

SERVED: February 27, 1997

NTSB Order No. EA-4526

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 13th day of February, 1997

_____	)	
BARRY L. VALENTINE,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14327
v.	)	
	)	
GREGORY D. D'ANTONIO,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent has appealed from two orders issued by Administrative Law Judge Patrick G. Geraghty.<sup>1</sup> The first order, issued on February 23, 1996, granted the Administrator's Motion for Summary Judgment and affirmed the Administrator's order revoking respondent's commercial<sup>2</sup> pilot certificate on

<sup>1</sup> Copies of the law judge's orders are attached.

<sup>2</sup> And any other airman pilot certificate held by respondent. See *infra* note 9.

allegations of a violation of section 61.15 of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 61, as a result of respondent's conviction for Possession With Intent to Distribute Marijuana. The law judge's second order, dated March 5, 1996, declined to review respondent's request for reconsideration because respondent's appeal of the initial decision had already been filed with the Board.

Respondent raises four issues on appeal. He claims that the law judge erred in affirming revocation of his private pilot certificate, because the Administrator failed to put him on notice that any certificate other than his commercial pilot certificate was subject to revocation. He also claims that the law judge's failure to hold a hearing on the issue of lack of qualification under the Board's stale complaint rule<sup>3</sup> was reversible error, and that it was error for the law judge to grant summary judgment to the Administrator. Finally, respondent asserts, the law judge should have ruled on his request for reconsideration. For the reasons that follow, we deny the appeal.<sup>4</sup>

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(..continued)

<sup>3</sup> Section 821.33, Rules of Practice in Air Safety Proceedings, 49 C.F.R. Part 821, provides for dismissal of complaints stating allegations of offenses older than 6 months, except where a lack of qualification is alleged. Subsection (b)(2) of the rule provides, in pertinent part, "If the law judge deems that an issue of lack of qualification would be presented by any or all of the allegations, if true, he shall proceed to a hearing on the lack of qualification issue only...."

<sup>4</sup> The Administrator has filed a brief in reply, urging the Board to deny the appeal and affirm the revocation order.

## Background

The Administrator's amended revocation order, filed as the complaint in this matter, alleged in pertinent part as follows:

1. You are now and at all times mentioned herein were, the holder of Commercial Pilot Certificate No. 526928542.
2. On or about June 29, 1994, you were convicted of Possession with intent to Distribute Marijuana in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(D) in the United States Court, District of Arizona.
3. Such conviction renders you subject to the provisions of Section 61.15 of the Federal Aviation Regulations.

By reason of the foregoing circumstances, you:

- a. violated Section 61.15(a)(2) of the Federal Aviation Regulations, in that you were convicted of violating a Federal statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of marijuana;
- b. failed to exercise the degree of care, judgment and responsibility required of the holder of a commercial pilot certificate; and
- c. have demonstrated that you presently lack the qualifications required of the holder of a commercial pilot certificate.

The Administrator has determined that, by reason of the foregoing circumstances, safety in air commerce and the public interest require the revocation of your Commercial Pilot Certificate No. 526928542 and any other airman pilot certificate held by you.

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator by 49 U.S.C. Section 44709, that:

- (1) Commercial Pilot Certificate No. 526928542 and any other airman pilot certificate now held by you be and hereby is revoked...

(5) No application for a new airman certificate shall be accepted from you, nor shall any airman certificate be issued to you, without prior written authorization for such action being given on behalf of the Administrator....

Respondent filed an answer to the complaint in which he admitted that he had been convicted of Possession With Intent To Distribute Marijuana. He asserted, however, that revocation was not appropriate in his case because an aircraft had not been used to facilitate the commission of the offense.<sup>5</sup> He also asserted that any sanction imposed should affect only his commercial pilot certificate and not his private pilot certificate.

The Administrator filed a motion for summary judgment. The Administrator argued that a hearing in this matter would serve no purpose, since Board precedent is clear that revocation for a conviction on charges of Possession With Intent To Distribute Marijuana is appropriate.<sup>6</sup> Respondent filed a response, urging the law judge to deny the Administrator's motion. He also filed a cross-motion for summary judgment, arguing that he should be permitted to retain a private pilot certificate, notwithstanding the revocation or suspension of his commercial certificate, because the Administrator's notice of proposed certificate action (NOPCA) failed to advise him that revocation of any airman

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<sup>5</sup> Respondent also claimed that his violation-free history and the fact that he claimed to receive no economic gain from the underlying offense, were factors that should be considered in mitigation.

