

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 7, 2026

Decided August 18, 2026

No. 25-1158

JAMES K. KNIGHT,
PETITIONER

v.

NATIONAL TRANSPORTATION SAFETY BOARD AND FEDERAL
AVIATION ADMINISTRATION,
RESPONDENTS

On Petition for Review of an Order of the
National Transportation Safety Board

Elizabeth A. Vasseur-Browne argued the cause and filed
the briefs for petitioner.

Jessica E. Kabaz-Gomez, Senior Attorney, Federal
Aviation Administration, argued the cause and filed the brief
for respondent.

Before: KATSAS, RAO and CHILDS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* CHILDS.

CHILDS, *Circuit Judge*: Pilot James Knight was found by
an Administrative Law Judge (ALJ) to have violated federal

aviation regulations by performing a safety-sensitive function with a prohibited substance in his system. Based on this violation, the Administrator of the Federal Aviation Administration (Administrator) sought revocation of Knight's airline transport pilot, ground instructor, and medical certificates. Knight successfully persuaded the National Transportation Safety Board (Board) that he had mistakenly ingested his son's prescription medication containing amphetamine and that revocation was thus an unreasonable sanction. The Board accordingly reduced Knight's sanction from revocation to a 90-day suspension.

Knight then filed an application for attorney's fees and expenses under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504. An ALJ granted Knight's application. But the Board reversed, concluding that although Knight was the "prevailing party" because he had succeeded in obtaining a reduced sanction in lieu of revocation, the Administrator's position in seeking revocation was "substantially justified." *Id.* § 504(a)(1).

Knight now petitions for review of the Board's order denying his EAJA motion for attorney's fees and expenses. Because we conclude that the Board's ruling was supported by substantial evidence, we deny Knight's petition.

I.

A.

On Thursday, December 20, 2018, at approximately 9:00 a.m., Knight reported to work at Channel Islands Aviation and received notice that he had been selected for a random drug test under his employer's Federal Aviation Administration (FAA) mandated drug-testing policy. That same day at approximately 1:30 p.m., he reported for the drug test. And on December 24,

the test results came back, showing that he had tested positive for amphetamine. Two days later, Channel Islands Aviation “grounded” Knight and removed him from performing safety-sensitive functions. J.A. 86. After completing the Department of Transportation’s return-to-duty process, Channel Islands Aviation “reinstated” Knight as “its assistant chief pilot effective January 17, 2019.” *Id.*

Federal aviation regulations prohibit a certificate holder from performing a safety-sensitive function “while that individual has a prohibited drug . . . in his or her system.” 14 C.F.R. § 120.33(b). Amphetamine is one such prohibited drug. *See id.* § 120.7(k) (citing 49 C.F.R. § 40); 49 C.F.R. §§ 40.82; 40.85. Safety-sensitive functions, predictably, encompass piloting an aircraft. 14 C.F.R. § 120.7(n) (citing 14 C.F.R. §§ 120.105, 120.215); *see also id.* § 135.100(a)–(b). An individual is “performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such function.” *Id.* § 120.7(i).

FAA guidance provides that a single act of “[p]erforming a safety-sensitive function with a prohibited drug in system,” “[g]enerally” warrants revocation, because such “acts of misconduct are, by their very nature, so egregious or significant as to demonstrate that the certificate holder does not possess the care, judgment, or responsibility to hold a certificate.” U.S. Dep’t of Transp., FAA Order 2150.3C, at 9-13–14 & Fig. 9-5(10) (Sept. 18, 2018).

Based on Knight’s positive drug test and the conclusion that Knight had performed a safety-sensitive function “while having a prohibited drug in [his] system,” J.A. 13, the Administrator sent Knight a Letter of Investigation on February 21, 2019, notifying him that he was under investigation.

Responding to the Letter, Knight pledged his “full cooperation” and offered to “explain the events that resulted in a positive drug test result.” J.A. 191. Knight elaborated that he had inadvertently ingested his son’s Vyvanse medication instead of his own prescribed medication while dealing with a medical emergency involving his son. *Id.* To this letter, Knight attached excerpts from his son’s medical records and photographs of the Vyvanse and Knight’s own medication bottles.

