

SERVED: January 21, 1993

NTSB Order No. EA-3769

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 6th day of January, 1993

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THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-8588
v.)	
)	
)	
FRED EUGENE BEAHM,)	
Respondent.)	
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OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge Patrick G. Geraghty at the conclusion of a hearing held on December 5, 1990.¹ In that decision, the law judge affirmed an order of the Administrator revoking respondent's commercial pilot certificate pursuant to

¹Attached is an excerpt from the transcript containing the decision and order and the comments that are incorporated in it by reference.

Section 61.15 of the Federal Aviation Regulations (FAR), 14 C.F.R. § 61.15.² For the reasons that follow, we deny respondent's appeal and affirm the initial decision.

In the order of revocation, which was filed as the complaint in this proceeding, the Administrator alleged that "[o]n or about June 29 [sic], 1982, in the Central District of California, [respondent was] convicted of distribution of cocaine", and further, that "[o]n or about March 7, 1986, in the United States District Court of the Southern District of Ohio, [respondent] pleaded guilty and [was] convicted of possession with intent to distribute cocaine in violation of 21 U.S.C. 841." The Administrator alleged that by reason of these convictions, respondent had demonstrated a lack of the qualifications necessary to hold a pilot certificate and that, accordingly, respondent's certificate should be revoked.

Because there was no dispute as to the factual allegations in the complaint, the hearing before the law judge was limited to the issue of sanction. The law judge heard argument from counsel for the Administrator and from respondent, who appeared pro se,

²Section 61.15 of the FAR states, in pertinent part:

"§61.15 Offenses involving alcohol or drugs.

(a) 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, marihuana, or depressant or stimulant drugs is grounds for --

* * *

(2) Suspension or revocation of any certificate or rating issued under this part."

and received into evidence documents pertaining to the 1982³ and the 1986 convictions. Based upon allegations contained in the indictment for the 1986 conviction, the law judge concluded that respondent had utilized an aircraft in connection with the offense leading to that conviction. Noting that Board precedent upholds revocation as the proper sanction when an aircraft has been used in furtherance of a drug-related offense,⁴ the law judge affirmed the order of revocation in this case.

On appeal, respondent contends that a one-year suspension, not revocation, is the appropriate sanction for his 1986 conviction. He asserts that FAR § 61.15 did not authorize revocation of pilot certificates for drug-related offenses until after it was amended in 1985 and, because he committed the offense underlying the 1986 conviction in 1981, the Administrator is without authority to revoke his certificate. As the Administrator points out in his reply brief, respondent is mistaken as to the regulatory history of FAR § 61.15. The 1985 amendment of that section served primarily to reorganize the section in order to clarify the meaning it previously carried. See 50 Fed. Reg. 15,376 (6/17/85). A drug conviction was a ground for revocation before and after 1985.

³Counsel for the Administrator acknowledged at the hearing that respondent's 1982 conviction was the basis for an order of suspension issued in 1984, which suspended respondent's certificate for one year.

⁴See Administrator v. Coulombe, 5 NTSB 2226 (1987) and cases cited therein.

Respondent also takes issue with the law judge's reliance on the 1986 indictment for his conclusion that respondent arranged for and piloted an aircraft carrying cocaine from Peru, South America to Waynesville, Ohio, because respondent was not a defendant in the count of the indictment which contained those allegations.⁵ We note that, although the law judge made clear at the hearing that the involvement of an aircraft in the underlying criminal activity would mandate revocation under Board precedent, respondent did not testify or attempt to offer any evidence either to contradict the statements in the 1986 indictment the law judge referenced, or to suggest that his alleged co-conspirators were not convicted under the count in which he was not a named defendant. In these circumstances, we think the indictment provided at least a prima facie showing that an aircraft was involved in the offense underlying respondent's 1986 conviction.

However, we would uphold revocation in this case even if an aircraft were not involved in the 1986 conviction. In light of the seriousness of that offense (knowing, willful, and intentional possession with intent to distribute approximately 150 kilograms of cocaine) and the fact that respondent was also convicted in 1982 of distribution of cocaine, we believe that respondent has demonstrated that he lacks the care, judgment and

⁵Respondent was named in that count as an unindicted co-conspirator.

responsibility required of the holder of a pilot certificate.⁶

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The revocation of respondent's commercial pilot certificate shall commence 30 days after the service of this opinion and order.⁷

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁶Although not decisionally significant, we also note that, since respondent was incarcerated for approximately 8 years as a result of his drug convictions and presumably did not fly during that time, the requirement that he demonstrate his qualifications for a pilot certificate before he flies again will serve the interests of aviation safety.

⁷For the purpose of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).