

SERVED: March 7, 2014

NTSB Order No. EA-5708

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 day 5th of March, 2014

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19536
v.)	
)	
JOSEPH LARRY SMITH,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the Order Granting the Administrator’s Motion to Dismiss Respondent’s Appeal of Chief Administrative Law Judge Alfonso J. Montañó, issued September 18, 2013.¹ By that order, the Chief Law Judge determined the Board lacked

¹ A copy of the law judge’s order is attached.

jurisdiction to dispose of respondent's appeal because the appeal was based on whether respondent and the Administrator reached a settlement. We grant respondent's appeal.²

A. *Facts*

1. *Notice of Proposed Certificate Action*

The Administrator issued a Notice of Proposed Certificate Action (NOPCA) on June 14, 2013, based on a flight respondent conducted on February 12, 2013. Respondent served as pilot-in-command (PIC) of a LearJet LJ40 during the flight, which departed from Palm Beach International Airport in Florida and arrived at Richmond International Airport in Virginia. The Administrator alleged, during the flight, air traffic control (ATC) assigned respondent flight level 230. Respondent allegedly acknowledged this instruction, yet climbed above the assigned flight level. As a result, the Administrator charged respondent with violating 14 C.F.R. § 91.123(a), which prohibits a PIC's deviation from an assigned ATC clearance unless the PIC has obtained amended clearance, an emergency exists, or the deviation is in response to a terrain alert and collision avoidance system resolution advisory.

In response to the NOPCA, on June 19, 2013, respondent completed a standard form reply, in which he selected the following:

- 4.a. I hereby request to discuss this matter in person at an informal conference with an attorney from your office at the location checked below . . .
- b. I hereby request a telephonic informal conference.³

² Respondent filed a motion requesting oral argument. We conclude oral argument is not needed in this case. See 49 C.F.R. § 821.48(e).

³ Mot. to Dismiss at Attach. 1.

On the following page of the form, a respondent may select options concerning the Aviation Safety Reporting Program (ASRP).⁴ In this case, respondent *did not* select any of the options, which state as follows:

I hereby claim entitled to waiver of penalty under the [ASRP] and enclose evidence that a timely report was filed with NASA. As to the allegations of fact and violations—

I request that an Order with Waiver of Sanction be issued. I also hereby waive my right to appeal.

I request that an Order with Waiver of Sanction be issued. I do not waive my right to appeal.⁵

2. *Informal Conference and Motion to Dismiss*

On June 25, 2013, the Administrator’s attorney submitted a notice of informal conference, to occur via telephone on July 15, 2013 at 2:00 pm. In the Administrator’s Motion to Dismiss, the Administrator’s attorney stated the parties discussed potential resolutions of the case during the informal conference on July 15, 2013, and continued to “engage in settlement discussions after the informal conference.”⁶ The motion stated “settlement was reached telephonically” on July 19, 2013, and the “terms of the settlement were that Complainant would

⁴ Under the ASRP, the Administrator may waive the imposition of a sanction, despite the finding of a regulatory violation, as long as certain requirements are satisfied. Aviation Safety Reporting Program, Advisory Circular 00-46E at 4, ¶ 9c (December 16, 2011). The Program involves filing a report with the National Aeronautics and Space Administration (NASA), which may obviate the imposition of a sanction by the Federal Aviation Administration (FAA) where: (1) the violation was inadvertent and not deliberate; (2) the violation did not involve a criminal offense, accident, or action found at 49 U.S.C. § 44709; (3) the person has not been found in any prior FAA enforcement action to have committed a regulatory violation for the past five years; and (4) the person completes and mails a written report of the incident to NASA within 10 days of the violation.

⁵ Mot. to Dismiss at Attach. 1.

⁶ Mot. to Dismiss at 1, ¶ 2.

accept the NASA and an Order would be issued with Waiver of Penalty and no appeal rights.”⁷

On July 24, 2013, respondent retained counsel; as a result, respondent engaged in discussions with the Administrator’s attorney as a *pro se* litigant during the informal conference and the July 19, 2013 telephone conversation.