On May 20, 2019, the Administrator issued an Emergency Order of Revocation, pursuant to 49 U.S.C. § 46105(c). The Revocation Order sought revocation of Knight’s airline transport pilot, ground instructor, and medical certificates, asserting that Knight had performed a safety-sensitive function while having a prohibited drug in his system in violation of 14 C.F.R. § 120.33(b), and asserted that he “lack[ed] the qualifications to hold any class of airman medical certificates under the medical standards in 14 C.F.R. §§ 67.107(b)(2), 67.207(b)(2), and 67.307(b)(2).” J.A. 13. The Administrator subsequently filed the Revocation Order as the Complaint.

Knight timely appealed the Revocation Order and filed an Answer to the Complaint. In his Answer, Knight denied several factual allegations, asserted six affirmative defenses, and sought dismissal of the Complaint. Pertinent here, Knight denied the key allegation that he had “performed a safety-sensitive function for an air carrier certificate holder while having a prohibited drug in [his] system,” J.A. 13, and asserted that “he never intentionally consumed any controlled substance that was not prescribed to him,” J.A. 21.

During discovery, the parties stipulated to, *inter alia*, the following facts: (1) “Vyvan[s]e medication contains Amphetamines,” (2) Knight’s “drug test was verified as

positive by a Medical Review Officer,” (3) “There is no evidence that [Knight] intentionally or knowingly ingested his son’s Vyvan[s]e medication,” (4) “There is no evidence that [Knight] was ever impaired by the Vyvan[s]e medication.” J.A. 85–87.

The case proceeded to a hearing before an ALJ on September 5, 2019. To support his accidental-ingestion affirmative defense, Knight testified to the series of events in December 2018 that had led to his positive drug test result.

Knight testified that on December 16, 2018, he had been on duty as a pilot and returned home around 12:30 a.m. Hours later, his son awoke in pain, prompting Knight and his wife to take their son to the emergency room. Without receiving a diagnosis, the family returned home between 5:00 a.m. and 6:00 a.m. on December 17. Knight called out of work on December 17 because he did not have adequate crew rest. In the early hours of December 18, Knight’s son was still in pain and so, following medical advice, the family returned to the emergency room. Knight’s son was discharged that afternoon. Upon returning home, Knight noticed that the bottle for his son’s Vyvanse medication was on the bathroom counter, which caused him to realize that he had taken his son’s Vyvanse medication rather than his own prescribed cholesterol medication when rushing back to the emergency room on December 18. Knight attributed the mistake to the similarities in the pill bottles and the stress and lack of sleep caused by his son’s ongoing medical emergency. He also testified that until their recent move, his medication had been stored separately from his son’s, yet due to space constraints in their current home the medications were stored together.

On cross-examination, Knight affirmed that he did not report the ingestion of the prohibited drug to the FAA or his

employer before reporting to work on December 20. He also testified to having known that Vyvanse was a “similar drug” to amphetamine. J.A. 135.

Additionally, Knight presented documentary evidence supporting his accidental-ingestion affirmative defense, including his son’s hospital records and photographs showing the similarities in the bottles containing his son’s Vyvanse medication and his own cholesterol medication.

Knight also called several witnesses in his defense: the drug and alcohol counselor to whom Knight was referred after being grounded by his employer, who testified that he believed Knight’s story and had recommended Knight’s return to duty; several character witnesses who, having worked with Knight for several years, spoke to his integrity; and Knight’s wife, who corroborated Knight’s testimony regarding the family’s medical emergency.

The Administrator called one witness, Lacey Jones, the manager of the FAA Special Investigations Branch, who had conducted the investigation into Knight’s alleged drug violation. Jones’ duties, she stated, “include receiving the incoming reports of drug and alcohol violations, assigning those cases out for investigation, . . . reviewing the enforcement investigative report . . . , and recommending [a] sanction” to the legal department. J.A. 108. She testified that she had recommended revocation as the sanction in Knight’s case.

