

SERVED: June 9, 1995

NTSB Order No. EA-4369

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 5th day of June, 1995

Application of)
)
DAVID F. NEEL)
)
for an award of attorney and) Docket 210-EAJA-SE-13573
expert consultant fees and)
related expenses under the)
Equal Access to Justice Act)
(EAJA).)
)
)

ORDER GRANTING RECONSIDERATION

By NTSB Order EA-4352, served April 26, 1995, the applicant's appeal from the denial of an EAJA award was dismissed for his failure to file a timely appeal brief. The applicant, by counsel, has filed a petition for reconsideration of that dismissal, arguing that his tardiness should be excused because of confusion over the correct service date for the decision of the law judge. As discussed below, we have determined to grant the petition, which the Administrator does not oppose, and reinstate the applicant's appeal.

At the top of the first page of the law judge's decision the following appears: "SERVED BY CERTIFIED MAIL ON SEPTEMBER 28, 1994." However, the decision also indicates, above the law judge's signature on the last page of the order, "[e]ntered and served on 30 September 1994." Although information provided separately with the decision indicated that the date on the face of the order should be used as the date of service, we cannot say that that advice would have removed all doubt as to the date from which the 30-day period for filing an appeal brief should be computed, especially since the date on the front of the order

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suggested that the order had been served two days before the law judge signed it.

In light of the foregoing, we believe that it is appropriate to use the later date for purposes of determining the timeliness of the applicant's brief. Since that pleading was filed within 30 days after the date the order reflects that the law judge served the order, it perfected the applicant's appeal.

ACCORDINGLY, IT IS ORDERED THAT:

1. The petition for reconsideration is granted, and
2. The applicant's appeal is reinstated.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above order.