The Administrator’s motion attached respondent’s NASA report, which respondent’s attorney provided to the Administrator’s attorney on July 24, 2013. The motion further stated the Administrator’s attorney and respondent’s attorney discussed “the parties had reached a settlement” and the Administrator would issue an Order with Waiver of Penalty.⁸ The motion stated, “[respondent’s attorney] asked to receive a copy of the Order for review and indicated that he would speak with his client.”⁹

3. *Order of Suspension with Waiver of Penalty*

The Administrator issued the Order of Suspension with Waiver of Penalty on July 29, 2013. Following a description of the allegations, the order stated, “NOW, THEREFORE, IT IS ORDERED, pursuant to 49 U.S.C. [§] 44709, that any and all Airline Transport Pilot certificates held by you... be and hereby are suspended for a period of sixty (60) days.” Following the signatures of the acting regional counsel and counsel of record for the Administrator, the Order contained a Waiver of Penalty section which stated as follows:

The Administrator has determined that you are entitled to a waiver of penalty under the Aviation Safety Reporting Program, by reason of your having filed a timely report of the incident which is the subject of this case under that program, and otherwise meeting all of the requirements for such waiver. Accordingly, the

⁷ Id.

⁸ Id. at 2, ¶ 3.

⁹ Id.

suspension of your certificate(s) ordered herein, although remaining a matter of record, will not actually be imposed.¹⁰

Beneath the Waiver of Penalty section, the order contained the standard text in the Certificate of Service section. The order did not contain a section with appeal instructions.

B. Procedural Background

On August 5, 2013, respondent's attorney filed a notice of appeal. On August 14, 2013, the Administrator's attorney filed the July 29, 2013 order as the complaint in this case, pursuant to our Rules of Practice. On August 16, 2013, respondent submitted an answer to the complaint and initial discovery requests. Respondent's answer admitted he operated the LearJet LJ40 as PIC during the February 12, 2013 flight, but *denied* during the flight he was assigned flight level 230, acknowledged the instruction, and then deviated from it. Respondent also denied the allegation that he violated 14 C.F.R. § 91.123(a).

As described above, respondent's attorney also served on the Administrator's attorney a document containing initial discovery requests. The document contained interrogatories, such as requests that the Administrator identify each releasable portion of the "FAA file" and records concerning the case; all exhibits the Administrator planned to use for the case; and the names and other information of all witnesses the Administrator planned to call. The discovery request also contained requests for production of several documents and records concerning the case, such as a copy of the ATC voice recordings and radar data. In addition, respondent requested production of a copy of the ATC voice recordings "showing that ATC personnel provided a timely deviation notice."¹¹

¹⁰ Order at 2.

¹¹ Initial Discovery Requests at 3, ¶ 8.

C. Law Judge's Order

On September 18, 2013, the Chief Law Judge issued an order granting the Administrator's motion to dismiss, titled "Order Dismissing Appeal for Lack of Jurisdiction." The order cited, and discussed at length, Administrator v. Alaska Island Air, Inc.,¹² in which the Board dismissed the air carrier certificate holder's appeal after the law judge had terminated the proceeding when the parties informed the judge they had reached settlement. In the order *sub judice*, the Chief Law Judge recognized Alaska Island Air was distinguishable from the case at issue, because the Board disposed of the appeal in Alaska Island Air by holding the respondent's request to reopen the case was untimely.¹³ However, the Chief Law Judge's order states, "the Board's review authority does not appear to extend to the litigation of whether or not the parties reached a settlement agreement any more than it does to a review of whether the parties have met their obligations under such an agreement."¹⁴ In the Board's Order Denying Reconsideration in Alaska Island Air, the Board declined to entertain respondent's appeal from the amended order of suspension the Administrator issued pursuant to the settlement agreement between the respondent and the Administrator. In this regard, at the end of the Order Denying Reconsideration, the Board stated it declined to permit the respondent to "obtain Board review of charges it [wa]s no longer free to challenge here," because such review would amount to an

¹² NTSB Order No. EA-4360 (1995), recon. denied NTSB Order No. EA-4367 (1995).

