

SERVED: 9/25/2026

NTSB Order No. EA-6033

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 24th day of September, 2026

_____	)	
BRYAN BEDFORD, ¹	)	
Administrator	)	
Federal Aviation Administration	)	
	)	
Complainant	)	
	)	
v.	)	Docket SE-31246
	)	
RUDOLPH JOHANNE OELOFSE,	)	
	)	
Respondent	)	
_____	)	

OPINION AND ORDER

1. Background

The Administrator appeals the oral initial decision issued by Administrative Law Judge Darrell L. Fun on September 24, 2024, granting respondent's motion for dismissal.^{2, 3} By that

¹ The original caption for this matter was Michael Whitaker, Administrator, Federal Aviation Administration v. Rudolph Johanne Oelofse. During the pendency of this appeal, the caption has been updated.

² A copy of the oral initial decision is attached.

³ This motion was also referred to at times as a "motion for directed verdict".

decision, the law judge reversed the Administrator's Order of Revocation. In his order, the law judge overturned the Administrator's revocation of respondent's private-pilot certificate, for violating 14 C.F.R. § 91.19(a).⁴ The Administrator timely appealed. Respondent died on February 16, 2026, before the Board was able to issue a decision on this matter. After counsel for respondent made an informal motion for dismissal, the Board in accordance with 49 C.F.R. § 800.24 requested briefs from both parties on April 24, 2026. Respondent's brief was received on May 25, 2026 and the Administrator's brief was received on June 22, 2026. For the reasons discussed below, we dismiss the Administrator's appeal and vacate the law judge's oral initial decision.

A. Procedural Background

On July 15, 2023, the Administrator issued an Order of Revocation for respondent's violation of 14 C.F.R. § 91.19(a), thereby revoking respondent's private-pilot certificate.⁵ Respondent subsequently appealed. On September 1, 2023, the Administrator filed the Order as the Complaint, which respondent timely answered.

On September 24, 2024, the law judge conducted a hearing. After the Administrator rested his case, respondent made a motion for a directed verdict that the law judge granted in an oral initial decision. That same day, the Administrator filed an appeal to the full Board.

2. Decision

A. Respondent's death renders the certificate action moot.

Counsel for the respondent argues that an airman certificate is a personal privilege that

⁴ Complaint at 2.

⁵ Section 91.19(a) states that no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft; 49 U.S.C. § 44710(b)(2) requires revocation of an airman's certificates under specific situations involving a controlled substance.

cannot survive the holder's death and that no Board order can now affect respondent's certificate privileges. Counsel therefore contends that no live controversy remains. The Board agrees.

The purpose of this proceeding was to determine whether respondent's airman certificate should be revoked. Upon respondent's death, there ceased to be a living certificate holder whose qualifications or certificate privileges could be affected by a Board decision. FAA certificates are strictly personal.⁶ There is nothing in the FAA's statutory or regulatory framework that suggests that an FAA certificate can be sold, transferred, or inherited. To the contrary, an FAA certificate is a privilege tied exclusively to the individual to whom it was issued and, therefore, does not survive the individual's death. Thus, upon the certificate holder's death, no enforcement action against his or her certificate can effectively be taken. Therefore, the legal controversy concerning respondent's private pilot certificate became moot as of February 16, 2026. When a case becomes moot pending appellate review, the established practice is to dismiss the appeal and vacate the judgment below.⁷

The Administrator argues that a decision on the merits in this matter is still appropriate given the potential for a claim under the Equal Access to Justice Act (EAJA). To support this contention, the Administrator cites to *Administrator v. Blair*, NTSB Order No. EA-4253 (1994), where the Board issued a decision on the merits of the underlying case, despite the death of the respondent. The key difference between *Blair* and the case currently before the Board is that in *Blair*, respondent's estate filed an EAJA application for fees and expenses.⁸ In the case presently

⁶ See, e.g., 14 C.F.R. §61.103, which states the requirements that a "person" must fulfil in order to be eligible for hold a private pilot certificate.

⁷ See *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950) (when a case becomes moot pending appellate review, the established practice is to vacate the judgment below and remand with directions to dismiss).

⁸ See *Administrator v. Blair*, NTSB Order No. EA-4253 at 1.

before the Board, there is no application for compensation under EAJA by respondent's estate. Accordingly, as there is no current EAJA claim, the Board does not view the potential for hypothetical EAJA-related issues as a sufficient basis to adjudicate the substantive merits of the Administrator's appeal.

Additionally, the Board's primary concern when reviewing FAA enforcement actions is to ensure the safety of aviation. Adjudicating this appeal would not further this goal.

As a result, the Board declines to rule on the merits of the Administrator's evidentiary and procedural arguments, and the Administrator's appeal is dismissed as moot.⁹

B. Vacatur of the enforcement action and law judge's oral initial decision is appropriate.

Although we conclude that the Administrator's appeal is moot, we do not believe that dismissal alone is the proper remedy.