The following day, the ALJ issued an Oral Initial Decision finding that the Administrator had “proven his prima facie case of a verified positive drug test for a prohibited drug” and that Knight “was available to perform safety-sensitive functions with a prohibited drug in his system” in violation of 14 C.F.R. § 120.33(b). J.A. 144. The ALJ further found that Knight “did

not prove his affirmative defense of innocent or unknowing ingestion by a preponderance of the evidence.” *Id.* Yet the ALJ noted that “nothing in [Knight’s] testimony” had “indicate[d]” that “he was attempting to be evasive in any way or to falsify his testimony,” and commented on Knight’s “redeeming value.” J.A. 145. In considering the appropriate sanction, the ALJ found that given “all of the evidence,” J.A. 144, “revocation” was “not appropriate,” and thus reduced the Administrator’s sanction of revocation to a 90-day suspension, J.A. 145.

The parties cross-appealed to the Board. Knight challenged the ALJ’s ruling that he had failed to prove his accidental-ingestion affirmative defense. The Administrator challenged the ALJ’s reduction of the sanction from revocation to a 90-day suspension.

The Board concluded that revocation was not a reasonable sanction based on its “de novo review,” J.A. 402, of the “aggravating and mitigating factors,” J.A. 405. Starting with the mitigating factors, the Board found (contrary to the ALJ’s finding) that Knight had proven his accidental-ingestion affirmative defense by a preponderance of the evidence. In the Board’s view, the ALJ’s determination that Knight’s testimony was credible and the corroborating evidence supporting Knight’s narrative—including character witnesses, medical records, and photographs—were sufficient to substantiate Knight’s affirmative defense. As for aggravating factors, the Board found that Knight “knew that he took Vyvanse and failed to report the accidental ingestion of a prohibited substance to his employer once he became aware of it and still reported for duty,” and did “not ‘ground’ himself until he tested positive for a prohibited drug.” J.A. 407. “As a certificate holder,” the Board explained, “[Knight] had a responsibility to report the ingestion of a prohibited drug as soon as he discovered it.” *Id.*

Balancing these factors, the Board upheld the ALJ's 90-day suspension.

The Board denied the Administrator's petition for reconsideration. The Administrator then moved for a stay pending judicial review and requested expedited consideration. After Knight filed an opposing memorandum, the Administrator withdrew the motion. On November 11, 2021, Knight received his certificates in the mail from the Administrator.

B.

On November 12, 2021, Knight filed an application seeking an award of \$63,648.05 in attorney's fees and expenses under the EAJA.¹ The EAJA provides for an award of attorney's fees in an agency adjudication "to a prevailing party . . . unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust." 5 U.S.C. § 504(a)(1).

Applying this standard, an ALJ granted Knight's application and awarded him \$62,821.32. But on appeal, the Board reversed. First, the Board concluded that Knight was a "prevailing party" under the EAJA. J.A. 632. Second, the Board concluded that the "administrative record, as a whole, which is made in the adversary adjudication," 5 U.S.C. § 504(a)(1), showed the Administrator's position in the underlying agency adjudication was "substantially justified," J.A. 634 & n.40. Specifically, the Board explained that since Knight had "reported to work in his safety sensitive position with a prohibited drug in his system," the Administrator proved the regulatory violation and thus "there was clearly a basis for the Administrator to move forward with the case." J.A. 637–

¹ Knight later amended his amount requested to \$70,039.

38. And despite Knight's success in proving his accidental-ingestion affirmative defense, the Board explained, "the case rested on the [ALJ]'s credibility determination" and "there was no way to determine the witness[es'] credibility without a hearing." J.A. 636. Accordingly, the Board held that "the Administrator had a reasonable basis for pursuing the allegations against [Knight]," reversed the ALJ's decision, and overturned the EAJA award. J.A. 638.

Knight timely petitioned for review, contesting the Board's determination that the Administrator's position was substantially justified. For the reasons that follow, we deny his petition.

II.

Our review of the Board's EAJA determination is tightly cabined, requiring us to "modify the determination of fees and other expenses only if" the Board's decision denying attorney's fees "was unsupported by substantial evidence." 5 U.S.C. § 504(c)(2); *see also Loumiet v. Off. of Comptroller of Currency*, 650 F.3d 796, 799 (D.C. Cir. 2011) (reviewing agency EAJA decision for substantial evidence); *Kuhns v. Bd. of Governors of Fed. Rsrv. Sys.*, 930 F.2d 39, 41 (D.C. Cir. 1991) (same).