¹³ The opinion and order stated, "if respondent wanted ... to have its terminated appeal reopened, it was obligated to so advise the law judge or the Board within the time for filing an appeal or to demonstrate why such advice could not have been provided during the relevant timeframe." NTSB Order No. EA-4360 at 4.

¹⁴ Order Dismissing Appeal for Lack of Jurisdiction at 3.

abuse of process and “involve the Board, more deeply than it already arguably is, in the dispute over the validity of the settlement agreement.”¹⁵

The Chief Law Judge’s order also cited Administrator v. Hegner,¹⁶ on which the Board relied in denying the reconsideration of Alaska Island Air. In Hegner, the Board reversed the Administrator's order of revocation against the respondent, which was based on flights occurring at the time respondent’s certificate was supposedly suspended.¹⁷ The Board held the parties’ settlement of the matter “was fully satisfied by respondent’s surrender of his certificate for 90 days,” and therefore, the Administrator’s “purported suspension of respondent’s certificate was ineffective.” Thus, the Board concluded the respondent’s certificate was not under suspension at the time of the flights that were the subject of the revocation order. In the case at hand, the Chief Law Judge’s Order cites footnote 4 of the Alaska Island Air Order Denying Reconsideration, which includes a citation to Hegner. The Chief Law Judge’s Order states:

In Alaska Island Air (at 4, n.4), the Board, citing Administrator v. Hegner, 5 NTSB 148 (1985), noted that, to the extent a dispute existed as to the parties’ rights and obligations under a settlement agreement they had negotiated, it was appropriate for the parties to look to the courts for the resolution thereof. Similar logic would seem to apply to determine what the appropriate forum is for the resolution of the question as to whether a settlement agreement was reached by the parties in the first place.¹⁸

However, the Chief Law Judge did not cite Administrator v. Crawford,¹⁹ which the Board also had cited in footnote 4 of the Alaska Island Air opinion and order. In Crawford, the Board

¹⁵ NTSB Order No. EA-4367 at 4.

¹⁶ 5 NTSB 148 (1985).

¹⁷ Id. at 151.

¹⁸ Order Dismissing Appeal for Lack of Jurisdiction at 3 n.9.

¹⁹ NTSB Order No. EA-4293 at 4 (1994).

stated, “[o]nce an agreement is entered, and the Board’s order dismissing the proceeding is administratively final, any remedy for breach of the agreement is to be had, if at all, in the courts.”

D. Issues on Appeal

In his appeal of the order, respondent argues the Chief Law Judge erred in holding the Board lacks jurisdiction to review his appeal. In particular, respondent argues a factual dispute exists as to whether a settlement was reached, and dismissal is therefore inappropriate. Respondent acknowledges he provided the NASA report to the Administrator’s attorney, but states neither party used the word “settlement” in his and her discussions until the Administrator’s attorney stated in a footnote in the cover letter accompanying the complaint that “the parties had previously agreed to settle the case.”²⁰ Respondent also argues the Administrator maintains the burden to prove the existence of a settlement, and that the Administrator cannot do so in this case because no settlement document exists. Respondent further argues in his response to the Administrator’s NOPCA, he did not elect the option of being subject to the Administrator’s order with waiver of sanction, and never knowingly waived his appeal rights. Respondent asserts the Chief Law Judge’s granting of the Administrator’s motion to dismiss denies him the right to appeal the Administrator’s order.

2. Decision

In accordance with our well-established jurisprudence, we review this case *de novo*.²¹

²⁰ Letter to Chief Administrative Law Judge at 1 n.1 (August 15, 2013).

²¹ Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013), Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991).

