

SERVED: January 5, 2001

NTSB Order No. EA-4872

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 26th day of December, 2000

JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15919
v.)	
)	
STEPHEN TRENT TUCKER,)	
)	
Respondent.)	
)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge William E. Fowler, Jr., rendered in this proceeding on June 26, 2000, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an emergency order of the Administrator that revoked respondent's airline transport pilot ("ATP") certificate on the ground that he lacked

¹An excerpt from the hearing transcript containing the initial decision is attached.

the good moral character that section 61.153(c) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 61)² requires of ATP certificate holders.³ For the reasons discussed below, we will affirm the revocation.⁴

The Administrator's April 7, 2000 Emergency Order of Revocation, the complaint in this matter, alleges, among other things, the following facts and circumstances concerning the respondent:

1. You are the holder of Airline Transport Pilot Certificate Number 254158152.
2. On or about October 30, 1998, you traveled from Fort Leavenworth Kansas to Arlington, VA with the intent to meet "Ashley" at the Pentagon City Mall, Arlington, VA for purposes of engaging in sexual acts with her.
3. The person referred to as "Ashley" at allegation number 2 herein was known to you as a 14 year old child whom you had established an internet relationship over a period of approximately nine weeks.
4. The person referred to as "Ashley" at allegation number 2 herein was really an undercover U.S. Customs Agent assigned to the FBI's "Innocent Imaging" Task Force and utilizing the undercover name "Ashley5665".
5. On or about October 31, 1998, you were arrested in the Pentagon City Mall, Arlington, VA.

²FAR section 61.153(c) provides as follows:

§ 61.153 Eligibility requirements: General.

To be eligible for an airline transport pilot certificate, a person must:

- * * * *
- (c) Be of good moral character....

³The respondent, who waived expedited processing of this case, was represented by counsel through the hearing phase of this proceeding. He is representing himself on this appeal.

⁴The Administrator has filed a reply opposing the appeal.

6. On or about November 24, 1998, you pleaded guilty to Interstate Travel With Intent to Engage in a Sexual Act with a Minor, 18 U.S.C. 2423(b).

7. On or about February 5, 1999 a criminal judgment was entered against you for Interstate Travel With Intent to Engage in a Sexual Act with a Minor, 18 U.S.C. 2423(b) and you were sentenced to a prison term of 15 months with supervised probation for two years following your release from prison.

8. In addition, the February 5, 1999 judgment requires you to register as a sex offender and participate in a mental health program as directed by the probation officer and you were fined \$100.00.

The complaint asserted that these allegations, whose factual correctness is not disputed by respondent,⁵ establishes that he does not possess the good moral character required of the holder of an ATP certificate, a conclusion with which the respondent disagrees. His brief, however, identifies no valid basis for overturning the law judge's affirmance of the revocation order.

As a starting point, we note that this case does not require extended analysis over whether respondent's specific conduct revealed such a departure from accepted standards of behavior as to raise a legitimate issue about his moral character; that is, whether his sexual pursuit of an underage female establishes that he cannot be expected to abide by traditional concepts of virtuous comportment.⁶ This is so because respondent does not

⁵At the hearing respondent gave his age as 39.

⁶By way of contrast, see Administrator v. Roe, 45 C.A.B. 969 (1966), wherein the hateful and vile non-criminal treatment of a former paramour by the respondent had to be evaluated without benefit of the moral guidance that written prohibitions in a criminal code can typically supply, given the societal judgments

argue, and did not advance any evidence suggesting, that the conduct of which he was convicted was not sufficiently reprehensible to support an adverse judgment concerning his personal morality. Rather, respondent's defense amounted to little more than an effort to persuade the law judge to accept an exculpatory explanation of the matter, despite his plea of guilty to the sex charge and his representation in a plea agreement that the factual basis for the charge was "accurate in every respect."⁷ In these circumstances, the Administrator's position that respondent's lack of good moral character was essentially established by the uncontested proof that he had been convicted of engaging in a prohibited sexual activity is entitled to our deference,⁸ as it has not been shown to be "arbitrary,

(..continued)

about right and wrong that our criminal laws can reasonably be said to incorporate.

⁷The law judge was, we think, exceptionally indulgent in allowing respondent to testify about the circumstances surrounding his conviction. While it is proper for a respondent to attempt to establish that his good moral character should be deemed intact notwithstanding a criminal conviction, a Board enforcement hearing is not an appropriate forum for a collateral attack on the validity of a conviction, especially where, as in this case, the respondent's testimonial assertion of innocence is directly contradicted by his written acceptance of guilt in his submissions in federal court. Indeed, even respondent's suggestion here that he had not received adequate legal representation in defending against the criminal prosecution is contrary to the express acknowledgement in the plea agreement that his attorney had given him "effective assistance." See Adm. Exh. A-4. While the law judge was not hoodwinked by the respondent's disingenuousness, the better approach is to block any effort to, in effect, retry a criminal case before the Board.

⁸See Administrator v. Doe, NTSB Order EA-3516, at p. 4 (1992) (Administrator's proof of criminal conviction establishes *prima facie* case for revocation under FAR section 61.151(b)).

capricious, or otherwise not according to law." See 49 U.S.C. § 44709(d)(3).

Our precedent does not, as respondent mistakenly asserts, require that the Administrator demonstrate, in order to prevail in a case challenging an airman's moral character, a connection between a respondent's putative conduct and aviation safety. See Administrator v. Doe, supra. Whether good moral character ought to be a criterion for the privilege of holding an ATP certificate is an issue we do not reach. It is enough, for purposes of the review we are authorized to perform, that the Administrator's regulation imposes the requirement.⁹ Thus, once an airman's character has been shown to be deficient, as it has been in this case, we do not undertake to assess for ourselves the nature of the risk to air safety that the airman's continued certification would present.

We find no merit in respondent's contentions that he was prejudiced because the law judge let in documents or testimony that referenced possible unlawful or dishonest activity not within the scope of the complaint. Neither the law judge's decision nor ours rests on evidence extraneous to the fact of his conviction for the sex offense specified in the revocation order.

⁹"[T]he Board's authority to review regulatory violations alleged by the Administrator extends solely to the question of whether the cited regulations have in fact been violated." Administrator v. Lloyd, 1 NTSB 1826, 1828 (1972).

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The initial decision and the emergency order of revocation are affirmed.

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