

SERVED: February 18, 2010

NTSB Order No. EA-5508

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 17<sup>th</sup> day of February, 2010

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J. RANDOLPH BABBITT,		)	
Administrator,		)	
Federal Aviation Administration,		)	
		)	
Complainant,		)	
		)	Docket SE-18605
v.		)	
		)	
DAVID MICHAEL REID,		)	
		)	
Respondent.		)	
		)	
<hr/>		)	

**OPINION AND ORDER**

Respondent, who proceeds pro se, appeals the written decision of Chief Administrative Law Judge William E. Fowler, Jr., served in this proceeding on September 18, 2009.<sup>1</sup> By that decision, the law judge entered judgment on the pleadings in

<sup>1</sup> A copy of the law judge's order is attached.

favor of the Administrator, and terminated the case.<sup>2</sup> We deny respondent's appeal.

The Administrator issued an emergency suspension order, which became the complaint in this case, on May 15, 2009.<sup>3</sup> The complaint alleged that respondent had not submitted "complete copies of a current evaluation from a certified Substance Abuse Specialist or Addictionologist" in response to the Administrator's request. Compl. at ¶ 5. On May 26, 2009, respondent sent an appeal via facsimile to the NTSB Office of Administrative Law Judges. On May 28, 2009, the Office of Administrative Law Judges sent a letter to respondent that acknowledged his appeal, and specifically instructed him that he must file an answer to the complaint within 20 days from the date of the complaint. An optional answer form accompanied the letter. Given that the Administrator reissued the order of suspension as the complaint on May 27, 2009, respondent's

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<sup>2</sup> The Administrator's emergency order sought suspension of respondent's third-class medical certificate, based on an alleged violation of 14 C.F.R. § 67.413, which requires that, when the Administrator determines that additional medical information or history is necessary to determine whether a certificate holder meets the medical standards to hold a medical certificate, the person must "(1) Furnish that information to the FAA; or (2) Authorize any clinic, hospital, physician, or other person to release to the FAA all available information or records concerning that history."

<sup>3</sup> Respondent subsequently waived the expedited procedures normally applicable to emergency cases.

deadline for filing an answer was June 16, 2009. The Office of Administrative Law Judges did not receive an answer; therefore, the law judge determined that respondent failed to submit an answer, and failed to show good cause for not submitting an answer. Consequently, the law judge concluded that respondent admitted to the Administrator's allegations in the complaint. Written Decision at 4 (citing Administrator v. Diaz, NTSB Order No. EA-4990 (2002)). As a result, the law judge entered judgment in favor of the Administrator on September 18, 2009.

Respondent filed a timely notice of appeal, dated September 27, 2009, in which he stated that he unexpectedly needed to leave the country, and would "comply more attentively with the requests & demands of [the law judge's order]" when he returned. The notice of appeal includes the headings, "Timely Answer" and "Good Cause," but contains no text indicating that the document is anything other than a notice of appeal. On October 11, 2009, respondent timely filed with the Board a handwritten submission self-styled as an appeal "brief," in which he stated that he again needed to leave town unexpectedly, but would supply all details concerning his appeal after he returned. To date, the Board has not received any additional correspondence or pleadings from respondent.

The Board has long held that it will not entertain late-submitted documents without a showing of good cause for the

delay.<sup>4</sup> The Board strictly adheres to this standard of timeliness, and the requirement for a showing of good cause.<sup>5</sup>

In the case at hand, respondent has failed to show good cause for his failure to file an answer below. Respondent's answer in the matter below was thus not timely under our rules, and respondent did not attempt to explain to the law judge why he failed to submit a timely answer to the Administrator's complaint. Furthermore, in this matter now before the Board, neither respondent's notice of appeal nor his filing styled as an appeal brief contains any argument that we should reverse the law judge's decision because good cause existed for respondent's failure to file an answer. Lastly, respondent's so-called appeal brief at this level contains no representation or argument on the issues before us. In short, respondent has failed to demonstrate good cause for his failure to answer below or for failure to address any aspect of his case in a proper appeal brief filed with this Board.

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<sup>4</sup> See, e.g., Administrator v. Near, 5 NTSB 994 (1986); see also 49 C.F.R. 821.11(a) (stating that the Board may grant an extension of time to file any document upon a showing of good cause).

<sup>5</sup> Administrator v. Hooper, 6 NTSB 559, 560 (1988), on remand from Hooper v. Nat'l Transp. Safety Bd., 841 F.2d 1150 (D.C. Cir. 1988).

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's appeal is denied.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, Member of the Board, concurred in the above opinion and order.

Served: September 18, 2009

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

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J. RANDOLPH BABBITT,  
ADMINISTRATOR,  
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

Docket SE-18605

DAVID MICHAEL REID,

Respondent.