III.

The sole issue on appeal is whether the Board's determination that the Administrator's position was substantially justified is supported by substantial evidence.

The Administrator bore the burden in the EAJA proceeding before the ALJ and the Board of demonstrating that their position on the merits was substantially justified. *SecurityPoint Holdings, Inc. v. TSA*, 836 F.3d 32, 39 (D.C. Cir.

2016). To satisfy this burden, the Administrator had to prove that their position was “justified in substance or in the main—that is, justified to a degree that could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (citation modified). In other words, that “it ha[d] a reasonable basis in law and fact.” *Id.* at 566 n.2; *accord Air Transp. Ass’n of Canada v. FAA*, 156 F.3d 1329, 1332 (D.C. Cir. 1998). Some of our cases have assessed the reasonableness of the agency’s position as a “whole,” *Kuhns*, 930 F.2d at 41 (“The position of the agency is to be measured as a whole, not by reference to separate parts of the litigation, such as discovery requests.” (citation modified)); *see also Commissioner, INS v. Jean*, 496 U.S. 154, 159–62 (1990), while others have considered whether it remained reasonable as the administrative proceeding advanced through “each successive phase,” *Am. Wrecking Corp. v. Sec’y of Lab.*, 364 F.3d 321, 325–26 (D.C. Cir. 2004) (per curiam) (noting that the agency’s position in EAJA cases is analyzed “in a piecemeal fashion, examining the reasonableness . . . at each successive phase of the proceeding”); *e.g., Alphin v. NTSB*, 839 F.2d 817, 819 (D.C. Cir. 1988) (addressing “whether the Administrator of the [FAA] was substantially justified in initiating and continuing proceedings against [respondent] resulting in the suspension of his [certificate]”). We assume without deciding that the latter standard applies here because the Administrator’s position was substantially justified even under that more exacting approach.

Knight’s arguments on appeal mirror the contentions that he raised before the Board in the EAJA proceeding. Knight contends that the Administrator lacked substantial justification both when they initiated the case and when they continued to seek revocation after an ALJ found Knight credible and reduced the sanction. Taking Knight’s arguments in turn, we conclude that substantial evidence supports the Board’s decision rejecting Knight’s arguments challenging the

Administrator's position at each stage of the administrative proceeding.

A.

To start, substantial evidence supports the Board's conclusion that the Administrator had substantial justification "in law and fact," *Air Transp. Ass'n of Canada*, 156 F.3d at 1332 (citation omitted), to issue Knight an Emergency Order of Revocation.

The Administrator was substantially justified in law because governing regulations establish that an individual's performance of a safety-sensitive function with amphetamine in his or her system is a violation of 14 C.F.R. § 120.33(b), and renders the individual unqualified to hold any class of airman medical certificates under federal aviation medical standards, *id.* §§ 67.107(b)(2), 67.207(b)(2), and 67.307(b)(2). And FAA guidance provides that a "single act" of "[p]erforming a safety-sensitive function with a prohibited drug in system," "[g]enerally" warrants revocation, because such "acts of misconduct are, by their very nature, so egregious or significant as to demonstrate that the certificate holder does not possess the care, judgment, or responsibility to hold a certificate." FAA Order 2150.3C, at 9-13-14 & Fig. 9-5(10). The Administrator was substantially justified in fact given Knight's positive drug test indicating that he had performed a safety-sensitive function with amphetamine in his system.

