



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

The Inspector General

Office of Inspector General
Washington, D.C. 20590

January 14, 2003

The Honorable Roy Blunt
U.S. House of Representatives
Washington, DC 20515

Dear Representative Blunt:

This is in final response to your letter of June 13, 2001, concerning the alleged harassment of Mr. Joseph Brinell by officials of the Federal Aviation Administration's (FAA) Kansas City Flight Standards District Office (FSDO). On December 9, 1999, Mr. Brinell, Director of Aviation for the College of the Ozarks, perished while piloting an aircraft owned by the College from St. Louis to Point Lookout, Missouri. The crash also claimed the lives of five other persons, including College officials and family members.

At your request, we initially examined FAA's internal investigation of the harassment allegations and reported our results to you by letter dated December 4, 2001, a copy of which is enclosed for your reference. Based on our findings of evident bias and deficiencies in FAA's investigation, we re-investigated the underlying allegations. This letter presents the results of our follow-on investigation.

This is the third investigation we have completed over the last three years involving fatal general aviation accidents and alleged improprieties on the part of FSDOs. In the two prior cases, we found that FSDO personnel were remiss in carrying out their regulatory duties. Our findings in this investigation are consistent with those of the previous two cases. We note that FAA's Regulation and Certification program, including the Flight Standards directorate, is under new leadership and we are encouraged by their responsiveness and expressed willingness to take appropriate action in this matter.

Background

NTSB's Findings

The National Transportation Safety Board (NTSB), in its June 2001 Accident Investigation Report, concluded that the crash resulted from pilot error under adverse weather conditions¹. The NTSB report included the following narrative based on an interview its accident investigator conducted:

“A corporate operator and friend of the pilot [Mr. Brinell] said that he met the pilot [on December 9, 1999] after the pilot’s airplane landed at St. Louis . . . [Mr. Brinell] said, “I need to talk to you.” . . . He said that [Mr. Brinell] told him that he hadn’t slept for three days, and expressed that a supervisor in the Kansas City FSDO “is trying to destroy me.” . . .”

FAA's Internal Investigation

By letter dated February 25, 2000, you requested FAA to investigate allegations you received from Mr. Brinell’s widow, Grace Brinell, that the Kansas City FSDO had wrongfully targeted Mr. Brinell for regulatory enforcement. FAA subsequently convened a team of three Aviation Safety Inspectors from within its Central Region to conduct an internal investigation. FAA reported its findings to you by correspondence signed by the Deputy Associate Administrator for Regulation and Certification, dated July 3, 2000, and October 10, 2000.

Significantly, among its investigative findings, FAA concluded that the FSDO’s May 1999 attempted formal re-examination of Mr. Brinell’s pilot competency, which could have led to revocation of his Airline Transport Pilot certificate, was not warranted. However, FAA further found, as reported to you in its October 10, 2000, letter, that the FSDO was “*not remiss in its oversight responsibilities or abusive in exercising its empowerment to re-examine Mr. Brinell, and the actions taken by the FSDO [Supervisor] were appropriate.*”

OIG's Review of FAA's Investigation

Based on your concerns about the adequacy of FAA’s internal investigation, you subsequently requested that we examine its thoroughness and accuracy, and we

¹ The NTSB cited as its investigative findings the following: (1) Proper altitude — not maintained — pilot in command; (2) Fatigue (lack of sleep) — pilot in command; (3) Weather condition — low ceiling; (4) Use of inappropriate medication/drug — pilot in command; (5) Weather condition — rain; and **(6) Pressure induced by others — FAA inspector** [*emphasis added by OIG*]. Regarding finding #4, per NTSB’s report, Mr. Brinell had been taking a commonly prescribed medication known as Sinequan, which reportedly may cause drowsiness.

reported our findings to you by letter dated December 4, 2001. We identified a number of troubling irregularities, the most significant of which was an evident lack of objectivity and an underlying bias in favor of FSDO personnel—against whom the allegations were made—thereby compromising the integrity of FAA’s investigation.

Specifically, we found that one of the team members, at the outset of the investigation, told the team that they had “reputations to protect.” We were also told that the team leader advised the team to consider that FSDO personnel subject to the allegations had applied for promotions². Further, we found serious omissions from FAA’s Report of Investigation, including a dissenting report prepared by a member of FAA’s investigative team that highlighted deficiencies in FAA’s investigation. These omissions gave rise to the perception of bias in FAA’s internal investigation.

We also found that remedial action pledged by the FAA in its correspondence to you—concerning FSDO personnel assignment changes—was ambiguous in terms of what action FAA intended to take, and that specific action directed by management was not adhered to. For instance, despite assurances to you that specific inspectors would no longer be assigned duties at the College, one of these individuals—who had pursued enforcement-related actions against Mr. Brinell—was seen by Mrs. Brinell at the College, sitting at her late husband’s desk with his feet on top of the desk.

