

SERVED: March 4, 1993

NTSB Order No. EA-3815

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 4th day of March, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12918
v.)	
)	
DAVID CORREA,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent, pro se, has appealed from an order Administrative Law Judge Patrick G. Geraghty served in this proceeding on January 29, 1993, affirming, on the Administrator's motion for summary judgment, the emergency revocation of all of respondent's pilot certificates, including his Airline Transport Pilot Certificate No. 155440363.¹ For the

¹A copy of the law judge's order is attached.

reasons discussed below, we will deny the appeal.²

In the November 19, 1992 Emergency Order of Revocation, which became the complaint in this action when respondent filed an appeal with the Board, the Administrator alleged that revocation of respondent's pilot certificates was warranted under section 61.15(a) of the Federal Aviation Act ("FAR," 14 CFR Part 61) because he had been convicted of several federal drug offenses.³ On appeal, respondent essentially argues that the revocation order should be reversed because no emergency requiring immediate action by the Administrator existed⁴ and because his drug convictions did not involve the operation of an aircraft, a factor that he contends precludes revocation under relevant laws. We find both arguments unavailing.

²The Administrator has filed a reply brief opposing the appeal.

³FAR section 61.15(a) provides as follows:

"§ 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 or substances is grounds for--

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

⁴In this connection, respondent, formerly a pilot with now-defunct Eastern Airlines, points out that he has been incarcerated in federal prisons since November 15, 1989. Although there is some indication in the record that he is serving a life term, no clear information on that issue or on his eligibility, if any, for parole is given in the record.

Respondent's first point requires little comment. As the law judge noted in his decision, the Board is not empowered to review the reasonableness or validity of the Administrator's exercise of his emergency authority under Section 609 of the Federal Aviation Act of 1958 (the "Act"), 14 USC Section 1429. See, e.g., Administrator v. Anderson, 5 NTSB 564, 565 (1985), aff'd, Civ. No. 85-1645 (D.C. Cir. 1987), Administrator v. Mealey, NTSB Order EA-3634 at 2, n. 4 (1992).

The respondent's second point also does not establish a ground for reversing the revocation order, for it is based on the mistaken assumption that the Administrator cannot revoke the certificate of an airman convicted of a drug offense that was not related to the operation of an aircraft.⁵ Specifically, respondent contends in effect that since the Administrator cannot, absent a showing of aircraft involvement, revoke an airman certificate under Section 609(c)(1) of the Act, such a showing must be made in order to justify a revocation under FAR section 61.15.⁶ The flaw in respondent's argument lies in its

⁵It is not entirely clear from respondent's brief whether his contention that the law judge erred in granting summary judgment for the Administrator is based solely on his position that revocation under FAR section 61.15 cannot be upheld without proof of aircraft usage in connection with a drug conviction, or whether he believes the law judge's ruling is also objectionable for other reasons concerning the "totality of the situation." Nevertheless, the only specific objection respondent has presented relates, as discussed above, to the Administrator's legal authority to revoke a certificate under the cited regulation, and our own review of the record reveals no factual dispute which might have precluded summary judgment on the complaint.

⁶Section 609(c)(1) provides, in pertinent part, that:

assumption that the Administrator's authority to revoke a certificate for a drug offense comes from Section 609(c) of the Act. It does not. The Administrator's authority to suspend or revoke airman certificates in the interest of air safety flows from Section 609(a).⁷ While under Section 609(c)(1) the Administrator must revoke the certificate of an airman whose conviction on a drug offense involved the use of an aircraft, we are aware of no legislative history or other basis for construing that statutory requirement as a limitation on the Administrator's discretion, under Section 609(a), to revoke the certificate of an airman convicted of a drug offense that did not entail the operation or use of an aircraft.⁸

(..continued)

"The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime...under a State or Federal law relating to a controlled substance..., if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense...."

⁷Under Section 609(a), the Administrator may "issue an order amending, modifying, suspending, or revoking, in whole or in part, any...certificate...", if he finds, as the result of any reexamination, reinspection, or investigation, that safety in air commerce or air transportation and the public interest so require.

⁸Moreover, we have affirmed, and the courts have sustained, revocation based on FAR section 61.15 for drug convictions that were unrelated to the operation of an aircraft. See Administrator v. Kolek, 5 NTSB 1437 (1986), aff'd Kolek v. Engen, 869 F.2d 1281 (9th Cir. 1989).

Aside from his challenge, rejected above, to the Administrator's authority to revoke his certificate under FAR section 61.15 on the facts related to his drug convictions, respondent advances no claim that the law judge erred in determining that the nature and circumstances of respondent's drug and other convictions demonstrate that he lacks the care, judgment, and responsibility required of a certificate holder. As we find no error in that determination, the sanction of revocation will be sustained.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied;⁹ and
2. The emergency order of revocation and the initial decision are affirmed.

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

⁹Also denied is respondent's motion for leave to file a brief in response to the Administrator's reply brief. The Board does not need an additional pleading from the respondent in order to properly evaluate the evidence of record in this proceeding.