A. *The Board's Jurisdiction*

The cases the Chief Law Judge cited in his order dismissing this case are distinguishable from the facts and procedural history of the case *sub judice*. In both Alaska Island Air and Hegner, the parties agreed they had reached settlement. In Alaska Island Air, the Board resolved the dispute based on the respondent's untimely attempt to appeal and reopen the case. Similarly, in Hegner, the parties disagreed, not about the existence of a settlement, but rather about whether the respondent's operation of his aircraft occurred while his certificate was suspended as a result of a settlement. We find these cases stand for the proposition that the Board lacks jurisdiction to enforce settlement agreements, and will not resolve disputes based on the terms of a settlement agreement. However, this lack of jurisdiction only arises if the parties clearly establish for the record the case is settled. The quote from Crawford, provided above, establishes this concept, stating, “[o]nce an agreement is entered, and the Board’s order dismissing the proceeding is *administratively final*, any remedy for breach of the agreement is to be had, if at all, in the courts.”²² Prior to the establishment of a settlement, the Board is responsible for disposing of respondents’ appeals.

The question in this case is drastically different from the issue of enforcing the terms of a settlement agreement; here, the parties dispute whether a settlement ever existed in the first place. Our statutory responsibility in handling aviation certificate enforcement appeals provides, in part, as follows:

§ 1133. Review of other agency action

The National Transportation Safety Board shall review on appeal--

²² Supra note 19 (emphasis added).

(1) the denial, amendment, modification, suspension, or revocation of a certificate issued by the Secretary of Transportation under section 44703, 44709, or 44710 of this title.²³

This statutory responsibility ensures a party is provided due process before the Administrator's certificate action against him or her becomes final. No portion of the Board's statute, nor any prior Board jurisprudence, states the Board is not permitted to review an appeal of a certificate action because the Administrator contends, and the respondent does not agree, the case has settled. If the Administrator sought to withdraw the action against the respondent, the Administrator may do so. However, in this case, the Administrator seeks to have us affirm the Order so respondent's record will reflect a violation notwithstanding the waiver of penalty. Until such time as the parties provide the Board's administrative law judge with a written, signed settlement agreement indicating both parties have agreed to settle the case, respondent may appeal the Administrator's order, in accordance with 49 U.S.C. § 1133.

B. Factual Dispute Concerning Existence of Settlement

We find, after a careful review of the record for this case, no concrete evidence shows the parties reached a settlement in this case. In his response to the NOPCA, respondent did not select the option of issuance of the order with a waiver of sanction; instead, he only requested an informal conference via telephone. In addition, respondent filed a timely notice of appeal, accompanied by discovery requests. However, *after* respondent submitted his notice of appeal, the Administrator sent the complaint with a cover letter, which stated in a footnote the parties had agreed to settle the case. The fact respondent had filed a notice of appeal is a direct indication he did not agree with the Administrator's order.

²³ 49 U.S.C. § 1133. In addition, § 1153 provides parties with the opportunity to appeal a Board Order in Federal court.

In addition, respondent's requests for production of records, to include ATC recordings relevant to the February 12 flight, indicates respondent was preparing to dispute the Administrator's allegation that he deviated from the ATC instruction. The record also indicates respondent may have considered presenting the affirmative defense of the Brasher doctrine, under which the Board may not impose a sanction if ATC did not provide the pilot a timely deviation notice.²⁴ In any event, respondent's requests for records and answers to interrogatories should have caused the Administrator's attorney to seek clarification from respondent concerning the existence of a settlement.

Respondent's filing of a timely NASA report under the ASRP may function to preclude the imposition of a sanction, if respondent fulfilled all four prongs of the ASRP test. However, it does not automatically indicate respondent agreed he violated § 91.123(a) and agrees to be subject to an Order of Suspension with Waiver of Penalty. Until the Board receives evidence of an agreement signed by all parties indicating settlement of the case, respondent may appeal the Administrator's order.²⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and
2. The law judge's order is reversed.

