

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 23 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EITAN LEASCHAUER,

Petitioner,

v.

NATIONAL TRANSPORTATION
SAFETY BOARD; FEDERAL AVIATION
ADMINISTRATION,

Respondents.

No. 13-73818

NTSB No. EA-5680

MEMORANDUM*

On Petition for Review of an Order of the
National Transportation Safety Board

Submitted June 14, 2016**

Before: BEA, WATFORD, and FRIEDLAND, Circuit Judges.

Eitan Leaschauer petitions pro se for review of the National Transportation Safety Board's ("NTSB") final order suspending Leaschauer's private pilot certificate pending reexamination. We have jurisdiction under 49 U.S.C. § 1153.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

We review the NTSB's final order under the arbitrary and capricious standard.

Gilbert v. NTSB, 80 F.3d 364, 368 (9th Cir. 1996). We deny the petition for review.

The NTSB's determination that a reasonable basis existed for the Federal Aviation Administration ("FAA") to request reexamination of Leaschauer was not arbitrary or capricious because substantial evidence supported the NTSB's finding that Leaschauer took off without prior clearance. *See Arrington v. Daniels*, 516 F.3d 1106, 1112 (9th Cir. 2008) (arbitrary and capricious standard requires agency to base decision on consideration of relevant factors and avoid clear error); 49 U.S.C. § 1153(b)(3) ("Findings of fact by the Board, if supported by substantial evidence, are conclusive."); 49 U.S.C. § 44709 (empowering FAA to reexamine certificate holders).

The NTSB's determination that the chief administrative law judge ("ALJ") did not err by denying Leaschauer's motion to disqualify the ALJ was not arbitrary or capricious because Leaschauer failed to show that the ALJ had any bias or prejudice from an extra-judicial source. *See Arrington*, 516 F.3d at 1112; *Adm'r v. Lackey*, NTSB Order. No. EA-5419 at 11 (2008) (setting forth standard).

The NTSB's determination that the ALJ's grant of leave for the FAA to

amend its complaint did not warrant relief was not arbitrary or capricious because the amendment did not prejudice Leaschauer. *See Janka v. NTSB*, 925 F.2d 1147, 1152 (9th Cir. 1991) (reversal is warranted only for substantial and prejudicial errors in administrative procedure).

We reject as unsupported by the record Leaschauer's contentions that he was denied due process during proceedings. *Id.*

We reject as without merit Leaschauer's contentions regarding misconduct by the ALJ or NTSB.

All pending motions and requests are denied.

PETITION FOR REVIEW DENIED.