

NTSB Order No. EA-5250

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of September, 2006

Respondent.

OPINION AND ORDER

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Respondent was convicted in Federal court of the felonies of: (1) conspiracy to manufacture, distribute, or possess with intent to manufacture, distribute, or dispense methamphetamine; (2) possession with intent to distribute or dispense methamphetamine; (3) use, carrying, or possession of a firearm during, in relation to, and in furtherance of a drug trafficking crime; and (4) possession of an unregistered firearm. He was sentenced to be imprisoned for 160 months and is now serving that sentence.

The law judge's decision was premised on our extensive precedent holding that drug convictions (whether or not the aircraft or the certificate was used in the offense) are serious enough to draw into question an airman's qualification to hold a certificate and to support a decision by the Administrator to revoke. See Administrator's Motion for Summary Judgment, and Reply to Appeal, for a number of the many cases so holding.

(continued...)

section 65.15(a)(2). Section 65.15(a) provides that the holder of a certificate that has been suspended or revoked, or is no longer effective, shall return it to the Administrator. Although neither the Administrator nor respondent have raised this issue on appeal, it is clear that the Administrator's repeated reference, in her complaint and in the pleadings, to section "65.15(a)(2)" is a harmless typographical error. The complaint clearly invokes the proscriptive language set forth in section 61.15(a)(2), which states that 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 suspension or revocation of any certificate, rating, or authorization. It is also clear from the pleadings that respondent clearly understood that the order was related to his drug-related felony convictions.

In his March 2006 appeal from the law judge's decision, respondent states that the convictions are pending on appeal in Federal court and, therefore, are not final. He argues that this justifies vacation of the FAA's order pending a final decision to ensure that he gets a full and fair hearing. The pendency of that proceeding does not justify a delay to ours. In Administrator v. Helms, NTSB Order No. EA-4506 (1996) at 4, we stated:

[T]he better result from a safety policy perspective is to reconsider the revocation action if, in fact, respondent's conviction is overturned, not to postpone it based on a respondent's expectation.

We see no reason to depart from that judgment here. See also Administrator v. Johnson, NTSB Order No. EA-3929 (1993).

Respondent also argues that revocation based on a felony drug conviction is contrary to statutory construction, specifically, contrary to 49 U.S.C. 44710. This provision requires *lifetime* revocation³ for Federal or State convictions regarding controlled substances when an aircraft was used to carry out or facilitate the offense and the individual served as an airman or was on the aircraft in connection with the offense. We have addressed this question on a number of occasions, notably when § 44710 was first enacted. Enactment of section 44710 did not vacate or void the Administrator's more general authority

³ A lifetime revocation differs from a standard revocation in that airmen are not permitted to re-apply and become re-certified after waiting a prescribed time period following the revocation, as they are in the case of a standard revocation.

under section 44709 to suspend or revoke airman certificates when safety in air commerce or air transportation, and the public interest, dictate. Administrator v. Sardina, NTSB Order No. EA-4605 (1997); Administrator v. Ortiz, NTSB Order No. EA-4635 (1998).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The revocation of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.⁴

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

⁴ 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).