We are unpersuaded by Knight's arguments to the contrary. Knight asserts that the Administrator should not have issued the Revocation Order because, before doing so, "the [Administrator] knew that Knight's ingestion of Vyvanse was accidental." Petitioner Br. 20. This argument belies the record. Before issuing the Revocation Order, the Administrator knew that Knight intended to claim that the ingestion was accidental

and explain the circumstances that had led to him “inadvertently ingest[ing] his son’s Vyvanse medication” and the subsequent positive drug test result, as he had indicated in his response to the Administrator’s Letter of Investigation. *Id.* at 7. But the Administrator’s knowledge that Knight sought to justify the positive drug test does not translate to the Administrator knowing that Knight’s ingestion of the Vyvanse was, in fact, accidental. As the Board put it: “[R]equiring the Administrator to give weight to every certificate holder’s claim that an illegal ingestion was accidental would render the drug testing program meaningless and have a negative impact on air safety.” J.A. 637. Thus, notwithstanding Knight’s response to the Administrator’s Letter of Investigation stating that he intended to establish that he ingested the Vyvanse by mistake, substantial evidence supports the Board’s determination that the Administrator was justified in fact and law in issuing the Revocation Order.

B.

Substantial evidence also supports the Board’s conclusion that the Administrator had substantial justification “in law and fact,” *Air Transp. Ass’n of Canada*, 156 F.3d at 1332 (citation omitted), to require Knight, as the certificate holder, to carry his burden of “prov[ing]” his accidental-ingestion affirmative defense by a “preponderance of the evidence.” *See Huerta v. Hermance*, NTSB Order No. EA-5706, 2014 WL 1118309, at *3 (Feb. 25, 2014).

The term “affirmative defense,” as used in this context, is a bit of a misnomer. Consistent with the Board’s and the parties’ use of the term, accidental ingestion does not negate the 14 C.F.R. § 120.33(b) violation; it bears on the resulting sanction. A certificate holder who proves “accidental ingestion” of a prohibited substance in violation of 14 C.F.R.

§ 120.33(b) is not entitled to dismissal of the violation or the administrative proceeding entirely. *See, e.g., Blakey v. Kalberg*, NTSB Order No. EA-5240, 2006 WL 2332760, at *3 (July 26, 2006) (noting that inadvertent ingestion is not a “legitimate medical explanation” as defined by 49 C.F.R. § 40.151 and thus is not a legally sufficient defense to a positive drug test result); *Hermance*, 2014 WL 1118309, at *11–12 (explaining that “even if believed,” respondent’s assertion of “inadvertent” ingestion is not “a legally sufficient defense to the findings of the positive test”). Rather, a certificate holder who proves accidental ingestion may receive a reduced sanction—*i.e.*, something less than revocation of their certificates. *See, e.g., Huerta v. Henry*, NTSB ALJ Order No. SE-19769, 2015 NTSB LEXIS 17, at *19, *31 (Apr. 15, 2015) (finding that respondent “established his inadvertent consumption by a preponderance of reliable, credible and probative evidence” and reduced sanction from revocation to 180-day suspension); *Dickinson v. Myers*, NTSB ALJ Order No. SE-30845, 2020 NTSB ALJ LEXIS 1, at *30–31 (Aug. 21, 2020) (similar, but reduced to a 90-day suspension). In this way, the accidental-ingestion defense is more of a mitigating factor relevant to determining a sanction than a true affirmative defense to the charged violation.

After the Administrator issued the Revocation Order, Knight filed his response denying that he had “performed a safety-sensitive function for an air carrier certificate holder while having a prohibited drug in [his] system,” J.A. 13, and invoking, *inter alia*, an accidental-ingestion defense. Subsequently, the parties stipulated that: (1) “[Knight’s] drug test was verified as positive by a Medical Review Officer”; (2) “There is no evidence that [Knight] intentionally or knowingly ingested his son’s Vyvan[s]e medication”; and (3) “There is no evidence that Knight was ever impaired by the Vyvan[s]e medication.” J.A. 86–87. Knight contends that

those stipulations, together with his accidental-ingestion defense, left the Administrator without substantial justification to continue seeking revocation. The administrative record substantiates the Board's disagreement with Knight's position.

As the record shows, contrary to Knight's characterization, the Administrator never stipulated that Knight's ingestion of his son's Vyvanse was accidental. *Cf.* Petitioner Br. 20 (asserting, without support, that "the FAA knew that Knight's ingestion of Vyvanse was accidental"). And the parties' stipulations that there was "no evidence" that Knight had ingested Vyvanse "*intentionally or knowingly*," standing alone, did not establish by a preponderance of the evidence that Knight had ingested the medication *accidentally*. *See Hermance*, 2014 WL 1118309, at *3.

