



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JUN 14 2017

Mr. Henry Putek, Jr.
Allied Pilots Association Training Committee
P.O. Box 390538
Keauhou, HI 96739

Re: Clarification of voluntary distance learning during a rest period under 14 C.F.R. § 117.25

Dear Mr. Putek:

This letter is in response to your September 30, 2016 follow-up email requesting clarification with regard to the scheduling of required distance learning as it pertains to pilots of American Airlines. You initially wrote to us about your concerns by letter dated May 5, 2016, and we responded to your inquiry on September 5, 2016. Specifically, you now ask whether a certificate holder is required to schedule sufficient duty time to complete required distance learning, assuming a pilot chooses not to voluntarily complete the distance learning during any required rest period or other duty free period.

In our September 5 response to you, we referenced the controlling interpretation issued to Mr. Eric McEldowney from Mark W. Bury (Mar. 13, 2015). The following paragraph from that interpretation, at p. 2, is most pertinent to your initial and follow-up questions:

Turning to Scenario 1, it is possible that the flightcrew member in Scenario 1 would also complete the distance learning training voluntarily. The flightcrew member in that scenario would be provided with approximately two months (from October 1 to November 30) to complete the distance learning training. Given the large amount of time that flightcrew member would be provided to complete the distance learning training, *it is possible that the flightcrew member would have an opportunity to complete the training outside of a rest period.* If that is the case, then if the flightcrew member in Scenario 1 chooses to complete the training during a rest period, the completion of the training during a rest period would be voluntary. *However, if the flightcrew member in Scenario 1 is scheduled such that he or she cannot complete the required training outside of a rest period, then the completion of the training during a rest period would not be voluntary and would act to interrupt the rest period.*

(Emphasis added).

This part of the *McEldowney* interpretation stands for the proposition that a certificate holder must allow flightcrew members an opportunity outside of rest periods to complete

any distance learning training that is required by the certificate holder. Completion of training required by the certificate holder (whether in a class room, via distance learning, or flight training) is work that is assigned by the certificate holder, and thus constitutes duty. *See* the Legal Interpretation to Norman W. Robinson, Jr. from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (July 14, 2011) (“The FAA has consistently interpreted duty to mean ‘actual work for a certificate holder, or the present responsibility for work should the occasion arise.’”); *see also* the Legal Interpretation to Scott M. Ewing from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations (Jan. 13, 2014) (extending the conclusion set forth in *Robinson* to part 121 certificate holders). Although *Robinson* concerns 14 C.F.R. § 135.263(b) and *Ewing* concerns § 121.471(e), we find no substantive reason why distance learning should not also constitute duty under part 117 operations.

However, as stated in *McEldowney*, a certificate holder may provide for an extended period of time to complete the distance training, and a flightcrew member may complete the training outside of a rest period or voluntarily complete the training during a rest period. If, however, the flightcrew member is scheduled such that he or she cannot complete the distance learning training outside of a rest period, then the completion of the training during a rest period would not be voluntary and would act to interrupt the rest period.

Flightcrew member duty schedules vary significantly, of course. Whether a particular flightcrew member has a real opportunity to complete his or her certificate holder-required distance learning training outside of rest periods in any given timeframe will be assessed on a case-by-case basis.

Because the principles in *McEldowney* involving the voluntary completion of distance learning during a rest period applies equally to operations conducted under parts 117, 121, and 135, the *Robinson* and *Ewing* interpretations are withdrawn to the extent they suggest that distance learning cannot be voluntarily completed by a flightcrew member during a required rest period.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Richard Doan, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,



Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

Enclosure