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ORDER 2000-7-33



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the **28th day of July, 2000**

Served: July 31, 2000

Application of

SERVANT AIR, INC.

for a certificate of public convenience and necessity under
49 U.S.C. 41102 to engage in interstate scheduled air
transportation of persons, property, and mail

Docket OST-97-3022-8

**ORDER ISSUING EFFECTIVE CERTIFICATE
AND CONFIRMING ORAL ACTION**

Summary

By this order we (1) find that Servant Air, Inc., continues to be fit, willing, and able to provide interstate air transportation pursuant to certificate authority issued under 49 U.S.C. 41102; (2) confirm our oral action of August 19, 1999, making the certificate issued to Servant Air by Order 98-6-9 effective in part; and (3) reissue to Servant Air its certificate to reflect the effective date of the property and mail authority contained therein.

Background

Servant Air was found fit and issued a certificate by the Department to engage in interstate scheduled air transportation of persons, property, and mail by Order 98-6-9, served June 15, 1998. The effectiveness of that certificate was conditioned upon Servant Air's fulfilling a number of conditions, including providing us with a copy of its Air Carrier Certificate and Operations Specifications from the Federal Aviation Administration authorizing such operations, a certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft, and a description of any fitness-related changes the company had undergone since the date of the Show Cause order in this case (*see* Order 98-5-21, served May 19, 1998).

On August 20, 1998, Servant Air sent us a letter enclosing the company's Air Carrier Certificate and Operations Specifications, a description of all of the changes that the

company had undergone since its fitness determination, and an explanation that it was arranging to obtain the appropriate liability insurance. Seven months elapsed from that time without our receipt of the required evidence of insurance. Therefore, on March 18, 1999, we sent Servant Air a letter discussing the above and reminding it of the requirements of section 204.7 of the Department's Regulations and the impact of that section on the company's certificate authority if it did not commence actual flying operations under that authority by June 15, 1999. After that date had passed and we had not received any further communication from Servant Air, we decided to proceed with revocation of Servant Air's certificate authority for reason of dormancy. However, before taking that action, we contacted the FAA and Servant Air to be certain that the carrier no longer intended to commence operations under this certificate. Servant Air informed us that it did, in fact, wish to maintain its certificate authority and intended to commence actual flying operations under that authority immediately.¹

On August 11, 1999, Servant Air submitted to the Department evidence of liability insurance coverage meeting the requirements of section 205.5(b) for its aircraft. At the same time, Servant Air provided information on fitness-related changes it had undergone since its August 20, 1998, filing. In addition, Servant Air stated that it now intended to conduct interstate all-cargo operations only rather than the scheduled passenger operations it initially proposed. Further, Servant Air indicated that since the date of Show Cause Order 98-5-21, the carrier's former owner and President, Mr. Karl Braun, had sold all the capital stock of Servant Air to Mr. Eddy McKenney, the carrier's Director of Maintenance, and his wife, Gigi McKenney. As a result, Mr. McKenney had assumed the additional role of General Manager and Mrs. McKenney assumed the role of Office Manager. Mr. Michael Sullivan continued to serve in the positions of Director of Operations and Chief Pilot.

Since the information provided demonstrated that the company continued to be fit to conduct interstate all-cargo operations² and since our review of all of the necessary information was satisfactory, we made the property and mail portion of Servant Air's certificate of public convenience and necessity effective on August 19, 1999, the end of the standard six (business) day waiting period.

Subsequent to receiving effective certificate authority, Servant Air informed us that Mr. McKenney was killed in a September 3 accident when his aircraft collided with mountainous terrain. As a result of the fatal accident, Servant Air has provided us with fitness information describing the changes that it has undergone due to Mr.

¹ Servant Air indicated that it thought that evidence verifying the appropriate insurance coverage for its aircraft (the only requirement left unfilled by the carrier for receipt of effective certificate authority) was already on file with the Department and hence did not respond to our March 18, 1999, letter.

² Servant Air furnished a copy of its amended Operations Specification from the FAA indicating that the carrier may only provide all-cargo operations.

McKenney's death.³ As summarized below, this information indicates that the carrier continues to be fit to conduct its current all-cargo operations.

FITNESS

Ownership and Managerial Competence

Ms. Gigi McKenney is the carrier's sole shareholder. She functions as its General Manager and is responsible for overall planning and guidance. The carrier's Director of Operations is Karl Braun, its former owner, and its Director of Maintenance is Ron Rentrop. Mr. Michael Sullivan continues to serve in the position of Chief Pilot. The qualifications of Messrs. Braun and Sullivan were reviewed in connection with Servant Air's initial fitness determination (*see* Order 98-5-21). Before becoming co-owner of Servant Air in 1999, Mrs. McKenney was in the business management of Bellair for two years. Prior to that time, she worked as a department coordinator nurse at Tanana Valley Clinic and Fairbanks Memorial Hospital. Mr. Rentrop, an Airframe and Powerplant Mechanic, began working as a mechanic for Bonne Idee Aero Service and was subsequently named Director of Maintenance for that company. He left Bonne Idee in 1995 to work as a pilot and mechanic for East Carroll Flying Service. In 1996, he formed his own aircraft maintenance and inspection business with which he was involved until joining Bellair as a mechanic in May 1998. He joined Servant Air in late 1999.

Upon review of the qualifications of the above individuals, we conclude that Servant Air's key personnel continue to have the management skills and technical ability to conduct its limited interstate all-cargo operations.

