

SERVED: December 15, 1993

NTSB Order No. EA-4049

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of December, 1993

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13349
v.)	
)	
DANIEL F. PIRO,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision Administrative Law Judge Jerrell R. Davis rendered in this proceeding on November 22, 1993, at the conclusion of an evidentiary hearing.¹ By that decision the law judge modified an emergency order of the Administrator so as to impose, instead of revocation, a 180-day suspension of respondent's commercial pilot

¹An excerpt from the hearing transcript containing the initial decision is attached.

certificate. The Administrator argues on appeal that the law judge erred in reducing the sanction. For the reasons discussed below, we will grant the Administrator's appeal and reinstate revocation.²

In his October 1, 1993 Emergency Order of Revocation, which served as the complaint in this matter, the Administrator alleged that respondent's airman certificate should be revoked, pursuant to sections 61.15 and 67.20(a)(1) of the Federal Aviation Regulations ("FAR," 14 CFR Parts 61 and 67), because he had been convicted in state court of a drug violation and because he had intentionally falsified a medical certificate application by not disclosing the conviction.³ The law judge accepted the

²The Administrator's appeal brief was due on November 29, 1993, and it contains a certificate of service attesting to its placement in the U. S. Mail on that date. However, the date on the postage placed by the agency on the envelope (postmarked December 1, 1993) in which the brief was mailed to us is November 30, 1993. No issue as to the discrepancy has been raised by the respondent, and we accept the certification. See Section 821.8(h), 49 CFR Part 821.

³FAR sections 61.15 and 67.20(a)(1) provide as follows:

"61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for--

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

"§67.20 Applications, certificates, logbooks, reports, records: Falsification, reproduction, or alteration.

respondent's testimony that he thought he did not need to report the conviction unless and until an appeal he had taken from it was decided adversely to him. The law judge concluded that this explanation, which he viewed as truthful, precluded a finding that respondent had intended to falsify the medical certificate application.⁴ With respect to the respondent's admitted state court drug conviction, the law judge in effect ruled that a 180-day suspension was consistent with Board precedent because it was not established that the drug conviction arose out of facts involving the operation of an aircraft. The Administrator maintains on appeal that revocation should have been upheld notwithstanding the lack of aircraft involvement. We agree.

The Board has repeatedly expressed the view that revocation should be upheld on charges under section 61.15 without regard to aircraft involvement if the drug offense underlying the charge is serious enough to draw in question the airman's qualification to hold a certificate; that is, did it demonstrate a lack of the necessary care, judgment, and responsibility a certificateholder must possess. See, e.g., Administrator v. Serra, NTSB Order EA-3938 (1993), Administrator v. Johnson, NTSB Order EA-3929 (1993),

(..continued)

(a) No person may make or cause to be made--

(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part[.]"

⁴Although the Administrator challenges on this appeal the dismissal of the falsification charge, he has identified no basis on which the law judge's credibility assessment in connection with the element of respondent's intent in filing out the application could be overturned.

Administrator v. Correa, NTSB Order EA-3815 (1993), and Administrator v. Beahm, NTSB Order EA-3769 (1993). These cases establish that a law judge must do more, in determining the appropriate sanction, than ascertain whether the drug offense for which an airman was convicted directly embraced the use of his certificate or of an aircraft. The law judge must determine, as well, whether the offense was a minor or an egregious one. Such an assessment in this case compels, we think, the conclusion that the revocation sought by the Administrator should be sustained.⁵

Respondent pleaded guilty to felonious possession *for sale* of some 1093 grams of cocaine. In our judgment, any drug conviction establishing or supporting a conclusion that the airman possessed a controlled substance for profit or commercial purposes is a flagrant one warranting revocation under the regulation. An individual who knowingly participates in a criminal drug enterprise for economic gain thereby demonstrates such a disregard for the rights and lives of others that he may reasonably be viewed as lacking the capacity to conform his conduct to the obligations created by rules designed to ensure and promote aviation safety.

⁵The range of sanction in the Administrator's Enforcement Sanction Guidance Table, FAA Order 2150.3A, Appendix 4, for "Drug conviction when an aircraft is not involved" is 180 days to revocation.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal for reinstatement of the sanction of revocation is granted;
2. The initial decision is affirmed, except to the extent it reduces the sanction in the Administrator's order; and
3. The Emergency Order of Revocation, except for its allegation of a violation of FAR section 67.20(a)(1), is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.