

SERVED: August 11, 1992

NTSB Order No. EA-3636

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 30th day of July, 1992

THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12085
v.)	
)	
STEPHEN R. STREETER,)	
)	
Respondent.)	
)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the notice of appeal in this proceeding because it was not, as required by Section 821.47 of the Board's Rules of Practice (49 CFR Part 821),¹ filed by the respondent within 10 days after the law judge rendered an

¹Section 821.47 provides as follows:

"§821.47 Notice of Appeal.

A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving upon the other parties (pursuant to §821.8) a notice of appeal within 10 days after an oral initial decision or an order has been served."

oral decision in the matter on April 7, 1992, at a hearing at which respondent failed to appear.² We will grant the motion.

In answer to the motion to dismiss, the respondent asserts that because he did not receive personal notice of the hearing, he was not aware of the necessity to file a notice of appeal until he received, well after the 10-day period had expired, a copy of the hearing transcript containing the law judge's order.³

We do not find good cause for respondent's late filing in his explanation, for it is predicated on the belief that service of the notice of hearing in this proceeding was deficient. We perceive no basis for concluding that it was.

The notice of the hearing that was held in this proceeding was mailed by certified mail to respondent's address of record and signed for by his mother. Although respondent states that he was not aware of the date set for the hearing, he does not explain why he did not obtain that information from the certified mail accepted by his mother at his address. In these circumstances, we must conclude that valid constructive service of the notice of hearing was effected on respondent, and, as a result, he has no legal justification for not being aware that a decision on his appeal from the FAA's suspension order might be made on April 7 and that his entitlement to appeal any adverse decision by the law judge to the Board would run from that date.

As it appears that the applicant's failure to file a timely notice of appeal is not excusable for good cause shown, his appeal will be dismissed. See Administrator v. Hooper, NTSB Order EA-2781 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. The applicant's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

²The law judge affirmed an order of the Administrator suspending respondent's commercial pilot certificate for 60 days for his alleged violations of sections 137.37, 137.39(a)(1), and 91.13(a) of the Federal Aviation Regulations, 14 CFR Parts 137 and 91.

³Respondent asserts that his filing of a notice of appeal on May 15, 1992, was within 10 days of his receipt of a transcribed copy of the law judge's decision.