

SERVED: April 28, 1998

NTSB Order No. EA-4654

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 9th day of April, 1998

JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14774
v.)	
)	
RAFAEL SERRATO,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from the initial decision of Administrative Law Judge William E. Fowler, Jr., issued on August 18, 1997, entering judgment on the pleadings in favor of the Administrator.¹ The law judge affirmed an order of the Administrator revoking respondent's airman and mechanic certificates, on finding that respondent had violated 49 C.F.R.

¹ The initial decision is attached.

61.15 and 65.12, and 49 U.S.C. 44709(b) and 44710.² We deny the appeal.

Respondent was convicted of conspiracy to possess with intent to distribute cocaine and conspiracy to possess another controlled substance. Respondent is currently incarcerated.

There is no question but that the law judge correctly found that respondent had violated the cited regulations. Revocation is the appropriate sanction. See Administrator v. Kolek, 5 NTSB 1437 (1986), aff'd Kolek v. Engen, 869 F.2d 1281 (9th Cir. 1989), and Administrator v. Correa, NTSB Order EA-3815 (1993) (drug conviction, even without use of aircraft or certificate, warrants revocation). Under § 44710, however, and in contrast to the typical revocation order where a respondent may reapply after 1 year, there can be no future certificate issuance. The law judge's conclusion that respondent's having carried cocaine, while a passenger in a commercial airliner, satisfies the statutory, permanent revocation requirement of § 44710 is consistent with precedent. See Administrator v. Hampton, NTSB Order No. EA-4251 (1994) (while we may or may not agree, we must defer to Administrator's interpretation). But see Senate Report No. 98-228 (1984). Thus, although on appeal, respondent asks

² The cited regulations provide for the suspension or revocation of certificates and ratings for alcohol or drug-related convictions in Federal or State court. Section 44709, as pertinent, contains similar discretionary authority, and section 44710, as pertinent, requires lifelong revocation in the case of a narcotics felony where the respondent served as an airman or was on an aircraft in connection with the offense.

that the sanction be mitigated to suspension for 1 year or that it be limited to his pilot certificate (and not his mechanic certificate), we are without power to do so. Further, that he would use his certificate to earn a living is not a basis we have accepted to reduce sanction. Administrator v. Mohamed, NTSB EA-2834 (1988) at p. 11, and cases cited there (consideration of the impact of the sanction on the individual is directly contrary to established precedent).

Contrary to respondent's argument, section 44710 did not have ex post facto application to respondent, even if that principle were applicable here, which it is not. And, finally, respondent's request for an indefinite continuance is unjustified.³ Respondent's status does not prevent him from retaining counsel, or obtaining other assistance, nor is he entitled to such as a matter of law.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The revocation of respondent's certificates shall begin 30 days from service of this order.⁴

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

³ In earlier requests he sought a continuance until November 1999, his anticipated release date.

⁴ For the purpose of this order, respondent must physically surrender his certificates to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).