

revoking respondent's private pilot certificate under the provisions of Section 61.15(a) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 61.15(a).² The Administrator has filed a brief in reply, urging the Board to affirm the law judge's order. For the reasons that follow, respondent's appeal is denied.

There is no dispute that on November 22, 1988, respondent was convicted of conspiracy to possess with intent to distribute 5 kilograms of cocaine. According to certified copies of the indictment and judgment that were offered in support of the Administrator's motion for summary judgment, from November 21, 1987 to December 21, 1987, respondent was present on a boat that ultimately entered the United States at Key West, Florida, with 5 kilograms of cocaine on board. Respondent was convicted of violations of 46 U.S.C. App. 1903(a), (g), and (j), and 18 U.S.C. § 2 and sentenced to 15 years' incarceration. The Administrator issued a revocation order on April 12, 1996, about seven years after the conviction.

Respondent, who represents himself in this appeal, raises three issues on appeal. First, he contends, the law judge should

(..continued)

²FAR § 61.15(a) provides, in pertinent part, as follows:

"§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal... statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of marihuana is grounds for....

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

have granted his motion to dismiss the complaint under the Board's Stale Complaint Rule, 49 C.F.R. § 821.33.³ This issue is without merit. Board precedent is clear that the stale complaint rule does not apply to cases where the allegations in the complaint present a legitimate issue of lack of qualification.⁴ Administrator v. Manning, NTSB Order No. EA-4363 (1995). See also Administrator v. Adler, NTSB Order No. EA-4048 (1993). In the Board's view, a conviction for participation in a criminal drug enterprise for economic gain clearly demonstrates that the airman lacks the necessary care, judgment, and responsibility a certificate holder must possess. Administrator v. Piro, NTSB Order No. EA-4049 (1993). Piro also supports the law judge's determination that revocation under FAR § 61.15(a) was appropriate here. And, since there were no issues of material fact to be determined by the law judge under the circumstances presented in this case, summary judgment was also appropriate. Administrator v. Poole, NTSB Order No. EA-4425 (1996).

Respondent next contends that the Administrator's order should be dismissed because it constitutes double jeopardy,⁵

³The Rule provides in some circumstances for the dismissal of complaints where an airman has not received notice of the Administrator's intent to suspend his certificate within 6 months of the offenses.

⁴Respondent's assertion that the Administrator was required to show good cause for the delay in issuing the complaint against him erroneously relies on 49 C.F.R. § 821.33(a)(1), which does not apply to those cases where the complaint alleges a lack of qualification, such as this case.

⁵U.S. CONST. amend. V.

since the revocation is based on the same conduct for which he has already been criminally sanctioned. This is also an issue that has been previously decided by the Board. The Administrator's action is civil, not criminal, and therefore double jeopardy protections do not attach. See, e.g., Administrator v. Franklin, 3 NTSB 986, *Denying Reconsideration* 3 NTSB 978 (1978).

Finally, respondent argues that revocation of his airman certificate in accordance with the provisions of 49 U.S.C. 44710, a statute that was enacted after the commission of his criminal acts, would violate the *ex post facto* provisions of the Constitution.⁶ This argument is premised on respondent's misreading of the order issued against him. The Administrator revoked respondent's certificate under the authority of 49 U.S.C. 44709, a part of the Federal Aviation Act that was in existence at the time of the acts underlying his conviction. Section 61.15 of the Federal Aviation Regulations also predates his conduct.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's order granting summary judgment, and the Administrator's revocation order, are affirmed.

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

⁶U.S. CONST. art. I, § 9, cl.3.