<sup>6</sup> Copies of the indictment and the judgment of conviction were attached to the motion.

certificate other than his commercial certificate was proposed.<sup>7</sup> Respondent's pleadings indicated that the basis for his conviction as a principal, in what appears to have been a major drug trafficking operation, was that he gave counsel to a legal client who was a co-conspirator in the drug operation.<sup>8</sup>

The law judge granted the Administrator's motion for summary judgment. He determined that the complaint should not be dismissed as stale, since a lack of qualification issue was clearly presented. The law judge ruled that respondent's private pilot certificate had been subsumed by the issuance of a commercial certificate and that, therefore, the revocation action was against any airman pilot certificate held by respondent. Finally, the law judge ruled, Board precedent dictated that respondent's conviction of possession with intent to distribute a controlled substance supported the finding of a violation of FAR section 61.15(a)(2), required revocation of his airman certificate, and made issues such as whether respondent made a profit, irrelevant to this proceeding.

On February 29, 1996, respondent concurrently filed a Notice of Appeal of the law judge's decision and a request for reconsideration. In an order dated March 5, 1996, the law judge ruled that the filing of a notice of appeal had divested him of

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<sup>7</sup> The Administrator treated this argument in his reply as a motion to dismiss the complaint as stale.

<sup>8</sup> Respondent failed to note that he was also convicted of one count of a violation of 18 U.S.C. 1512(b)(1), apparently for attempting to obstruct the testimony of a government witness.

jurisdiction to rule on the motion for reconsideration.

### **Discussion**

Respondent's appeal must fail. As we have stated repeatedly, most recently in Administrator v. Adcock, NTSB Order No. EA-4507 (1996), the law in this area is clear. The courts have affirmed our rulings 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 into question the airman's qualification to hold a certificate. . . . 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.

Administrator v. Adcock, NTSB Order No. EA-4507 at 3, citing Administrator v. Piro, NTSB Order No. EA-4049 (1993), at 3-4, aff'd, Piro v. NTSB, 66 F.3d 335 (9<sup>th</sup> Cir. 1995).

Respondent's attempt to distinguish the facts in his case from Board precedent is unavailing. In our view, an attorney who gives advice and assistance to a participant in a drug ring is no more qualified to hold an airman certificate than the drug dealer. That he may not have received proceeds directly from the sale of drugs is not pertinent to our finding that he lacks the care, judgment, and responsibility to hold any airman

certificate.<sup>9</sup> We agree with the law judge that a hearing was unnecessary to determine whether respondent's conduct was sufficiently egregious to warrant revocation. See Administrator v. Cole, NTSB Order No. EA-4418 (1996).

Respondent's claims of error because of the Administrator's failure to include language in the NOPCA proposing revocation of any airman certificate and because the law judge did not conduct a separate hearing on the issue of lack of qualification, are also unconvincing. "The stale complaint rule does not apply to cases where the allegations in the complaint present a legitimate issue of lack of qualification." Administrator v. Beauchemin, NTSB Order No. EA-4371 at 5 (1995). Since Board precedent is clear that revocation is appropriate under the circumstances before us, and because we have upheld disposition by summary judgment in similar cases, see e.g. Administrator v. Cole, NTSB Order No. EA-4418 (1996), a hearing on the issue of lack of qualification simply would have served no useful purpose. Similarly, a remand to the law judge for reconsideration of his

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<sup>9</sup> Respondent argued that he should be permitted to retain a private pilot certificate notwithstanding the suspension of his commercial airman certificate. This contention is also without merit. Airman certificates are cumulative in nature. Administrator v. Bridges, 1 NTSB 1500, 1501 (1972). An applicant for a commercial pilot certificate must hold a private pilot certificate. FAR § 61.29(a). Therefore, we agree with the law judge's ruling that respondent's private pilot certificate has been subsumed by the issuance of a commercial pilot certificate. Cf. Administrator v. Rogers, NTSB Order No. EA-4428 at 11, recon. denied NTSB Order No. EA-4458 (1996) (Suspension or revocation of a commercial or airline transport pilot certificate "suspends [or revokes] all levels of the certificate and all ratings at those levels, leaving the airman with no pilot certificate.").

ruling<sup>10</sup> would place form over substance.

As the respondent has identified no reason to disturb the decision of the law judge, the appeal will be denied.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is denied; and
2. The Administrator's order of revocation is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>10</sup> Rule 821.47(b) of the Board's Rules of Practice provides that a request for reconsideration that is submitted to the law judge on the same date that a notice of appeal is filed with the Board will be deemed to have been filed first, so that the law judge in this case could have reconsidered his initial decision.