

SERVED: August 11, 2016

NTSB Order No. EA-5789

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

Issued under delegated authority (49 C.F.R. § 800.24)
on the 11th day of August, 2016

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-19640
)	
RANDALL E. BERNARD,)	
)	
Respondent.)	
)	
_____)	

**ORDER DENYING THE ADMINISTRATOR’S MOTION FOR EXTENSION OF TIME
TO FILE APPEAL BRIEF AND EXPEDITED RULING**

On August 4, 2016, the Administrator of the Federal Aviation Administration (FAA) filed a Motion for Extension of Time to File Appeal Brief and Expedited Ruling seeking an extension of time to perfect FAA’s appeal of the July 22, 2016 written initial decision of Administrative Law Judge Stephen R. Woody. The Board’s Rules of Practice require that an appeal be perfected within 30 days after the date on which the written initial decision is served.¹ Accordingly, the Administrator’s appeal brief is due on August 22, 2016.² The Administrator seeks a three-week

¹ 49 C.F.R. 821.48(a)

² August 21, 2016, 30 days after the date on which the written initial decision was served, is a Sunday, and in accordance with 49 CFR § 821.10, if the last day for doing an act falls on a

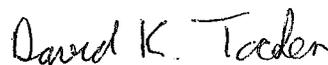
extension of time, until September 12, 2016, to file the appeal brief. Respondent opposes the Administrator's motion.

The NTSB General Counsel, in accordance with 49 C.F.R. § 800.24(b), may "[a]pprove or disapprove in safety enforcement proceedings, for good cause shown, requests for extensions of time...."³ The Administrator explains that counsel assigned primary responsibility for drafting the FAA's appeal brief will be in China on U.S. government business from August 12 – 21, 2016, returning one day before the appeal brief is due. The Administrator further states that counsel will be unable to work on the appeal brief during that time.

The Administrator's explanations fail to establish good cause exists to extend the filing deadline for FAA's appeal brief. The Board has previously held untimely filings caused by a party's travel did not constitute good cause.⁴ Citing Administrator v. Paquin,⁵ the Administrator contends that the Board has implied that a party's travel schedule may constitute good cause where, as here, the party makes a timely request for an extension. In Paquin, however, the Board explicitly rejected the argument that foreign travel established good cause. The Administrator has presented no reason for the Board to depart from its long-established jurisprudence in this regard.

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's motion is denied.



David K. Tochen
General Counsel

(..continued)

Saturday, Sunday, or Federal holiday, that deadline extends to the next day that is not a Saturday, Sunday, or Federal holiday, which, in this case, is Monday, August 22, 2016.

³ The Administrator filed the instant Motion pursuant to § 821.11(a), which states the Board or the law judge may, for good cause shown, grant an extension of time to file any document. The Board, however, delegated to the General Counsel the authority grant or deny such a request made subsequent to the law judge's initial decision. 49 C.F.R. § 800.24(b). This Order is issued pursuant to that delegated authority.

⁴ Administrator v. Mason, NTSB Order No. EA-5634 at 1 (2012); see also Administrator v. Givens, NTSB Order No. EA-2928 (1989); 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"); Administrator v. Waingrow, NTSB Order No. EA-2041 (1984).

⁵ NTSB Order No. EA-2686 at 1 (1988).