

SERVED: June 18, 1998

NTSB Order No. EA-4675

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 8th day of June, 1998

RAYMOND L. GRANDA,)	
)	
Applicant,)	
)	Docket 246-EAJA-SE-14555
v.)	
)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from the Equal Access to Justice Act (EAJA) initial decision of Administrative Law Judge William R. Mullins, served on September 29, 1997.¹ The law judge approved applicant's EAJA application, and ordered the payment of the \$5,940 requested in fees. The Administrator has appealed that decision, to the extent that it authorized the payment of \$1,687.50 for work done prior to the filing of the

¹ A copy of the law judge's decision is attached.

Administrator's complaint. Applicant has not replied to the appeal, which we grant.

EAJA requires, as a condition precedent, that the sought fee recovery have been incurred in an "adversary adjudication." It is well-settled in our case law that the adversary adjudication does not begin until the filing of the complaint.² In this case, that occurred on July 2, 1996. Accordingly, the Administrator is correct in arguing that the fees sought for the dates of 11/14/95 through 6/27/96 may not be recovered under EAJA.

Further, although not raised by the Administrator, the law judge erred in authorizing an hourly rate (\$135) that exceeds the amount we are permitted to award. Fees for work performed in 1996 are capped at \$130/hr.; fees for 1997 are capped at \$133/hr. (See 49 CFR 826.6. The Consumer Price Index for 1996 was 156.9, and for 1997 was 160.5.) The law judge's award must be further reduced to reflect this limitation.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and
2. The law judge's decision and the award to applicant are modified as set forth in this decision.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

² Barth v. Administrator, NTSB Order No. EA-3833 (1993); Petersen v. Administrator, NTSB Order No. EA-4490 (1996).