The Administrator argues that outright dismissal would leave intact an unreviewed oral initial decision and requests the Board to vacate the law judge's decision. The Board finds this argument persuasive as it aligns with precedent. As such, vacatur of the underlying enforcement action is also appropriate in this instance. For example, in *Claiborne v. United States*, the Supreme Court vacated the judgment below after the petitioner's death rendered the case moot while it was pending before the Court.¹⁰ Here, the Administrator initiated an enforcement action on issues that were neither insubstantial nor frivolous. The Administrator's enforcement action then became moot while his appeal was pending before the Board. Under these circumstances, allowing the oral initial decision as well as the enforcement action to remain in place could

⁹ The Administrator also cites to *Administrator v. Woidyla*, NTSB Order No. EA-5969 (2024), however there is no indication in that decision that the issue was raised to the Board.

¹⁰ *Claiborne v. United States*, 551 U.S. 87 (2007) (vacating the judgment below after the petitioner's death mooted the case while pending before the Supreme Court).

improperly suggest that the Board has affirmed the enforcement action as well as the law judge's oral initial decision when, in fact, the merits have not been resolved. Here, vacatur appropriately eliminates any potential legal effect of an unreviewed decision that has become insulated from appellate review through happenstance.

Therefore, the Board dismisses the Administrator's appeal and vacates the Administrator's enforcement action and the law judge's oral initial decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is dismissed as moot;
2. The law judge's order is vacated; and
3. The Administrator's enforcement action is vacated.

HOMENDY, Chairwoman; GRAHAM, Vice Chairman; CHAPMAN and DELEEUEW, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

* * * * *
In the matter of: *
*
MICHAEL WHITAKER, *
ADMINISTRATOR, *
FEDERAL AVIATION ADMINISTRATION, *
*
Complainant, *
v. *
RUDOLPH J. OELOFSE, *
*
Respondent. *
* * * * *

Docket No.: SE-31246
JUDGE FUN

United States Bankruptcy Court
255 E. Temple Street
Courtroom 1645
Los Angeles, California

Thursday,
September 24, 2024

The above-entitled matter came on for hearing,
pursuant to notice at 9:00 a.m. Pacific Time.

BEFORE: DARRELL L. FUN
Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

ROBERT J. MILLER, Esq.
KENDRA B. JACOBS, Esq.
Federal Aviation Administration
Aviation Litigation Division - Southern Enforcement Team
robert.j.miller@faa.gov

On behalf of the Respondent:

ROBERT M. HELFEND, Esq.
Helfend Law Group
23838 CA-1 #309,
Malibu, California 90263
rmhelfend@gmail.com

I N D E X

<u>ITEM</u>	<u>PAGE</u>
Oral Initial Decision	45
Order	49
Appeal	50

ORAL INITIAL DECISION

JUDGE FUN: All right. I think I'm prepared to rule on this issue.

I'm going to grant Respondent's motion for directed verdict. A couple things I want to note off hand is that Mr. Helfend is right, the FAA has had plenty of time to prepare their case in chief. None of the documents are authenticated or certified. There was a proper objection, which I sustained. And Counsel is correct that it's not his job to assist or educate FAA counsel with regards to the rules of evidence, nor is it the court's job to do so, and it's clear from the federal's evidence that in order to submit records, they have to be properly authenticated.

Authentication can be -- can occur in a few ways, including testimony of the custodian or a qualified witness that can explain the record keeping process and attest to its accuracy or by certification that complies with Rule 902(11) or (12), or with a statute permitting certification Under Federal Rules of Evidence 902, which provides for what type of documents are self-authenticating, it's either public documents that are sealed and signed -- these documents don't have a proper seal on them, there's a copy of the seal, but that isn't a proper seal -- these are not sealed -- or are signed and certified -- there is no certification on these documents or certified copies of public records, which then carries over to Rule 1005, which requires a certification from a custodian of records that it's a true and

1 correct copy when compared to the original. Therefore, again, I
2 reaffirm my exclusion of the evidence based upon that.

3 In addition, the FAA has rested their case. There was no
4 evidence presented in this matter with regards to the allegations
5 they made in the complaint. The Respondent did deny paragraphs 3,
6 4, 5, and 8, which relate to allegations that he transported
7 marijuana with a weight of approximately 100 grams; that he knew
8 the marijuana was aboard the flight with reference to paragraph
9 two, and that was transported to another person for sale; and
10 five, on or about January 9th, 2018, law enforcement officers
11 discovered approximately 100 grams of marijuana aboard the flight;
12 and then eight, the facts referenced in paragraphs two through
13 five are described in the factual basis, referenced in paragraph
14 seven. It is correct that 49 United States Code, Section
15 44710(b)(2) does require the Administrator to issue an order,
16 revoking a certificate if the individual knowingly carried out an
17 activity punishable under the law of the United States or a state
18 related to a controlled substance except for simple possession,
19 that's a felony that requires imprisonment for more than one year;
20 and an aircraft was used to carry out and facilitate the activity
21 and individual served as an airman or was on the aircraft. That's
22 the elements of 44710(b)(2). It has three specific requirements,
23 knowledge, use of an aircraft, and the individual served as an
24 airman or was aboard the aircraft. The FAA has failed to meet its
25 burden with regards to those three elements.

