

SERVED: August 31, 1998

NTSB Order No. EA-4695

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 20th day of August, 1998

JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-15002
)	
RONNIE DEE IKELER,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed the orders of Administrative Law Judge Patrick G. Geraghty, issued on December 3, 1997, and December 29, 1997, both of which denied his motion to dismiss the Administrator's complaint as stale under Rule 33 of the Board's Rules of Practice in Air Safety Proceedings, 49 C.F.R. § 821.33.¹

¹The stale complaint rule provides, in pertinent part, as follows:

The Administrator has filed a brief in reply, urging the Board to deny the appeal and affirm the December 29, 1997 order, which also granted the Administrator's motion for summary judgment and affirmed the Administrator's suspension order and complaint.² For the reasons that follow, respondent's appeal is denied.

The Administrator's order alleges that on September 8, 1995, respondent's driver's license was revoked by the State of Colorado for driving a motor vehicle while under the influence of alcohol (DUI) and that on October 20, 1995, respondent was convicted of that same offense. According to the Administrator, respondent failed to report either of these motor vehicle actions to the FAA's Civil Aviation Security Division (hereinafter referred to as the Security Division) within 60 days, as required by section 61.15(e) of the Federal Aviation Regulations (FAR).³

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§ 821.33 Motion to dismiss stale complaint.

Where the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator's advising respondent as to reasons for proposed action under section 609 of the Act, respondent may move to dismiss such allegations pursuant to the following provisions:

(a) In those cases where a complaint does not allege lack of qualification of the certificate holder:

(1) The Administrator shall be required to show by answer filed within 15 days of service of the motion that good cause existed for the delay, or that imposition of a sanction is warranted in the public interest, notwithstanding the delay or the reasons therefor.

(2) If the Administrator does not establish good cause for the delay or for imposition of a sanction notwithstanding the delay, the law judge shall dismiss the stale allegations....

²Copies of both orders are attached.

³FAR § 61.15 provides in pertinent part as follows:

The Administrator ordered a 45-day suspension of respondent's airline transport pilot (ATP) certificate. A notice (NOPCA) proposing to suspend respondent's ATP certificate for this violation was issued on March 17, 1997, approximately 17 months after the first violation occurred.

The Administrator's order was filed as the complaint in this proceeding. On September 13, 1997, respondent filed an answer in which he admitted that he did not report the motor vehicle actions to the Security Division. Respondent claimed, however, that his violations were inadvertent, because he did not know of the regulatory reporting requirements. Respondent also asserted as a defense that the Administrator's complaint was stale. On October 23, 1997, respondent filed a motion to dismiss stale complaint in which he further claimed in defense, that he had reported the information concerning his conviction to his aviation medical examiner (AME) on June 25, 1996, by entering the

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§ 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, 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, 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

information on his application for a first-class airman medical certificate.⁴

In cases where the Administrator issues a NOPCA more than 6 months after the occurrence of a suspected violation, Board precedent is clear that in order to survive a motion to dismiss stale complaint, she must show that good cause existed for the delay in discovering the incident, and that reasonable diligence was exercised in investigating the matter once she learned that a possible violation had occurred. Administrator v. Brea, NTSB Order No. EA-3657 (1992), and cases cited therein.

The Administrator asserts that she did not become aware of the reporting failure until January 10, 1997, when respondent's name was matched by the Security Division from records obtained from the FAA's Civil Aeromedical Institute (CAMI), to records obtained from the National Driver Registry (NDR). The Administrator argues that there was thus good cause for the delay in advising respondent of proposed certificate action, and that reasonable steps were then taken to investigate the matter once it was discovered.⁵ The law judge ruled in the Administrator's favor. We adopt the law judge's findings as our own.

We reject respondent's argument that the date of his medical

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than 60 days after the motor vehicle action....

⁴On the back of respondent's application the AME indicates that he discussed respondent's DUI conviction with the Regional Flight Surgeon.

⁵Only 66 days elapsed from the date of the CAMI-NDR records match (January 10) to the FAA's issuance of the NOPCA (March 17).

certificate application should be used as the date the Administrator had knowledge that he may not have satisfied the requirements of section 61.15(e). While respondent advised his AME of the fact of his DUI conviction, who, in turn, advised the Regional Flight Surgeon, these individuals did not know whether respondent had reported the conviction to the Security Division, and they did not need such information to evaluate the impact of his DUI conviction on his eligibility for a medical certificate. Even if, as respondent claims, the AME said something to the effect that nothing more would come of the matter, this, in context, presumably meant that the conviction would not keep him from receiving a medical certificate, not that he was being given dispensation for noncompliance with rules in FAR § 61.15 applicable to motor vehicle actions that he may not have followed.

This case is clearly distinguishable from Administrator v. Smith, NTSB Order No. EA-4088 (1994), which is relied on by respondent in his appeal. Smith had contacted his local FSDO (Flight Standards District Office) within the 60-day reporting period, seeking advice on how to report his arrest. He was reminded to report it on his next medical application, but he was not reminded of his independent duty to report motor vehicle actions to the Security Division within 60 days. Eleven days after his conviction, Smith disclosed the information to his AME. We held that although Smith had technically violated section 61.15(e), his certificate should not be suspended because of his

timely attempt to comply with the regulation, and because of the incomplete advice he was given by the FSDO. In the case before us, the 60-day reporting periods for both motor vehicle actions had already expired when respondent applied for a medical certificate on June 25, 1996. In other words, there was nothing either the AME or the Regional Flight Surgeon could have said to respondent that would have had a bearing on his compliance with FAR § 61.15.

The law judge ruled that the Administrator took reasonable steps in processing the investigation once she became aware of reasons for proposing certificate action under section 61.15(e). Respondent offers us no valid reason for disturbing that ruling.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's orders and the Administrator's order are affirmed; and
3. The 45-day suspension of respondent's airline transport pilot certificate shall begin 30 days from the date of service of this order.⁶

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

⁶For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).