Based on our findings, we advised you that it was appropriate for our office to re-investigate the underlying alleged FSDO improprieties concerning FAA’s oversight of Mr. Brinell and the College of the Ozarks. This letter presents the results of our follow-on investigation. We would be pleased to brief you and your staff on our investigation.

² The FSDO General Aviation Supervisor was promoted to the position of FSDO Manager while FAA conducted its internal investigation. Currently, this individual is the Acting Assistant Regional Flight Standards Division Manager. To date, a permanent selection for that position has not been made.

(The Flight Standards field reporting scheme is summarized as follows: FSDO Principal Operations Inspectors and Maintenance Inspectors report to the FSDO Supervisor, who reports to the FSDO Manager. The FSDO Manager in turn reports to the Assistant Regional Flight Standards Division Manager, who reports to the Regional Flight Standards Division Manager. The Headquarters-based Director of Flight Standards oversees the Regional management.)

OIG's Investigation of Alleged Harassment by the FSDO

Summary of Findings

We found that between March 1999 and the crash in December 1999, the FSDO's General Aviation Supervisor and a Principal Operations Inspector took a series of three enforcement-related actions against Mr. Brinell, each of which posed a threat to his livelihood in commercial aviation. These actions were (a) an attempt to strip Mr. Brinell of his pilot examiner status³; (b) a directed re-examination of his pilot proficiency, potentially resulting in the revocation of his transport pilot's license; and (c) direction for him to turn-in to the FSDO all of his logbooks—documenting his history as a pilot—as part of an investigation into alleged unauthorized check-rides given by Mr. Brinell⁴.

In reviewing these actions, we found that they were unwarranted and the FSDO's justification lacked credibility. The following summarizes our findings for each of these actions, along with a troubling inconsistency in FAA's October 10, 2000, correspondence to you:

1. Proposed Termination of Mr. Brinell's Designated Pilot Examiner Status

In March 1999, the Supervisor and Operations Inspector inappropriately attempted to relieve Mr. Brinell of his Designated Pilot Examiner authorization based on an undocumented belief that he had been a poor representative of the FAA. The Regional Flight Standards Manager rejected their proposed action, along with another attempt in April 1999, because it was based on anecdotal, word-of-mouth reports from inspectors and lacked required supporting documentation. When interviewed by us, the Supervisor and Operations Inspector could not attribute any such adverse reports about Mr. Brinell to a specific inspector.

³ Designated Pilot Examiners are private-sector pilots formally authorized to serve as representatives of the FAA in testing applicants for FAA-issued pilot certificates. They are not employees of the FAA, but rather are either self-employed and charge a fee for their services, or work for private entities.

⁴ Practical flight examinations, known as check-rides, are conducted by either FAA inspectors or FAA-approved Designated Pilot Examiners to determine pilot proficiency for purposes including issuance of operating certificates (a.k.a. licenses). This matter was under investigation by the FSDO Supervisor and Operations Inspector at the time of the crash. The FSDO Supervisor acknowledged that it is not unusual for pilots to experience stress when directed to provide their logbooks to FAA; other pilots had expressed this to us.

2. Directed Re-examination of Mr. Brinell's Pilot Competency

In May 1999, the Supervisor and Principal Operations Inspector wrongfully directed Mr. Brinell to submit to a re-examination of his pilot competency⁵ for reasons not relevant to his status as a pilot. Both the Inspector and Supervisor stated that their actual intent in directing the re-examination was to get Mr. Brinell's attention about identified lapses in the College's maintenance of several of its aircraft⁶, based on his overall position of responsibility as Director of Aviation. They told us that as the Director, he was in the best position to effect changes in the College's maintenance program.

As an FAA-certificated repair station, the College itself—as opposed to Mr. Brinell—was subject to regulatory sanctions for non-compliance with FAA standards. FSDO re-examination of Mr. Brinell's pilot proficiency was merited only if he had flown College aircraft at the time they were in violation of FAA regulations. Despite repeated attempts to find such evidence, the FSDO found none. The Supervisor and Operations Inspector continued to pursue re-examination of Mr. Brinell, even after an FAA Regional attorney counseled the Supervisor against it. The re-examination was withdrawn only after Mr. Brinell wrote a detailed letter of objection to the Regional Manager. While the Operations Inspector acknowledged that this action was not appropriate, the Supervisor remained defensive, asserting, “We have some fairly broad powers” under FAA regulations. However, we found the actions of the Supervisor and Operations Inspector to be inconsistent with policy guidance restricting re-examinations prescribed in FAA's Inspector's Handbook.