Financial Posture and Operating Proposal

Initially, Servant Air proposed to commence its operations by providing scheduled passenger service three days per week using one leased three-seat Cessna 172 aircraft. According to its latest fitness information, Servant Air currently uses three Piper PA32-300 aircraft to conduct weekly all-cargo flights between Fairbanks and Lake Minchumina, Tanana, Ruby, Galena, Kaltag, Nulato, Koyukuk, Bettles, Anaktovuk Pass, Allakaket, Fort Yukon, Chalkyitsik, Arctic Village, and Stevens Pass.

The carrier provided a balance sheet as of September 30, 1999, and an income statement for the nine months ending September 30, 1999. The balance sheet disclosed total assets of \$295,352, a current assets to current liabilities ratio of 0.89:1, negative working capital of \$15,313, and positive stockholder's equity of \$150,166. Its income statement for the nine months ending September 30, 1999, reflected a net income of \$106,368.

³ This information was submitted on December 9, 1999, and January 24 and 28, 2000.

Servant Air also furnished bank statements from Alaska USA Federal Credit Union and American Express Financial Advisors verifying that the carrier had nearly \$80,000 of funds on deposit as of November 24, 1999. In light of these statements, we conclude that Servant Air continues to have sufficient financial resources available to it to conduct its current all-cargo operations using small aircraft without posing an undue risk to consumers or their funds. In fact, the operations currently being performed by Servant Air could be conducted under our air taxi regulations (14 CFR Part 298).

Compliance Disposition

We found in Order 98-6-9 that Servant Air had the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conformed to applicable safety standards and that acceptable consumer relations practices would be followed. Neither Servant Air's earlier ownership change nor the September 3, 1999, fatal accident⁴ and subsequent management changes have had any negative impact on the carrier's overall compliance disposition and, therefore, the findings of Order 98-6-9 with respect to compliance disposition remain valid.

CITIZENSHIP

49 U.S.C. 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned or controlled by U.S. citizens. We have also interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

As noted earlier in this order, Servant Air is owned by Ms. Gigi McKenney, a U.S. citizen. In addition, Servant Air has affirmed that all of its key personnel are U.S. citizens. Further, our review of Servant Air's citizenship has uncovered no reason to suggest that control of the carrier rests with non-U.S. citizens.

Based on the above, we conclude that Servant Air continues to be a citizen of the United States and is fit, willing, and able to conduct the interstate air transportation of property and mail authorized by its certificate.

CERTIFICATE CONDITIONS AND LIMITATIONS

We will take this opportunity to reissue to Servant Air the certificate previously issued to it by Order 98-6-9 to reflect the effective date for the property and mail authority contained therein. The authority to carry passengers contained in this certificate has not been made effective. Moreover, since Servant Air does not propose to provide

⁴ The FAA has not taken any action against Servant Air as a result of the accident.

passenger service at this time, its authority to conduct such operations will not become effective until it has undergone a redetermination of its fitness to conduct such operations and provided evidence of FAA certification for scheduled passenger operations, as well as evidence of the required passenger liability insurance coverage.⁵

Further, because our findings of fitness are based on Servant Air's current operations which utilize small aircraft, the certificate being reissued will continue to restrict the company to such operations. However, in addition to defining "small" aircraft in terms of their passenger carrying capabilities (that is, having nine passenger seats or less), we have amended Servant Air's terms and conditions to include the payload capacity limitation (7,500 pounds of payload capacity or less) for small all-cargo aircraft. This amendment does not impose any new restriction on Servant Air; rather, it merely clarifies the aircraft size restriction previously imposed in light of the fact that the carrier is, at present, conducting only all-cargo operations.

To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness. Therefore, if Servant Air should propose any substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our regulations.⁶ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under 49 U.S.C. 41110(e).⁷

As a final matter, when we initially found Servant Air fit in 1998, we directed that the company submit a first-year progress report to the Air Carrier Fitness Division within 45 days following the end of its first year of actual flight operations. As the carrier

⁵ Servant Air should file a notice of its intent to commence scheduled passenger operations under its certificate at least 45 days in advance of its intended commencement of such operations and, at that time, supply updated information on its ownership, key personnel, operating plans, financial posture, and compliance history. If the information submitted demonstrates that the carrier is fit to commence scheduled passenger operations, and Servant Air has otherwise complied with the terms for receipt of effective scheduled passenger authority, we will reissue Servant Air's certificate to reflect the authorization of passenger operations.

⁶ The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

⁷ We also remind Servant Air about the requirements of section 204.7 of our rules. This section provides, among other things, that, if the carrier ceases all operations for which it was found fit, it may not resume such operations unless its fitness to do so has been redetermined, and that, if the carrier does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

commenced operations on August 19, 1999, this progress report is due on October 9, 2000. Servant Air's report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during the next year, current financial statements, a listing of current management and key technical personnel. Servant Air should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations, if requested.

ACCORDINGLY, Acting under authority assigned by the Department in its regulations, 14 CFR 385.12:

1. We find that Servant Air, Inc., continues to be fit, willing, and able to engage in interstate air transportation under its certificate of public convenience and necessity
2. We confirm our oral action of August 19, 1999, making Servant Air, Inc.'s authority to carry property and mail under its certificate effective on that date.
3. We reissue to Servant Air, Inc., the interstate air transportation certificate issued to it by Order 98-6-9 in the attached form to reflect the effective date of the property and mail authority contained therein.
4. We direct Servant Air, Inc., to submit to the Air Carrier Fitness Division its first-year progress report by October 9, 2000.
5. We will serve a copy of this order on the persons listed in Attachment A.

Persons entitled to petition the Department for review of this order under the Department's Regulations 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

The action confirmed in this order was effective when taken and the filing of a petition for review shall not alter its effectiveness.

By:

RANDALL D. BENNETT
Acting Director
Office of Aviation Analysis

(SEAL)

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