Indeed, as Knight acknowledges, even after the parties' stipulations, they still disagreed about what the corresponding sanction for the violation should be. The Administrator sought full revocation; Knight hoped for a less severe sanction based on his accidental-ingestion defense. The hearing before the ALJ was thus necessary to resolve the question "of whether [Knight] factually proved the defense by a preponderance of the evidence" such that his sanction could be reduced. *Id.*

The administrative record buttresses the Board's conclusion that the ALJ's credibility findings, which are "within the exclusive province of the [ALJ]," were essential to the resolution of whether Knight could establish his accidental-ingestion defense. J.A. 636 (citation omitted). And as the Board noted, per established Board precedent, if key factual issues hinge on witness credibility, then the Administrator is substantially justified in pursuing a complaint. J.A. 635 (citing *Application of Keith*, NTSB Order No. EA-5223, 2006 WL 1462193, at *3 (May 24, 2006)); *Application of Peterson*,

NTSB Order No. EA-4490, 1996 WL 616333, at *3 (Oct. 7, 1996)).

As the Board explained, the success of Knight's accidental-ingestion defense turned on the ALJ's "believ[ing] [Knight's] story surrounding the drug ingestion." J.A. 636. This required the ALJ to not only consider Knight's credibility, but also the credibility of the five witnesses that Knight called in his defense. Indeed, the Board elaborated, if the ALJ "did not believe [Knight's] story surrounding the drug ingestion, [the ALJ] would have been less likely to find" that Knight: "rushed his son to the emergency room," that "his medications were not separated from his son's" due to a recent move, that his "medication looked similar to his son's medication," "and critically, [that] his ingestion of the prohibited drug was inadvertent." *Id.* What's more, in affirming the ALJ's 90-day suspension, as opposed to revocation, the Board too "relied on the [ALJ's] finding that [Knight's] testimony was credible in concluding that he proved his affirmative defense of accidental ingestion." *Id.* Accordingly, the record supports the Board's conclusion that Knight's defense—and in turn the resolution of the administrative proceeding—required a hearing and "rested on the [ALJ's] credibility determination[s]." *Id.*

For these reasons, we hold that substantial evidence supports the Board's conclusion that the Administrator was substantially justified in continuing to seek revocation and require Knight to carry his burden of establishing his accidental-ingestion defense.

C.

Finally, substantial evidence supports the Board's conclusion that the Administrator had substantial justification "in law and fact," *Air Transp. Ass'n of Canada*, 156 F.3d at 1332 (citation omitted), to seek revocation of Knight's

certificates after the ALJ reduced Knight's sanction from revocation to a 90-day suspension.

As the Board explained during the EAJA phase, its disagreement with the Administrator during the merits phase over what the appropriate sanction should be does not *ipso facto* undermine the Administrator's position seeking revocation such that Knight is entitled to an EAJA award. J.A. 638 (“[D]isagreement with the sanction does not mean that the Administrator was not substantially justified.”); *see also FEC v. Rose*, 806 F.2d 1081, 1087 & n.13 (D.C. Cir. 1986) (explaining that “Congress’ intent,” in including the “substantially justified” standard was to prevent “a prevailing party” from “automatically . . . recover[ing] fees” under the EAJA); *accord LePage’s 2000, Inc. v. Postal Regul. Comm’n*, 674 F.3d 862, 866 (D.C. Cir. 2012) (per curiam). That the Board in its *de novo* review of the ALJ’s decision balanced the aggravating and mitigating factors differently than the Administrator is not enough to conclude that the Administrator’s position seeking revocation of Knight’s certificates lacked justification in law or fact.

