

SERVED: June 18, 2004

NTSB Order No. EA-5100

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 17th day of June, 2004

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MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15472RM
v.)	
)	
DAVID A. SHRADER,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

Respondent and the Administrator appeal the oral initial decision and order of Administrative Law Judge William R. Mullins, issued on March 25, 2003,¹ wherein the law judge, after an order affirming the violation and a hearing as to sanction,²

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

² Respondent admitted to the FAR violation. See Administrator v. Shrader, NTSB Order No. EA-4971 at footnote 3 (2002).

modified the 60-day suspension of respondent's airman certificate sought by the Administrator to a 30-day suspension for respondent's alleged violation of section 61.15(e) of the Federal Aviation Regulations (FARs).³ We grant respondent's appeal, and dismiss the Administrator's appeal as moot.⁴

In Administrator v. Ramaprakash, NTSB Order No. EA-5076 (2004), the Board's decision on remand from the Court's ruling in Ramaprakash v. Federal Aviation Administration, 346 F.3d 1121

³ Section 61.15 provided, in pertinent part:

§ 61.15 Offenses involving alcohol or drugs....

(c) For the purposes of paragraphs (d) and (e) of this section, a motor vehicle action means-

(1) A conviction after November 29, 1990, for the violation of any Federal or state statute relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;

(2) The cancellation, suspension, or revocation of a license to operate a motor vehicle by a state after November 20, 1990, for a cause related to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug....

* * * *

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AAC-700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action....

14 C.F.R. § 61.15 (1995).

⁴ The Administrator appeals the law judge's modification of sanction. Respondent, among other arguments presented on appeal, urges us to reconsider our earlier opinion that denied his motion to dismiss the Administrator's complaint as stale. See Administrator v. Shrader, NTSB Order No. EA-4971 (2002); see also Administrator v. Shrader, NTSB Order No. EA-5012 (2003) (Order Dismissing Petition For Reconsideration).

(D.C. Cir. 2003), we stated that "in FAR 61.15(e) cases ... the Administrator's due diligence, for purposes of a challenge under the stale complaint rule, shall be assessed by reference to the time when FAA personnel receive NDR information which may include information about an airman that could support a conclusion that reporting requirements had not been observed." Accordingly, consistent with Ramaprakash, we conclude that the Administrator failed to meet the applicable due diligence standard in this case, for after receiving an NDR tape with information about respondent on August 14, 1997, she did not issue to respondent her Notice of Proposed Certificate Action ("NOPCA") until March 13, 1998.⁵ See Administrator v. Shrader, NTSB Order No. EA-4971 at 3-5 (2002) (setting forth facts associated with respondent's stale complaint motion). Respondent's stale complaint motion should have been granted.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted;
2. The Administrator's appeal is dismissed as moot; and
3. The Administrator's Order of Suspension is dismissed.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

⁵ Our opinion and order in Ramaprakash incorrectly referenced the Administrator's Letter of Investigation instead of the NOPCA in describing why the Administrator had not established due diligence in pursuing her stale allegations. See NTSB Order No. EA-5076 at 5 (2004).