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

²⁴ Administrator v. Brasher, 5 NTSB 2116 (1987); see also Administrator v. Winton, NTSB Order No. EA-5415 at 17 n.8 (2008); Administrator v. Pate and Yoder, NTSB Order No. EA-5105 at 4 (2004).

²⁵ See Administrator v. Schmidt, NTSB Order No. EA-5587 (2011) (Board found no formal settlement existed and remanded the case for a full hearing when the record indicated only the Administrator's counsel had agreed to settlement).

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

MICHAEL P. HUERTA,
ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

Docket SE-19536

JOSEPH L. SMITH,

Respondent.

**ORDER GRANTING ADMINISTRATOR'S
MOTION TO DISMISS RESPONDENT'S APPEAL**

Service: Charles W. Hundley, Esq.
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4908 Monument Avenue
Richmond, Virginia 23230

(BY CERTIFIED MAIL)

Nicole L. Jackson , Esq.
Federal Aviation Administration
Southern Region
Post Office Box 20636
Atlanta, Georgia 30320

(BY REGULAR MAIL AND FAX)

On August 5, 2013, respondent, through counsel, filed with this office an appeal from an "Order of Suspension and Waiver of Penalty," issued by the Administrator of the Federal Aviation Administration ("FAA") on July 29, 2013. A copy of said order accompanied respondent's appeal. That order relates that respondent was previously advised, in a Notice of Proposed Certificate Action ("NOPCA") issued on June 14, 2013, that the Administrator had proposed to suspend his airline transport pilot ("ATP") certificate for an alleged violation of § 91.123(a) of the Federal Aviation Regulations ("FAR," codified at 14 C.F.R.) occurring on February 12, 2103, when, while acting as pilot-in-command of N256AH, a LearJet LJ40 aircraft on a flight in the vicinity of Palm Beach, Florida, he purportedly flew that aircraft above a flight level assigned by air traffic control that he had acknowledged. The subject order states that the Administrator had determined that respondent is entitled to a waiver of penalty under the Aviation Safety Reporting Program ("ASRP") by virtue of his having filed a timely report of the incident and meeting all other ASRP requirements for such a waiver. That order does not include an appeal rights section.

Thereafter, on August 16, 2013, counsel for the Administrator filed a motion to dismiss respondent's appeal, which relates that, following the issuance of the NOPCA, respondent, then acting *pro se*, requested an informal conference and maintained that he was entitled to a waiver of sanction under the ASRP; that an informal conference was later held on July 15, 2013; that respondent and the Administrator's counsel engaged in settlement discussions following the informal conference; and that "[o]n July 19, 2013, [a] settlement was reached telephonically. The terms of the agreement were that the [Administrator] would accept the NASA [report] and an Order would be issued with a Waiver of Penalty and no appeal rights."¹ The motion to dismiss further states that respondent later contacted counsel for the Administrator on July 23, 2013 "and indicated that a copy of the NASA [report] was on its way;" that counsel for respondent contacted the Administrator's counsel the following day, and informed the Administrator's counsel that he had been engaged to represent respondent and "[a]t no time did [he] indicate that he had represented Respondent prior to July 24, 2013"; that counsel for the Administrator and respondent's counsel telephonically "discussed that the parties had reached a settlement and that an Order would be issued" along the lines noted above, and respondent's counsel "asked to receive a copy of the Order for review and indicated that he would speak with [respondent]; and that counsel for respondent e-mailed a copy of respondent's NASA report to the Administrator's counsel."² Finally, the Administrator relates that the July 29, 2013 order was issued pursuant to the previously arrived at settlement agreement, and avers that the Board is without jurisdiction to consider the August 5, 2013 appeal in light of the parties' settlement.³

