

NOT FOR PUBLICATION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.

MICHAEL P. HUERTA, Administrator,
FAA,

Respondent.

No. 14-72214

NTSB No. EA-5723

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 from the National Transportation Safety Board's ("NTSB") final order suspending his pilot's license for sixty days as a punitive measure. We have jurisdiction under 49 U.S.C. § 1153. We review the NTSB's final order under the arbitrary and capricious standard. *Gilbert v. NTSB*,

* 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).

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

The administrative law judge (“ALJ”) held that the Federal Aviation Administration (“FAA”) was entitled to summary judgment on the basis of issue preclusion, based upon the ALJ’s order in a prior action, *Adm’r v. Leaschauer*, NTSB Order No. EA-5680 (2013). See Supplemental Excerpts of Record, *Leaschauer v. NTSB, et al.*, No. 13-73818 (9th Cir. Feb. 24, 2014) (ECF No. 14-2 at 36-44) (ALJ order). We exercise our discretion and take judicial notice of the ALJ’s oral initial decision and order in that case. See *Trigueros v. Adams*, 658 F.3d 983, 987 (9th Cir. 2011) (judicial notice may be taken of “proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue”).

The NTSB’s determination that issue preclusion applied to the 14 C.F.R. §§ 91.129(i), 91.13(a), and 91.13(a) charges was not arbitrary or capricious because the ALJ in EA-5680 specifically found that Leaschauer took off from an airport with a control tower without receiving clearance, and that Leaschauer failed to contact the control tower despite being instructed to do so by an air traffic controller. 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); *Adm'r v. Forrette*, NTSB Order No. EA-5524 (2010) (setting forth preclusion analysis); 49 C.F.R. § 821.17 (setting forth summary judgment standard).

We reject Leaschauer's contention that the NTSB erred in applying issue preclusion because Leaschauer was appealing NTSB Order No. EA-5680 to this court, as "the preclusive effects of a lower court judgment cannot be suspended simply by taking an appeal that remains undecided." *Robi v. Five Platters, Inc.*, 838 F.2d 318, 327 (9th Cir. 1988).

All pending motions and requests are denied.

PETITION FOR REVIEW DENIED.