

SERVED: June 24, 1994

NTSB Order No. EA-4201

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 16th day of June, 1994

---

JOHN M. SMITH,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	Docket 70-EAJA-SE-9242
DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Respondent.	)	
	)	

---

**OPINION AND ORDER**

In response to NTSB Order EA-4096, applicant has filed an amended application for fees and expenses. That order indicated that, although certain fees and expenses were recoverable, we were unable from the application to separate those that were not. We directed applicant and the Administrator jointly to determine those fees and expenses that were recoverable, and the level of permissible fee recovery in excess of \$75 per hour. The Administrator has responded, in agreement, to applicant's amended filing.

5814B

Applicant now states that the fees and expenses for which he seeks recovery do not include fees in connection with judicial review of our prior order, NTSB Order EA-3648 (September 1, 1992), in which we disallowed respondent any EAJA<sup>1</sup> recovery, and do not duplicate fees and expenses already awarded pursuant to the decision of the Eighth Circuit Court of Appeals. Applicant, also as required, has done the calculations to demonstrate that fee recovery does not exceed the ceiling authorized in our rules (see 49 C.F.R. Part 826).

**ACCORDINGLY, IT IS ORDERED THAT:**

The Administrator shall pay to applicant fees in the amount of \$10,475.10, and expenses in the amount of \$2,208.00, for a total of \$12,683.10.

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

---

<sup>1</sup>Equal Access to Justice Act, 5 U.S.C. 504.