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**ORDER ENTERING JUDGMENT ON THE  
PLEADINGS IN FAVOR OF ADMINISTRATOR**

Served: David Michael Reid  
3463 North Old Dixie Highway  
Ft. Pierce, Florida 34946

*(BY CERTIFIED MAIL)*

Robert B. Dixon, Esq.  
Federal Aviation Administration  
Southern Region  
Post Office Box 20636  
Atlanta, Georgia 30320

*(BY FAX)*

On May 15, 2009, the Administrator of the Federal Aviation Administration (“FAA”) issued an order suspending respondent’s third-class airman medical certificate, pursuant to § 67.413 of the Federal Aviation Regulations (“FAR,” codified at 14 C.F.R.), until such time as he produces all of the medical information that was requested of him by the Manager of the FAA’s Aerospace Medical Certification Division in September 2008.<sup>1</sup> That order was issued on an emergency basis.

<sup>1</sup> FAR § 67.413 provides as follows:

“§ 67.413 Medical records.

(a) Whenever the Administrator finds that additional medical information or history is necessary to determine whether you meet the medical standards required to hold a medical certificate, you must:

(1) Furnish that information to the FAA; or  
(2) Authorize any clinic, hospital, physician, or other person to release to the FAA all available information or records concerning that history.

Said order contains the following factual allegations:

1. At all times material herein you were and are now the holder of a Third Class Medical Certificate issued on August 1, 2008.
2. In a letter dated September 10, 2008, Dr. Warren S. Silberman, D.O., M.P.H., Manager, Aerospace Medical Certification Division, Civil Aerospace Medical Institute, requested that you submit:
  - a. Complete copies of all court records associated with your alcohol-related offenses (must include the police/investigative reports and BAC [blood alcohol content level]), and all records associated with any care, treatment, or assessments/evaluations for alcohol abuse or related disorders;
  - b. A detailed statement from you regarding your past and present patterns of alcohol use and the circumstances surrounding the offense;
  - c. A complete copy of your current driving record from the Department of Motor Vehicles from any state that you have held a driver's license;
  - d. Complete copies of a current evaluation from a certified Substance Abuse Specialist or Addictionologist. The evaluation must address your complete alcohol related history of usage and all offenses, and should include copies of all testing performed with a final diagnosis; and
  - e. A current (within the preceding 6 months) cardiovascular examination.
3. On or about October 9, 2009, you requested an extension to submit the information, reports, and records requested in Dr. Silberman's September 10, 2008 letter.
4. On or about October 14, 2008, Dr. Silberman granted you an extension until November 10, 2008 to submit the requested medical information referenced in paragraph 2.
5. Although you have provided most of the information requested in Dr. Silberman's September 10, 2008 letter, as of this date, you have failed to provide complete copies of a current evaluation from a certified Substance Abuse Specialist or Addictionologist.

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(b) If you fail to provide the requested medical information or history or to authorize its release, the FAA may suspend, modify, or revoke your medical certificate or, in the case of an applicant, deny the application for a medical certificate.

(c) If your medical certificate is suspended, modified, or revoked under paragraph (b) of this section, that suspension or modification remains in effect until you provide the requested information, history, or authorization to the FAA and until the FAA determines that you meet the medical standards set forth in [FAR P]art [67].

Thereafter, on May 26, 2009, this office received from respondent by fax an appeal from the Administrator's order. In connection with his appeal, respondent waived the applicability of the Board's rules governing emergency proceedings. This office's Case Manager then transmitted to respondent on May 28, 2009 a letter acknowledging the receipt of his appeal, in which he was instructed that he would be required to submit an answer to the Administrator's complaint within 20 days of its service upon him. Specifically, that acknowledgement letter stated, in pertinent part (emphasis original):

**Since you have waived the emergency procedures in this proceeding, Sections 821.30 through 821.33 of the [Board's] Rules [of Practice in Air Safety Proceedings] will now apply to this proceeding. However, the Administrator's Order will remain in effect pending the outcome of this appeal.** Section 821.31(b) of [the Board's] Rules requires that you file with this office your answer to the Administrator's Complaint in this proceeding. The FAA's Complaint is the order the FAA served on you which you appealed from re-filed by the FAA. An answer, according to our Rules, must contain an admission or denial of each and every paragraph of the charges/allegations in the FAA's Order/Complaint. Failure to file an answer with the Board, responding to each allegation in the Order/Complaint may be deemed an admission of the charge or charges not answered. It is important to note that the "date of mailing" is the "date of service" in all documents pertaining to this proceeding.

Therefore, the filing of a timely answer is a very important step in the protection of your rights. Your answer, to be timely, must be postmarked 20 days from the date the Administrator's Complaint was placed in the U.S. Mail. \*Enclosed is an optional answer form for your use. This form is also available in Adobe Acrobat form on the NTSB Website at [www.NTSB.gov](http://www.NTSB.gov) under the heading "Legal Matters."

In addition to the paper copy of the answer form referenced therein (Answer Form NTSB.2005.1), the appeal acknowledgment letter was accompanied by a series of informational items, including a copy of the Board's Rules of Practice (49 C.F.R. Part 821).

