

SERVED: March 15, 1993

NTSB Order No. EA-3824

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 9th day of March, 1993

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THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12528
v.)	
)	
VERN LEMRICK,)	
)	
Respondent.)	
)	
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ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because it was not, as required by Section 821.48(a) of the Board's Rules of Practice,¹ perfected

¹Section 821.48(a) provides as follows:

"§ 821.48(a) Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

by the filing of a timely appeal brief. We will grant the motion, to which respondent has filed a response in opposition.

The record establishes that respondent filed a timely notice of appeal from the oral initial decision the law judge rendered on July 17, 1992.² Respondent did not, however, file an appeal brief within 50 days after that date,³ and his answer to the motion to dismiss does not explain his failure to do so.⁴ Dismissal of his appeal is therefore warranted. See Administrator v. Hooper, NTSB Order No. EA-2781 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. The respondent'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 any mechanic certificate, including Mechanic Certificate No. 001640252, held by respondent for 120 days for his alleged violations of sections 43.13(b) and 43.9(a) of the Federal Aviation Regulations, 14 CFR Part 43.

³Respondent's two-page appeal brief is dated September 11, 1992, but postmarked September 14. To be timely, it should have been mailed no later than September 8, 1992.

⁴In his answer, respondent, pro se, asserts, with regard to the alleged failure to file a timely appeal brief, that "Vern Lemrick received his copy of the proceedings just one day before his reply was sent. Since Vern Lemrick is no lawyer and does not wish to be involved in such ventures and can not afford them either, he does the best he can." Although it is not clear to us what respondent means by the phrase "copy of the proceedings," we note that the Board received from the reporting company its copy of the transcript of the hearing in the case on August 25, 1992 and, presumably, respondent would have received his copy at about the same time. However, even if respondent did not receive a copy of the hearing transcript until the day before his appeal brief was due, that circumstance would not excuse his failure to file his appeal brief, or a request for an extension of time to do so, before the filing deadline.