

revocation order, which served as the complaint, alleged that respondent violated sections 61.15 and 67.20(a)(1) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Parts 61 and 67) by intentionally omitting from two consecutive medical certificate applications any reference to his drug-related convictions.² The Administrator claimed that respondent had intentionally checked "no" in response to the question on the applications of whether he had a record of any convictions when, in fact, he had been convicted in 1980 of drug-related crimes.³ The law judge

²FAR sections 61.15 and 67.20(a)(1) state:

§ 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.

(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....

³On May 2, 1980, respondent was convicted in the United States District Court for the Eastern District of Virginia of the following: 2 counts of conspiracy to violate federal narcotics laws; six counts of distribution of heroin; 2 counts of use of a telephone to facilitate possession and distribution of heroin; and interstate travel in aid of racketeering. As a result, he was incarcerated until February 7, 1985, when he was paroled. His parole ended on August 8, 1989.

believed respondent's explanation that he inadvertently checked no because he thought all the questions were relating to possible medical problems and therefore found that respondent did not intentionally falsify the applications. Further, the law judge determined that, given the totality of the circumstances, justice would be served by a six-month suspension of respondent's airman and medical certificates.

The Administrator has appealed, asking that the Board reinstate the original revocation.⁴ Respondent, on the other hand, seeks dismissal of the charges under the Board's stale complaint rule,⁵ and maintains that any sanctions under section 61.15 are unjustified because the conviction is both remote in time and did not involve the operation of an aircraft.

After consideration of the briefs of the parties and the record, the Board concludes that safety in air commerce or air transportation and the public interest require that we grant the Administrator's appeal and deny the respondent's appeal.

The argument that the complaint should have been dismissed as stale is unpersuasive. The FAA became aware of the 1980 conviction in June 1990 and immediately sent respondent a notice of investigation, informing him of the FAR sections he allegedly violated. Although the order of revocation did not explicitly

⁴The Administrator did not appeal the finding of no intentional falsification.

⁵Allegations of infractions that occurred more than six months prior to the Administrator advising a respondent of any pending charges may be dismissed unless an issue of lack of qualifications is presented. 49 C.F.R. 821.33.

state that lack of qualification was at issue, Board precedent manifests that implicit in a revocation order, as well as an intentional falsification charge, is an allegation of lack of qualifications.⁶ As for respondent's claim that his qualifications to hold an airman certificate could not be called into question by his 1980 criminal conviction since an aircraft was not used in the commission of the crime, Board precedent states otherwise.⁷ Lack of qualifications refers to the care, judgment, and responsibility demanded of a certificate holder, as well as proficiency in the physical operation of an aircraft. Administrator v. Klock, NTSB Order No. EA-3045 (1989). A drug-related conviction in and of itself calls into question respondent's qualifications. See Administrator v. Hagan, NTSB Order No. EA-3985 (1993). Therefore, the law judge did not err by refusing to dismiss the complaint as stale. Respondent also asserts that the conviction is too old to warrant any sanction now. By contrast, the Administrator maintains that even though respondent was convicted in 1980, given the egregious nature of the underlying narcotics offenses, revocation is warranted. We agree.

⁶We stated as much in Administrator v. Finefrock, 5 NTSB 632, 633 (1985) ("Revocation is predicated on lack of qualifications, which is a matter not only of technical skill and proficiency but also of care, judgment and responsibility").

⁷See Administrator v. Correa, NTSB Order No. EA-3815 (1993)(revocation based on FAR section 61.15 for drug convictions unrelated to aircraft operations is consistent with Board precedent).

The FAA has established guidelines for its enforcement policy where drug-related convictions are involved. See 54 Fed. Reg. 15,144 (1989). Additional information on the application of these guidelines may be found in FAA Order 2150.3A, Appendix 1, Compliance and Enforcement Bulletin 90-2 (1990). This bulletin states that in most drug conviction cases, action will be taken against a certificate holder only if the convictions occurred after February 17, 1984. Id. at 9. But, "the FAA reserves the prerogative to take certificate action in any case it considers aggravated even if the conviction falls outside the 'lookback' period."⁸ Id. In addition, the penalty sought for more than simple drug possession is generally revocation.⁹ Other factors are also considered when the Administrator determines what sanction to pursue, such as whether an aircraft was used, the time of the conviction, and rehabilitation or recidivism. In the instant case, the Administrator viewed respondent's subsequent conviction in 1990 of willful failure to report transportation of

⁸Among the situations considered "aggravated" are cases that the Department of Justice has found appropriate for criminal prosecution. Appendix 1 at 9.

⁹Specifically, for drug convictions that do not involve falsification:

1. For single conviction for simple possession, suspension of any pilot or flight instructor certificates for 120 days.
2. For more than simple possession, except in extraordinary circumstances, revocation of any pilot or flight instructor certificate.
3. For two or more convictions, except in extraordinary circumstances, revocation of any pilot or flight instructor certificates.

Id. at 12.

monetary instruments exceeding \$10,000 as further evidence that he lacks the care, judgment, and responsibility of a certificate holder.¹⁰ Given all the circumstances, revocation is justified and consistent with precedent.¹¹

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's appeal is granted;
3. The initial decision is affirmed, except to the extent it reduces the sanction; and
4. The Order of Revocation, except for the 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.

¹⁰According to a presentence report included in respondent's medical file, Exhibit A-2, respondent pleaded guilty to the above-mentioned charge on November 6, 1990, in United States District Court for the District of Maryland. Apparently, respondent was scheduled to depart BWI Airport on a flight bound for Frankfurt via London when he was stopped by U.S. Customs agents. When asked, respondent told an agent that he did not have more than \$10,000 in cash to report. A search of his luggage revealed several empty zip-lock bags, tape, and an elastic waistband. A total of \$78,506 in cash was found on his person. Respondent asserted that he was on his way to visit his sick mother in Gibraltar and was taking the money to pay for an operation for her. Respondent was sentenced to a 10-month prison term.

¹¹See Administrator v. Piro, NTSB Order No. EA-4049 (1993); Administrator v. Beahm, NTSB Order No. EA-3769 (1993).