

SERVED: September 18, 2007

NTSB Order No. EA-5315

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 12th day of September, 2007

MARION C. BLAKEY,)
Administrator,)
Federal Aviation Administration,)
Complainant,)
v.) Docket SE-17759
JUAN PAUL ROBERTSON,)
Respondent.)

OPINION AND ORDER

Respondent, proceeding pro se, appeals the oral initial decision and order of Administrative Law Judge Patrick G. Geraghty in this matter, issued October 18, 2006.¹ By that decision, the law judge affirmed the Administrator's order of revocation by granting the Administrator's motion for summary

¹ The initial decision, an excerpt from the hearing transcript, is attached.

judgment. The law judge's order was based on a finding that respondent lacks the qualifications required to hold an airman certificate, under 14 C.F.R. § 61.15(a).² We deny respondent's appeal.

The Administrator's order, which functions as her complaint in this case, alleged that, on or about February 18, 1992, in the United States District Court for the Southern District of California, respondent was convicted of a felony charge of conspiracy to possess a controlled substance (cocaine) with the intent to distribute, and a felony charge of possession of a controlled substance (cocaine) with the intent to distribute, in violation of 21 U.S.C. §§ 846 and 841(a)(1). The Administrator's order alleged that such convictions render respondent subject to 14 C.F.R. § 61.15(a); as such, the Administrator ordered revocation of respondent's private pilot certificate.

² Section 61.15(a) provides as follows:

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, marijuana, or depressant or stimulant drugs or substances is grounds for:

- (1) Denial of an application for any certificate, rating, or authorization 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, rating, or authorization issued under this part.

Upon receipt of the Administrator's order, respondent filed a timely appeal. On July 26, 2006, the Administrator filed a motion for summary judgment, with accompanying exhibits.³ Respondent filed a timely response to the Administrator's motion, arguing that the Administrator misrepresented factual information with regard to respondent's convictions and failed to respond to respondent's discovery requests, that the doctrine of laches⁴ precludes the Administrator from taking action against his certificate, and that his experience with the United States Parole Commission rehabilitated him. Subsequently, the law judge allowed the Administrator to supplement her motion, and respondent filed an additional opposition in response to the motion. In response to this motion and the consequent pleadings, the law judge issued an order indicating that he would decide the motion after holding a hearing on the issue of whether respondent had established that his rehabilitation

³ The Administrator's exhibits in support of her motion included: a copy of the judgment against respondent from the United States District Court for the Southern District of California, as well as the minutes from the sentencing hearing; a copy of the superseding indictment against respondent; and a copy of the Ninth Circuit's decision on respondent's case, which affirmed the aforementioned drug convictions and overturned the District Court's conviction regarding a count that alleged a violation of the Racketeer Influenced and Corrupt Organizations Act.

⁴ The equitable doctrine of laches may function as a bar in cases in which an unreasonable amount of time has lapsed before a person asserts a right or claim, and in which such delay has caused detriment to the opposing party. Black's Law Dictionary 705 (7th ed. 2000).

showed that he did not lack the qualifications necessary to hold a certificate.

On September 7, 2006, the law judge issued an order directing the parties to appear at a hearing on October 18, 2006. On September 19, 2006, respondent filed a motion to continue the hearing date, and the Administrator opposed respondent's motion. On October 3, 2006, and in a supplemental order on October 12, 2006, the law judge denied respondent's motion for a continuance of the hearing, finding that respondent had not shown good cause for a continuance. Respondent did not appear at the hearing, and the law judge granted the Administrator's motion for summary judgment, based on a finding that respondent had not opposed the allegations in the Administrator's order and had not established a reason why the Board's precedent regarding revocation under 14 C.F.R. § 61.15(a) should not apply. Tr. at 8-9.

On appeal, respondent argues that the law judge erred in denying respondent's motion for a continuance, that the Administrator misrepresented the facts with regard to respondent's convictions, that the Administrator did not respond to respondent's discovery requests, that the doctrine of laches precludes the Administrator's complaint, and that the Administrator has not proven that respondent presently lacks the qualifications necessary to hold a certificate. The

Administrator disputes each of respondent's arguments, and urges us to affirm the law judge's decision.

A party may file a motion for summary judgment on the basis that the pleadings and other supporting documents establish that no material issues of fact exist, and that the party is therefore entitled to judgment as a matter of law. 49 C.F.R. § 821.17(d). We have previously considered the Federal Rules of Civil Procedure to be instructive in determining whether disposition of a case via summary judgment is appropriate. Administrator v. Doll, 7 NTSB 1294, 1296 n.14 (1991) (citing Fed. R. Civ. P. 56(e)). In this regard, we recognize that Federal courts have granted summary judgment when no genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986).⁵

The law judge did not err in granting the Administrator's motion for summary judgment. First, no genuine issue of material fact exists with regard to respondent's convictions of criminal charges regarding controlled substances in 1992. Respondent has not disputed the factual allegations in the Administrator's order regarding the convictions, and the

⁵ An issue is genuine if the evidence is sufficient for a reasonable fact-finder to return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255-56 (1986). An issue is material when it is relevant or necessary to the ultimate conclusion of the case. Id. at 248.

