

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

IN RE:)	
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)	
SUSPENSION OF VIRTUAL HEARINGS)	<u>STANDING ORDER 25-1</u>
AND SCHEDULING OF HEARINGS IN)	
NON-EMERGENCY CASES)	

The Office of Administrative Law Judges (“OALJ”) of the National Transportation Safety Board (“NTSB”) is required to conduct proceedings involving appeals of Federal Aviation Administration (“FAA”) enforcement actions suspending or revoking certificates of airmen, mechanics and air carriers for alleged violations of the Federal Aviation Regulations or lack of qualification. *See* 49 U.S.C. § 44709(d). The OALJ is also charged with adjudication of petitions for review of FAA denials of applications for the issuance or renewal of airman certificates. *See* 49 U.S.C. § 44703(d).

The most frequent types of cases adjudicated by the OALJ include “SE” for safety enforcement (certificate suspension/revocation), and “SM” (safety medical) for cases involving denials of medical certification. *See* 49 C.F.R. § 821.3. For those SE cases in which the FAA determines an emergency exists, the revocation or suspension is immediately effective upon issuance, and the respondent is unable to exercise the privileges of his or her certificate during the pendency of the appeal proceeding. *See* 49 U.S.C. § 44709(e)(2). Although the respondent may waive the accelerated timeline for emergency appeals, they are still without the possession and benefit of any airman or mechanic certificate for the duration of their appeal. *See* 49 C.F.R. § 821.52(d).

Cases that do not settle or otherwise resolve through motions practice proceed to a merits hearing before an Administrative Law Judge (“ALJ”). In setting the place of the hearing, an ALJ shall give due regard to the location of the subject incident, the convenience of the parties and their witnesses, and the conservation of Board funds as well as the convenience of the hearing site to scheduled transportation services. *See* 49 C.F.R. § 821.37(a). In SM cases, the hearing is required to be conducted “at a place convenient to the place of residence or employment” of the petitioner. *See* 49 U.S.C. § 44703(d)(2). There is no Board Rule that requires a virtual hearing.

Following the onset of the Coronavirus Disease of 2019 (“COVID-19”) pandemic, the OALJ established electronic filing procedures and extensive use of virtual hearings to enable it to continue to carry out its core functions while protecting the health and safety of the public and office staff. As the threat posed by COVID-19 is no longer acute, the OALJ has determined that continued reliance on virtual hearings is no longer warranted as a matter of public safety. The use of virtual hearings, however, may be appropriate for reasons of financial economy or to support the due process rights of the parties.

Prior to the COVID-19 pandemic, merits hearings conducted by the OALJ were held in person and required little staff personnel support at the site of the hearing, other than the assigned ALJ. By contrast, virtual hearings require staff support before and during the hearing in order to manage the participants' appearances and use of electronic exhibits. The use of agency staff to assist in preparing for and conducting virtual hearings is an additional duty that the NTSB did not anticipate in planning personnel staffing requirements before COVID-19.¹ Recent staff departures have been exacerbated by a significant increase in the OALJ docket of SE emergency cases which must be heard on an accelerated timeline.²

Given the current situation, the OALJ has determined it is appropriate to allocate its resources to the adjudication of emergency cases first, waived emergency cases second, then non-emergency enforcement case and medical petitions for review third. Further, the OALJ is without adequate support personnel to moderate virtual hearings without compromising the routine activities required to efficiently maintain the cases on its docket.

For the reasons stated above, the OALJ will institute the following directives to take effect on or after May 5, 2025:

1. The OALJ will not schedule a merits hearing to be conducted by virtual electronic means in any case until further notice.
2. The OALJ will not schedule a merits hearing for any SM or non-emergency SE case until the OALJ provides notice, and after adjudication of all emergency appeals is complete.
3. An ALJ may *sua sponte* continue or enter a stay of proceedings in any SM or non-emergency SE cases assigned to them, to include those currently scheduled for a merits hearing.
4. After consultation with the parties, an ALJ may relax application of the Federal Rules of Evidence consistent with the Pilots Bill of Rights and Board Rule 38 (49 C.F.R. § 821.38) to permit adjudication of any case based upon a documentary record, subject to available administrative support.
5. Upon written motion, an ALJ may deviate from any of these directives upon a showing of extraordinary circumstances and to ensure the due process rights of a party. *See* 49 C.F.R. § 821.14(b).

This order is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing in this order should be construed as mandating a particular outcome in any

¹ As of January 2024, the OALJ was authorized 13 staff members including four ALJs. Following the loss without replacement of two support staff members last year, and the upcoming loss without replacement of three more staff members, the OALJ will experience a 56% reduction in support staff personnel in the next four months. Indications from NTSB leadership are that the vacancies will not be filled, nor will the duty requirements of departing support staff members be covered by other resources.

² From March 21, 2025, to April 29, 2025, the OALJ received appeals in 24 emergency cases. At this pace, the OALJ is on track to receive 150% more emergency cases than in a normal year.

specific case, or limiting an ALJ's independent judgment and discretion in adjudicating cases or exercising their authority under applicable law.

IT IS SO ORDERED.

Entered this 29th day of April 2025, at Morehead City, North Carolina.

A handwritten signature in blue ink, appearing to read "V. Stuart Couch", written over a horizontal line.

V. STUART COUCH
Acting Chief Administrative Law Judge