Counsel for respondent then filed a reply to the Administrator's motion, which relates that "[respondent] generally DENIES that he agreed to settle the case in exchange for FAA acceptance of the NASA Report as alleged in the FAA Motion to Dismiss. [Respondent] received a [NOPCA] and requested a telephone informal conference which was conducted without counsel on July 15, 2013. At no time did [respondent] request or agree to waive his right of appeal."⁴ The reply further states that, although respondent's counsel provided proof of respondent's contemporaneous filing of the NASA report and "additional information on behalf of [respondent]" following said counsel's telephone discussion with counsel for the Administrator, "it was neither discussed nor agreed that [respondent] entered into a settlement agreement with the FAA."⁵ Accordingly, respondent's counsel posits that the Administrator's motion to dismiss "is factually incorrect in that it states and/or infers [respondent] agreed to 'settle' the case in exchange for the FAA accepting his proof of filing of the NASA Report."⁶

While the order of suspension with waiver of penalty which respondent seeks to appeal in this matter would, as an airman certificate suspension order, seemingly be within

¹ Administrator's Motion to Dismiss at 1. Reports made by pilots under the ASRP are commonly referred to as "NASA reports" because, under that program, such incident reports are filed by the pilot with the National Aeronautics and Space Administration.

² Administrator's Motion to Dismiss at 1-2.

³ *Id.* at 2.

⁴ Respondent's Reply at 1.

⁵ *Id.* at 2.

⁶ *Id.* at 3.

the Board's jurisdiction to review under 49 U.S.C. § 1133 and 49 U.S.C. § 44709, the Board does not have the authority to review, enforce or litigate disputes relating to settlements reached by the Administrator and a certificate holder stemming from a safety enforcement matter. In *Administrator v. Alaska Island Air, Inc.*, the Board issued an order (NTSB Order EA-4367 (1995)) denying reconsideration of a previous order (NTSB Order EA-4360 (1995)), which dismissed an air carrier certificate holder's appeal of a judge's order that denied a request to reinstate its appeal from a suspension order issued by the Administrator, after the judge had previously terminated the proceeding upon being informed by the parties that they had reached a settlement in the matter. There, the Board noted that:

The Administrator . . . requests that we clarify our prior decision to the extent that it does not speak to the status of the [certificate holder]'s appeal from the Amended Order of Suspension that the Administrator issued pursuant to the settlement agreement. . . . In our judgment, the appeal from that order should not be entertained. Under the settlement, [the certificate holder] in effect agreed to accept a 30-day suspension of its certificate . . . if the Administrator would abandon an order seeking a 120-day suspension [I]f [the certificate holder] were allowed to appeal from the amended order of suspension, which provides for the lesser sanction, . . . we would effectively be rewarding, at the Administrator's expense, [the certificate holder]'s apparent decision to breach the settlement agreement. We decline to permit such an abuse of our process.⁷

The undersigned recognizes that respondent here contests that a settlement — under which the Administrator accepted his NASA report to warrant a waiver of sanction as a *quid pro quo* to having him not contest that he committed a violation of FAR § 91.123(a) — was reached between the parties.⁸ However, the Board's review authority does not appear to extend to the litigation of whether or not the parties reached a settlement agreement any more than it does to a review of whether the parties have met their obligations under such an agreement.⁹

⁷ NTSB Order EA-4367 at 3-4.

⁸ Nevertheless, the undersigned notes that the order respondent seeks to appeal here does not include the recitation of appeal rights that customarily appears in certificate orders issued by the Administrator under adversarial (or potential adversarial) circumstances.

⁹ In *Alaska Island Air* (at 4, n.4), the Board, citing *Administrator v. Hegner*, 5 NTSB 148 (1985), noted that, to the extent a dispute existed as to the parties' rights and obligations under a settlement agreement they had negotiated, it was appropriate for the parties to look to the courts for the resolution thereof. Similar logic would seem to apply to determine what the appropriate forum is for the resolution of the question as to whether a settlement agreement was reached by the parties in the first place.

THEREFORE IT IS ORDERED that the Administrator's motion to dismiss respondent's appeal in this proceeding is hereby GRANTED.

Entered this 18th day of September, 2013, at Washington, D.C.

Alfonso J. Montaña
Chief Administrative Law Judge

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.