1 Additionally, I will note that while the Administrator has no
2 discretion in terms of revoking the certificate, that does not end
3 the inquiry, because under 44710(d)(1) concerning appeals, it does
4 give the individual the right to appeal the revocation to the
5 NTSB, the Board, and it goes on to state "the Board shall affirm
6 or reverse the order after providing notice and opportunity for a
7 hearing on the record. When conducting the hearing, the Board is
8 not bound by findings of fact of the Administrator."

9 Therefore, the Administrator, although they have a conclusive
10 requirement, the Board is not similarly bound by such conclusion.
11 Additionally, I'll note that again, it's not my job to educate
12 either side as to meeting their burden. However, I did cite in my
13 order that I issued to the parties yesterday, with regards to all
14 those pending motions, several cases that discuss these issues,
15 including FAA vs. Siegel at NTSB order number EA-5838 from 2018.

16 Now, in that particular case, it was a pilot that was arguing
17 that he did not know that the THC-laced edibles were on the
18 airplane. However, in that case, there were witnesses, there were
19 passengers that testified, the case agent that actually seized the
20 drugs testified, and all of that was circumstantial evidence that
21 the pilot knew of the edibles because it was proven to show it was
22 in his briefcase, which belonged to him. So the point being is
23 that certainly the FAA could have called the actual case agent.
24 In addition, I note that they could have invoked Rule 801(d)(2)
25 with regards to statements made by the Respondent as being party

1 opponent admissions. They were admissible and no evidence of that
2 was presented, and no witnesses were called other than -- not even
3 the case agent -- an agent that was involved but was not the
4 actual case agent.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ORDER

JUDGE FUN: Therefore, I grant the Respondent's motion. This matter is hereby dismissed for failure to -- failure of the FAA to meet their burden of proof by preponderance of the evidence the violation is alleged.

So ordered this 24th day of 2024 in Los Angeles, California.

DARRELL L. FUN

Administrative Law Judge

APPEAL

JUDGE FUN: All right. Before we -- I need to advise the parties of their right to appeal. You'll be provided a written advisement, your right to appeal. All right.

I will give the advisor to both sides at this point with regards to that right. It's important to note that the board requires the parties to adhere to the rules and the timelines for appealing, and absent extraordinary circumstances, they'll not accept late filed appeals or improperly filed appeals.

All documents submitted by the party in an emergency proceeding must be filed and simultaneously served on all the parties, which can be done by email. If you wish to appeal, which is your right to do so. If you believe I have made an error in law or procedure, either party may appeal my oral initial decision, which I've just already issued. But they must do so by filing a written notice of appeal within two days after my decision, which I've issued today.

That appeal must be filed with the National Transportation Safety Board at the Office of Administrative Law Judges, which can be served by email to aljappeals@ntsb.gov. Again, that appeal must also be served on opposing party. In addition, the party must perfect the appeal by filing a brief in support of the appeal within five days after the date on which the notice of appeal was filed.

That brief, however, is filed directly with the Office of

1 General Counsel of the National Transportation Safety Board, which
2 again can be filed by email to boardappeals@ntsb.gov. And again,
3 that brief also must be simultaneously served on opposing counsel.
4 A reply to any brief may be filed by the other party directly with
5 the Office of General Counsel within seven days after the notice
6 of appeal is filed. If any or all papers, including all motions
7 replies, must be submitted directly to the Office of General
8 Counsel afterwards.

9 All right. Does either side have any other matters before we
10 adjourn?

11 Mr. Miller or Ms. Jacobs?

12 MR. MILLER: No, Judge. Thank you.

13 JUDGE FUN: Mr. Helfend.

14 MR. HELFEND: No, Your Honor. Thank you, Your Honor.

15 JUDGE FUN: All right. I conclude this matter then. This
16 matter is now considered closed and terminated.

17 You may go off the record.

18 (Whereupon, at 10:44 a.m., the hearing in the above-entitled
19 matter was adjourned.)
20
21
22
23
24
25

CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Rudolph J. Oelofse
DOCKET NUMBER: SE-31246
PLACE: Los Angeles, California
DATE: September 24, 2024

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.

Jamar Brown/BW

Jamar Brown
Official Reporter