

SERVED: March 25, 2002

NTSB Order No. EA-4961

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 18th day of March, 2002

_____)	
)	
Applications of)	
)	
KYLE S. BORK)	
and BRIAN GRANT)	Dockets 277-EAJA-SE-15774
)	and 278-EAJA-SE-15882
for an award of attorney's fees)	
and related expenses under the)	
Equal Access to Justice Act (EAJA))	
)	
_____)	

OPINION AND ORDER

Applicants appeal the initial decision of Chief Administrative Law Judge William E. Fowler, Jr., issued on March 27, 2001, denying their application for fees and expenses pursuant to the Equal Access to Justice Act ("EAJA").¹ We deny the appeal.

The Administrator issued orders of suspension against applicants' airframe-powerplant ("A&P") mechanic certificates,

¹ A copy of the law judge's written initial decision is attached.

seeking 30-day suspensions, for their alleged improper maintenance and return to service of a Cessna 310J aircraft that suffered a gear collapse about five weeks after applicants worked on it. Applicants appealed the Administrator's orders to the law judge, who, after a hearing, dismissed the Administrator's charges for want of a preponderance of the evidence to support her theory as to why the gear had failed.² The Administrator did not appeal the law judge's ruling, and applicants' current EAJA application followed. The law judge denied the application after finding that the Administrator was substantially justified in bringing her charges.

The EAJA requires the government to pay certain attorney's fees and expenses of a prevailing party unless the government establishes that its position was substantially justified. 5 U.S.C. 504(a)(1). To meet this standard, the Administrator must show that her decision to bring and maintain her case was "reasonable in both fact and law, [that is,] the facts alleged must have a reasonable basis in truth, the legal theory propounded must be reasonable, and the facts alleged must reasonably support the legal theory." Thomas v. Administrator, NTSB Order No. EA-4345 at 7 (1995) (citations omitted). Reasonableness in this context is determined by whether a reasonable person would be satisfied that the Administrator had substantial justification for proceeding with her case, Pierce v.

² The attached initial decision recites the details of the underlying case.

Underwood, 497 U.S. 552, 565 (1988), and is determined on the basis of the "administrative record, as a whole." Alphin v. National Transp. Safety Bd., 839 F.2d 817 (D.C. Cir. 1988). The Administrator's failure to prevail on the merits in the original proceeding is not dispositive. U.S. Jet, Inc. v. Administrator, NTSB Order No. EA-3817 (1993); Federal Election Commission v. Rose, 806 F.2d 1081 (D.C. Cir. 1986).

In his ruling on the current EAJA application, the law judge reasoned:

[The Administrator's] case was neither weak nor tenuous, and her legal theory did not suffer from a lack of evidentiary support. To a large extent, the outcome of the underlying proceeding hinged on an evaluation of competing and conflicting testimony, including expert testimony[.]

Initial Decision at 8. Accordingly, he concluded that the Administrator was substantially justified in bringing and maintaining her cases against applicants, and denied their EAJA application.

On appeal, applicants argue that the "Administrator failed to reasonably evaluate the facts of the case, and in the face of insurmountable evidence to the contrary, continued with blinders on to allege that [the gear] was not properly reassembled." Applicants' Brief at 20. In support of this argument, applicants argue technical and practical issues, developed at the hearing, which, they say, demonstrate that the Administrator's theory of the case was unfounded. See, e.g., id. at 20-24. The Administrator argues that she was substantially justified in

pursuing her case against applicants.

We discern no error in the law judge's decision. Clearly, the Administrator had a reasonable basis in law for proceeding as she did, for she has discretion to prosecute enforcement actions against certificated mechanics who do not perform to regulatory standards. 49 U.S.C. § 44709; 14 C.F.R. Part 43. As for whether the Administrator also had a reasonable basis in fact (i.e., that applicants did not conform to the maintenance standards expected) for proceeding as she did, we think she did. Specifically, it was not unreasonable for the Administrator to conclude that applicants performed unsatisfactory work in connection with the repair and return to service of the aircraft's landing gear, for it collapsed unexpectedly merely a few weeks after they had reassembled it and returned it to service. Cf. Application of Carr and Thomas, 7 NTSB 447, 448-449 (1990) (denying EAJA fees and costs after finding Administrator substantially justified in maintaining enforcement actions against last mechanics to perform maintenance and inspections of portion of aircraft involved in an incident, until such time as the Administrator withdrew her complaints upon receiving evidence that non-logged maintenance had been performed by others). Here, the Administrator's case was supported not just by the circumstantial evidence that applicants recently performed landing gear-related work, but by expert opinion, including that of the FAA inspector who inspected the incident aircraft at the scene of the incident. Ultimately, the law judge accepted applicants' explanations that non-culpable

failure modes could have induced the gear collapse. That decision, however, emphasized conclusions the law judge drew from conflicting lay and expert testimony. In essence, the law judge resolved a "battle of the experts" in applicants' favor. We therefore discern no error in the law judge's denial of applicants' EAJA application.

ACCORDINGLY, IT IS ORDERED THAT:

1. Applicants' appeal is denied; and
2. The initial decision denying EAJA fees and expenses is affirmed.

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