The Administrator reissued the order of revocation as the complaint in this proceeding, pursuant to Rule 31(a) of the Board's Rules (codified at 49 C.F.R. § 821.31(a)),<sup>2</sup> on May 27, 2009. Thus, under Rule 31(b) (codified at 49 C.F.R. § 821.31(b)), respondent's deadline for filing an answer to the complaint was June 16, 2009.<sup>3</sup> However, as of this

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<sup>2</sup> Under Rule 31(a), "[t]he order of the Administrator from which an appeal has been taken shall serve as the complaint. The Administrator shall . . . file the complaint with the Board within 10 days after the date on which he or she was served with the appeal by the respondent, and shall simultaneously serve a copy of the complaint on the respondent."

<sup>3</sup> Rule 31(b) specifically provides that "[t]he respondent shall . . . file with the Board an answer to the complaint within 20 days after the date on which the complaint was served by the Administrator," and that "[f]ailure by the respondent to deny the truth of any allegation or allegations in

date, this office has not received from respondent either an answer to the complaint or any explanation of his reason(s) for failing to submit an answer.

In *Administrator v. Diaz*, NTSB Order EA-4990 (2002), affirmed *sub nom.*, *Diaz v. Department of Transportation*, 65 Fed. Appx. 594 (9th Cir. 2003), the Board, noting that the submission of an answer is critical to the air safety enforcement appeal litigation process, affirmed an NTSB administrative law judge's ruling not accepting a respondent's late-filed answer, and, on the basis of the resulting deemed admissions, entering judgment on the pleadings against him. There, the Board held that the standard to be applied in deciding whether a late-filed answer should be accepted is whether the respondent has shown good cause for the delay in its submission.<sup>4</sup>

Because respondent has not filed an answer to the Administrator's complaint or shown good cause for his failure to do so, the undersigned will, pursuant to *Diaz*, *sua sponte* deem all of the factual allegations of the complaint to have been admitted by him. Such deemed admissions are further sufficient to establish that respondent has not submitted to the FAA all of the medical information it had, through the Manager of the FAA's Aerospace Medical Certification Division, requested from him on September 10, 2008, and that he is, therefore, not in compliance with the requirements of FAR § 67.413(a). Accordingly, the provisions of FAR §§ 67.413(b) and (c), which specifically authorize the Administrator to suspend his medical certificate until such time as he provides all of the requested medical information requested, apply. Given that the sanction imposed by the Administrator in this matter is, thus, warranted, the undersigned will enter a judgment on the pleadings in favor of the Administrator and terminate this proceeding on that basis.

THEREFORE, IT IS ORDERED that a judgment on the pleadings in this matter is ENTERED in favor of the Administrator, that the indefinite suspension of respondent's third-class airman medical certificate, as ordered by the Administrator, is, accordingly, AFFIRMED, and that this proceeding is hereby TERMINATED on that basis.

Entered this 18th day of September, 2009, at Washington, D.C.

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William E. Fowler, Jr.  
Chief Administrative Law Judge

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the complaint may be deemed an admission of the truth of the allegation or allegations not answered."

<sup>4</sup>NTSB Order EA-4990 at 4-5. See also Rule 11(a) of the Board's Rules of Practice (codified at 49 C.F.R. § 821.11(a)), and *Administrator v. Hooper*, 6 NTSB 559, 560 (1988), on remand from *Hooper v. Nat'l Transp. Safety Bd.*, 841 F.2d 1150 (D.C. Cir. 1988).

**APPEAL (DISPOSITIONAL ORDER)**

Any party to this proceeding may appeal this order by filing a written notice of appeal within 10 days after the date on which it was served (the service date appears on the first page of this order). An original and 3 copies of the notice of appeal must be filed with the:

National Transportation Safety Board  
Office of Administrative Law Judges  
Room 4704  
490 L'Enfant Plaza East, S.W.  
Washington D.C. 20594  
Telephone: (202) 314-6150 or (800) 854-8758

That party must also perfect the appeal by filing a brief in support of the appeal within 30 days after the date of service of this order. An original and one copy of the brief must be filed directly with the:

National Transportation Safety Board  
Office of General Counsel  
Room 6401  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594  
Telephone: (202) 314-6080  
FAX: (202) 314-6090

The Board may dismiss appeals on its own motion, or the motion of another party, when a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

A brief in reply to the appeal brief may be filed by any other party within 30 days after that party was served with the appeal brief. An original and one copy of the reply brief must be filed directly with the Office of General Counsel in Room 6401.

**NOTE: Copies of the notice of appeal and briefs must also be served on all other parties to this proceeding.**

An original and one copy of all papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel in Room 6401. Copies of such documents must also be served on the other parties.

The Board directs your attention to Rules 7, 43, 47, 48 and 49 of its Rules of Practice in Air Safety Proceedings (codified at 49 C.F.R. §§ 821.7, 821.43, 821.47, 821.48 and 821.49) for further information regarding appeals.

**ABSENT A SHOWING OF GOOD CAUSE, THE BOARD WILL NOT ACCEPT LATE APPEALS OR APPEAL BRIEFS.**