SERVED: July 20, 2012

NTSB Order No. EA-5634

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 19th day of July, 2012

MICHAEL P. HUERTA, Acting Administrator, Federal Aviation Administration, Complainant, v. RON MASON, Respondent.	)	Docket SE-19195

ORDER DENYING PETITION

1. *Background*

Respondent, who proceeds *pro se*, has filed a petition for reconsideration of NTSB Order No. EA-5630, wherein respondent's appeal was dismissed under delegated order for his failure to file a timely appeal brief.[1] Respondent contends dismissing his case for filing his brief three days late is a miscarriage of justice. To support his claim, respondent asserts the 50 day time period for filing a brief is an "unnatural period" of time which was difficult to calculate. He also

[1] See 49 C.F.R. § 800.24. While the General Counsel has delegated authority to dismiss untimely filed appeals, this authority does not include acting on petitions for reconsideration.

argues the merits of his case—for example, the law judge's impartiality—justifies permitting his case to proceed on appeal. We deny the petition.

2. Analysis

Respondent has not established good cause for failing to file a timely appeal brief, let alone provided a sufficient basis for the Board to reconsider its initial decision.[2] 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. The Board has strictly adhered to this standard since its decision in Administrator v. Hooper, 6 NTSB 559 (1988).

The record from the hearing shows the law judge thoroughly briefed respondent on the importance of complying with the Board's filing deadlines. At the end of the hearing, the law judge clearly informed respondent of the requirement to file his brief within 50 days of the law judge's oral decision. Initial Decision at 459. Because respondent was pro se, the law judge went on to state, "[t]he appeal process—***the timeliness of it is critical*** and if you miss the 10 days or you miss the 50 days for your brief and you are wanting to appeal, the Office of General Counsel will summarily dismiss these cases—***will dismiss any consideration of your appeal***." Id. at 460 [emphasis added]. Furthermore, the law judge provided respondent with a written notice of his appellate rights. Id.

In this case, to be timely, respondent needed to file his appeal brief on or before April 27, 2012. He filed a brief with a certificate of service reflecting a date of April 30, 2012. The certificate of service indicated respondent served the brief via regular mail and facsimile on April 30, 2012. However, both the postmark on the envelope and the date stamp on the facsimile copy received at the NTSB Office of Administrative Law Judges reflect a date of May 2, 2012. Respondent did not request an extension of time to file his brief.

a. *Good Cause Standard*

In response to the Administrator's motion to dismiss, respondent argued he "was on the road" and "was away from home and out of State for 2 weeks." Response at 1-2. The General Counsel, under delegated authority, determined respondent's argument failed to provide good

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[2] See 49 C.F.R. 821.50(c), which provides,

> Content. The petition shall state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon. If the petition is based, in whole or in part, upon new matter, it shall set forth such new matter and shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable, and shall explain why such new matter could not have been discovered in the exercise of due diligence prior to the date on which the evidentiary record closed.

cause. The Board previously has held untimely filings caused by a party's travel did not constitute good cause.[3] In Administrator v. Givens, the Board noted,

> It is incumbent on parties to Board proceedings to plan and arrange their affairs during the pendency of the adjudicatory process so as to protect their appeal rights. A party who misses a deadline because steps were not taken to ensure a timely response to any development that might occur during more than brief absences from his address of record cannot reasonably be said to have exercised an appropriate degree of diligence.[4]

We agree with the General Counsel's determination that respondent's travel, work-related or otherwise, fails to provide good cause for missing his filing deadline. We also conclude respondent's argument on reconsideration—that calculating 50 days from the date of the law judge's decision was unnatural—fails to provide good cause.

b. *Respondent's Argument on the Merits of the Case*

In Hooper, the Board also expressly rejected the notion it would look to the merits of the case in deciding whether to accept untimely filed appeal briefs and instead adopted the good cause standard.[5] Consistent with our long-held jurisprudence established in Hooper, we decline to reach the merits of respondent's case in making this determination to deny the petition for reconsideration.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition is denied.

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

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[3] Administrator v. Waingrow, NTSB Order No. EA-2041 (1984). See also Administrator v. Donnallco, Inc., NTSB Order No. EA-2666, at 5 n.8 (1988) ("The fact that counsel was out of the country for an extended period of time serves as no excuse for noncompliance with the Board's rules.").

[4] 6 N.T.S.B. 1055, 1055-56, petition for reconsideration denied, 6 N.T.S.B. 1057 (1989).

[5] 6 N.T.S.B. at 560.