Administrator has provided evidence of respondent's convictions. See supra, n.3.

Moreover, respondent did not provide a colorable basis for the Board to find that the Administrator's order should not be effective. Respondent's argument on appeal in this regard is two-fold: he contends that the Administrator has not established that he does not presently lack the qualifications necessary to hold a certificate, and that the doctrine of laches precludes the Administrator from attempting to revoke his certificate at this time. We find both arguments unavailing. The fact that respondent was convicted in United States District Court of violating two criminal statutes regarding controlled substances is undisputed, and the Administrator has provided evidence that respondent remains on supervised release for these violations. Respondent's arguments that his military record and past career as a Federal prosecutor and municipal judge, as well as the fact that respondent now volunteers in fundraising for a military museum and works at a real estate development company, do not counteract his criminal convictions. Respondent has not established that he now maintains the qualifications to hold an airman certificate.

Moreover, respondent's argument that the doctrine of laches precludes the Administrator's order is also unpersuasive. We have previously held that the doctrine of laches is relevant to

Board cases only in the context of the stale complaint rule. Administrator v. Adcock, NTSB Order No. EA-4507 at 2 (1996); Administrator v. Brown, 4 NTSB 630, 631 (1982). Here, respondent does not dispute the fact that the stale complaint rule, codified in the Board's Rules of Practice at 49 C.F.R. § 821.33, does not apply, given that convictions of drug offenses indicate a lack of qualifications to hold a certificate. See, e.g., Administrator v. Beauchemin, NTSB Order No. EA-4371 at 2 (1995) (citing cases in which the Board held that, "any conviction involving the sale of drugs, even if it does not involve the use of an aircraft, warrants revocation based on a lack of qualification").

Respondent also argues that the Administrator misrepresented the facts regarding his convictions, and that the Administrator did not respond to respondent's discovery requests. We find these arguments similarly unavailing, given that the Administrator provided a copy of the judgment against respondent, and a copy of the subsequent opinion in which the Ninth Circuit overturned a part of respondent's conviction. Respondent does not dispute that he was convicted of conspiracy to possess a controlled substance (cocaine) with the intent to distribute. Such a conviction indicates a lack of qualifications, and falls within the purview of 14 C.F.R. § 61.15(a). Likewise, no factual issue exists with regard to

the Administrator's attempt to answer respondent's discovery requests; the Administrator has provided evidence that she attempted to deliver her response to respondent's address of record on August 15, 2006, but that her responses were returned "unclaimed" a month later. In addition, we note that the Board's Rules of Practice designate law judges as the authority overseeing discovery issues. See 49 C.F.R. §§ 821.19(b), 821.35(b). As such, pre-trial motions practice, or requesting that the law judge hear an oral motion to compel at the administrative hearing, is the appropriate manner in which to raise such discovery issues. Overall, respondent has not established that the law judge erred in his factual findings or procedural rulings.

Respondent also argues that the law judge erred in denying respondent's motion for a continuance of the administrative hearing. Respondent asserts that the law judge should have checked the parties' calendars before setting a date for the hearing, and that respondent articulated good cause for a continuance when he asserted that he had to go to Connecticut⁶ during the month of the hearing, in order to help his mother prepare for the coming winter. We note that law judges have wide discretion with regard to overseeing hearings, including the scheduling thereof. See 49 C.F.R. § 821.37(a); see also

⁶ The administrative hearing occurred in Gardena, California.

Administrator v. Pearsall, NTSB Order No. EA-3576 (1992);
Administrator v. Fries & Long, NTSB Order No. EA-3517 at 2
(1992) (holding that law judges have the discretion to schedule
hearings and decide motions for continuances of such hearings,
but that such discretion must be reasonable). Here, we do not
find that the law judge abused his discretion or acted
unreasonably in deciding that respondent had not established
good cause for continuing the hearing. Respondent did not
provide evidence of travel plans that were not subject to
alteration, nor did he attempt to articulate good cause for
delaying the date of the hearing, with the exception of the
phrase, "[r]espondent will be in Connecticut helping his mother
prepare her home for winter until October 19, 2006," in his
initial motion requesting a continuance. Given this brief
reason, we find that the law judge did not abuse his discretion
by concluding that respondent had not shown good cause for
delaying the hearing.

In sum, respondent demonstrates no error in the law judge's
order. We conclude that the public interest and air safety
require affirmation of the law judge's initial decision granting
the Administrator's motion for summary judgment.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's initial decision is affirmed; and

3. The revocation of respondent's private pilot certificate shall begin 30 days after the service date indicated on this opinion and order.⁷

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.

⁷ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).