The Administrator’s position that revocation was the appropriate sanction was warranted in law. Pursuant to governing agency guidance, the sanction of “revocation” is “generally” warranted for a single act of an airman “[p]erforming a safety-sensitive function with a prohibited drug” in his or her system in violation of 14 C.F.R. § 120.33(b). FAA Order 2150.3C, at 9-13–14 & Fig. 9-5(10). And given that the Administrator’s choice of sanction was permissible under applicable regulations, the Administrator reasonably expected that the Board would defer to its choice of sanction. *See Martin v. Occupational Safety & Health Rev. Comm’n*, 499 U.S. 144, 154–55 (1991) (denoting that the agency with adjudicative power in a split-enforcement regime would play a

role similar to a “court in the agency-review context” and review “only for consistency with the regulatory language and for reasonableness” (emphasis omitted)); *see also Pham v. NTSB*, 33 F.4th 576, 583 (D.C. Cir. 2022) (relying on *Martin*, 499 U.S. at 154–55) (holding that the National Transportation Safety Board must defer to the Administrator’s “choice of sanction,” unless it finds “that the sanction is unwarranted in law or without justification in fact”).

The Administrator was also justified in fact in appealing the ALJ’s order and seeking revocation. Importantly, Knight’s own testimony established that Knight had reported to work to perform a safety-sensitive function knowing that he had taken his son’s Vyvanse and that Vyvanse was “a similar drug” to amphetamine, but without either first disclosing that fact to his employer or taking the initiative to ensure that the prohibited substance was no longer in his system. J.A. 135. And as the ALJ found, Knight had violated 14 C.F.R. § 120.33(b) by reporting to work to perform a safety-sensitive function with a prohibited drug in his system. Additionally, despite finding Knight credible, the ALJ found that Knight had failed to prove his accidental-ingestion defense by a preponderance of the evidence. Given the evidentiary record and the ALJ’s findings, the Administrator’s appeal to the Board seeking revocation of Knight’s certificates was justified in fact.

Resisting this conclusion, Knight relies on non-precedential ALJ decisions in which certificate holders had proven their accidental-ingestion defense and, on that basis, the ALJ reduced a revocation to a suspension. Petitioner Br. 21 (citing *Henry*, 2015 NTSB Lexis 17; *Myers*, 2020 NTSB ALJ Lexis 1). In Knight’s view, the Administrator’s decision not to appeal the reduced sanction in those adjudications makes the Administrator’s position in his case unjustified. For three reasons, we are unpersuaded.

First, the ALJ decisions that Knight relies on are distinguishable. In both *Myers* and *Henry*, unlike here, the ALJ found that the certificate holder had established their accidental-ingestion defense by a preponderance of the evidence. *Henry*, 2015 NTSB Lexis 17, at *19, *31 (finding respondent “established his inadvertent consumption by a preponderance of reliable, credible and probative evidence”); *Myers*, 2020 NTSB ALJ Lexis 1, at *30–31 (similar).

Second, as the Administrator points out, ALJ decisions are not precedential and so neither the Administrator nor the Board were bound by them. Respondent Br. 29 n.7 (quoting 49 C.F.R. § 821.43, which provides that an ALJ decision is binding only on the parties in that specific proceeding and “shall not be binding precedent for the Board”).

Third, that the Administrator opted not to appeal the ALJ’s decisions in *Myers* and *Henry* does not make the Administrator’s position in this case inconsistent. There are multitudes of considerations that go into an agency’s litigation decisions and strategy, and we refuse to infer from the agency’s decision not to appeal an ALJ ruling that it has adopted a policy position on the merits. *See Hastings v. Earth Satellite Corp.*, 628 F.2d 85, 94 n.27 (D.C. Cir. 1980) (“The Director’s strategy about what cases to appeal may result from myriad factors, *e.g.*, allocation of staff attorney time, the amount in controversy in a particular case, the prospects of settlement, and others.”); *Freeman v. U.S. Dep’t of the Interior*, 37 F. Supp. 3d 313, 345 (D.D.C. 2014) (“The lack of any appeal of those unrelated ALJ rulings was certainly not due to [the Department] agreeing with or acquiescing in those decisions in a manner that would suggest a changed agency policy being applied to the plaintiff here.”).

* * *

We thus conclude that substantial evidence supports the Board's determination that the Administrator was substantially justified in seeking revocation of Knight's certificates throughout the administrative proceeding.

IV.

For the foregoing reasons, we deny Knight's petition challenging the Board's denial of his application for an award of attorney's fees and other expenses pursuant to the EAJA.

So ordered.