

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 07-1033**

**September Term, 2007**

**Filed On: October 23, 2007**

[1075132]

John F. Kilgroe,  
Petitioner

v.

National Transportation Safety Board and  
Commandant, United States Coast Guard,  
Respondents

**ON PETITION FOR REVIEW FROM AN ORDER OF THE  
NATIONAL TRANSPORTATION SAFETY BOARD**

**BEFORE:** Henderson, Tatel, and Kavanaugh, Circuit Judges

**J U D G M E N T**

This petition for review of an order of the National Transportation Safety Board was considered on the briefs and appendices filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

**ORDERED AND ADJUDGED** that the petition for review of the December 12, 2006 order of the National Transportation Safety Board (“NTSB”) be denied. The NTSB’s decision is supported by substantial evidence, see Throckmorton v. NTSB, 963 F.2d 441, 444 (D.C. Cir. 1992), and is not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971). The Administrative Law Judge (“ALJ”) properly exercised his fact finding authority to assess witness credibility during the trial. Carosella v. United States Postal Service, 816 F.2d 638, 641 (Fed. Cir. 1987). With respect to Kilgroe’s claim that the lost logbook would establish his competence, the ALJ properly exercised his discretion in deciding not to draw an adverse inference from the fact that the logbook was missing. See International Union (UAW) v. NLRB, 459 F.2d 1329, 13139 (D.C. Cir. 1972). Finally, no improper ex parte communication took place between the ALJ and the investigating officer. See 5 U.S.C. § 554(d).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for hearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**