Additionally, we found indicia of disparate treatment of Mr. Brinell, in that FSDO records reflect that no other pilots were subjected to re-examination of their pilot competency for maintenance-related violations unless they were found to have operated an aircraft at the time violations occurred. Moreover, while the FSDO Supervisor targeted Mr. Brinell's pilot competency based on his position of overall responsibility for the College's aviation program, he did not pursue re-examination of the College's Director of Maintenance, relative to his mechanic's certificate. We question the Supervisor's rationale—albeit flawed—

⁵ A pilot's refusal to submit to re-examination subjects the pilot to suspension/revocation of his/her pilot certificate(s).

⁶ On March 10, 1999, subsequent to the Regional Manager's disapproval of the FSDO's proposed action against Mr. Brinell's DPE authorization, a FSDO inspector conducted an examination of the College's aircraft maintenance records. Although all College-owned aircraft were found to be in compliance with FAA regulations at the time of the review, the inspector identified five aircraft that had previously exceeded 100-flight hour inspection requirements and violated FAA airworthiness directives between September 1997 and January 1999. During a subsequent informal hearing, the College successfully argued that FAA could substantiate violations on only two aircraft. FAA assessed a \$1,500 civil penalty against the College.

for attempting to hold Mr. Brinell personally accountable, when the Director of Maintenance had day-to-day responsibility for the College's aircraft maintenance program and thus was in a more direct position to take corrective action.

3. Direction for Mr. Brinell to Provide His Pilot Logbooks to the FSDO

By letter dated November 24, 1999, the Supervisor notified Mr. Brinell that he was under investigation for allegedly conducting two check-rides in a model of aircraft for which he did not have current authorization, and directing him to turn-in his pilot logbooks for examination by the FSDO. Mr. Brinell claimed that although his formal authorization to conduct check-rides in a Cessna 310 had lapsed, he had received verbal authorization for the check-rides from the Principal Operations Inspector. Mrs. Brinell told us that shortly before the crash, her husband drafted, but did not complete, a response objecting to the Supervisor's letter directing him to turn-in his logbooks.

We found the Supervisor's explanation for requiring Mr. Brinell's logbooks to lack credibility, and other circumstances of this action questionable. Moreover, the prior inappropriate conduct of the Supervisor and Inspector, in targeting Mr. Brinell for enforcement actions, taints its legitimacy.

When we asked the Supervisor to explain why he required Mr. Brinell's logbooks, he related that he was trying to be helpful and wanted to review the logbooks in order to verify Mr. Brinell's flight time in the Cessna 310, in order to consider granting retroactive approval of the check-rides in question. The Supervisor's explanation to us is inconsistent with the fact that he had at least two opportunities to communicate this purpose to Mr. Brinell and did not do so. He did not express it in his November 24 letter or during a conference call he had with Mr. Brinell and the Operations Inspector on that same date. Further, also on November 24, the Supervisor notified one of the pilots having received a check-ride from Mr. Brinell that it was invalid. The other pilot was similarly notified on November 26, 1999. In our view, if the Supervisor had intended to grant Mr. Brinell such approval, he would not have invalidated the check-rides in question prior to reviewing Mr. Brinell's logbooks.

The Supervisor and Inspector told us the FSDO had no record of ever issuing a Letter of Authorization to Mr. Brinell for the Cessna 310. However, Mrs. Brinell provided us with a copy of one for that aircraft, issued to Mr. Brinell by the same Inspector in May 1995. This letter—required to be maintained by the FSDO for eight years—could have satisfied the Supervisor's stated intent to verify Mr. Brinell's experience giving check-rides for that type of aircraft. This would have been justification for providing a one-time verbal

authorization for Mr. Brinell to conduct the two check-rides. Further, the Supervisor told us Mr. Brinell was not asked to provide any prior Letter of Authorization.

During their November 24 conference call, Mr. Brinell contended that he had received verbal authorization from the Operations Inspector in advance of the check-rides. The Inspector told us while he did have a telephone conversation with Mr. Brinell, he did not recall what they discussed, but said he would not have given verbal approval. However, the Inspector acknowledged having given other pilots such authorization in the past.

Mrs. Brinell also maintained that from the time he received the Supervisor's letter, Mr. Brinell did not have a full night's sleep; that he would get up in the middle of the night to review his logbooks in comparison with aircraft records trying to understand why the Supervisor wanted them. She stated, "Given his last experience with the Kansas City FSDO . . . [t]his was creating an enormous amount of stress for him." By letter to Mrs. Brinell dated June 12, 2000, FAA's then-Director of Flight Standards concluded that the dispute regarding the verbal authorization for the check-rides resulted from a miscommunication and that both Mr. Brinell and the Operations Inspector had acted in good faith.

