

SERVED: August 7, 2009

NTSB Order No. EA-5469

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. § 800.24)
on the 7th day of August, 2009

J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18631
v.)	
)	
GOHAR ZAIDI,)	
)	
Respondent.)	
)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal that respondent has filed in this proceeding, because respondent did not perfect his appeal by filing a timely appeal brief, as Section 821.57(b) of the Board's Rules of Practice requires (49 C.F.R. Part 821).¹ The Administrator's motion, to which respondent replied, is granted.

¹ Section 821.57(b) provides as follows:

§ 821.57 Procedure on appeal.

(b) Briefs and oral argument. Each appeal in proceedings governed by this subpart must be perfected, within 5 days after the date on which the notice of appeal was filed, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal.

The record establishes that respondent filed a timely notice of appeal from the law judge's July 20, 2009 order entering summary judgment in favor of the Administrator.² Respondent, however, did not file an appeal brief by the deadline established by § 821.57(b), and has not provided good cause for his failure to do so.

To be timely, respondent had to file his appeal brief on or before July 27, 2009. He filed a brief on July 29, 2009.

Without good cause to excuse a failure to file a timely appeal brief, or a request to file one out of time before it is due, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988). Respondent's reply to the Administrator's motion to dismiss states that respondent was unaware that the deadline of 5 days under the Board's Rules of Practice means 5 calendar days, rather than 5 business days. We have previously held that a party's miscalculation of days does not constitute good cause for the failure to file a timely appeal brief. See, e.g., Administrator v. Dirksen, NTSB Order No. EA-4699 (1998), and cases cited therein.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. Respondent's appeal is dismissed.

Gary L. Halbert
General Counsel

² The law judge affirmed the Administrator's emergency order suspending respondent's airworthiness certificate for an alleged violation of 14 C.F.R. § 91.417(c).