4. Inconsistency in FAA Correspondence

Finally, we found a troubling inconsistency reported to you in FAA's October 10, 2000, letter signed by the Deputy Associate Administrator for Regulation and Certification. While the letter stated that the FSDO's directed re-examination of Mr. Brinell was not warranted, it qualified that finding by asserting that the FSDO had not been remiss and the actions of the FSDO Supervisor in pursuing the re-examination were appropriate. Based on our findings, these statements are inherently inconsistent and should not have been reported to you. During the course of both our initial and subsequent investigations, we found no support for FAA's conclusion that the actions of the FSDO were appropriate.

In consideration of the totality of facts and circumstances in this matter, we have concluded that the FSDO Supervisor and Principal Operations Inspector were remiss in their oversight of Mr. Brinell, and their actions implicate an abuse of regulatory authority. Collectively, the series of FSDO actions give rise to at least the appearance that Mr. Brinell was being harassed. Mr. Brinell clearly perceived that he was being singled-out and unfairly treated. Our findings support the NTSB's conclusion that FAA had induced stress in Mr. Brinell.

In his 26 years as a Designated Pilot Examiner for the Kansas City FSDO and in over 28 years as a pilot for the College, Mr. Brinell had an unblemished FAA enforcement record. We found that Mr. Brinell was reported to have a positive relationship with the FSDO until the arrival of the FSDO Supervisor in July 1998, after which the relationship reportedly deteriorated for reasons that remain unclear. A friend of Mr. Brinell's⁷ advised us that the FSDO Supervisor told him in November 1999 that, "Joe [Brinell] does not give me the respect that I deserve as a Supervisor. We are going to change that. We are going to get his attention." The Supervisor told us that he did not specifically recall making those statements, but said it was possible. The Supervisor stated, "I had heard that he [Mr. Brinell] didn't like the FAA, bad-mouthed the FAA, he didn't want to fly in accordance with the rules; that [changing his attitude], yes, that is our job." The Supervisor related that his approach to changing Mr. Brinell's attitude was to "put pressure on him."

Recommendations to FAA

We are transmitting our full Report of Investigation, including all interview transcripts, to the FAA Administrator, along with the following recommendations:

1. That FAA consider appropriate disciplinary and other administrative action against the FSDO Supervisor and Operations Inspector based on their culpability in this matter. Due to the gravity of our investigative results, we question the Supervisor's suitability to serve as the FSDO Manager, the permanent position to which he was promoted while FAA's internal investigation was ongoing. We also recommend that FAA consider terminating the Supervisor's present assignment as Acting Assistant Regional Flight Standards Manager.

The FAA was previously apprised of our initial investigative findings, including the promotion of the FSDO Supervisor to FSDO Manager during the conduct of FAA's internal investigation, and agreed to hold any future promotions in abeyance pending the results of our follow-on investigation.

2. That the FAA Administrator correspond to you, as well as to Mrs. Brinell, regarding actions taken pursuant to our investigative findings and recommendations. It is our position that, to date, you and Mrs. Brinell have not been provided with an adequate, straightforward response from FAA.
3. That FAA apply the results of this investigation in reinforcing with its Flight Standards inspection workforce the appropriate protocols and criteria for such

⁷ This individual is the corporate pilot and friend, referenced in NTSB's Accident Investigation Report, who met with Mr. Brinell in St. Louis on December 9, 1999.

enforcement-related actions as re-examination of certificate holders and directing pilots to submit their logbooks to FSDOs.

4. That FAA take steps to ensure that the Kansas City FSDO, along with other FSDOs, follow prescribed record retention procedures. We find it troubling that the FSDO had no record of Mr. Brinell's 1995 Letter of Authorization for the Cessna 310.

We note that this is the third investigation we have conducted over the last three years involving fatal general aviation accidents and alleged improprieties on the part of FSDOs. In the two prior cases, both of which were requested by Members of Congress, we found FSDO personnel to have been remiss in performing their regulatory oversight functions. In one case, in FAA's Eastern Region, the then-Regional Flight Standards Manager and his then-Assistant Manager took significant disciplinary and other administrative action pursuant to our findings and recommendations.

These executives, who now serve in the capacity of Associate Administrator for Regulation and Certification, and Director of Flight Standards, respectively, were not in their current positions at the time of FAA's October 10, 2000, correspondence to you. We recently discussed this investigation with them and they consider our results to be of a serious nature. They expressed a strong commitment to personally review our investigative results and take appropriate action. Separately, we will be providing the complete report of investigation on this matter to the FAA Administrator. We have asked them to inform us, within 30 days, of action they intend to take and this will be reported to you in a timely manner.

If I can answer any questions or be of further assistance in this or any other matter, please feel free to call me at (202) 366-1959, or my Deputy, Todd J. Zinser, at (202) 366-6767.

Sincerely,



Kenneth M. Mead
Inspector General

Enclosure
Member Correspondence