

SERVED: June 29, 2007

NTSB Order No. EA-5298

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

Issued under delegated authority (49 C.F.R. 800.24)
on the 29th day of June, 2007

_____)	
PETITION OF)	
)	
DAVID JOHN FORRETTE)	
)	
for review of the denial by)	
the Administrator of the)	Docket SM-4758
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss petitioner's appeal from the law judge's February 22, 2007 order, on the basis that petitioner's appeal is not timely.¹ Section 821.47(a) of the Board's Rules of Practice (49 C.F.R. Part 821),² requires that an

¹ The law judge's order dismissed petitioner's petition for review of the Administrator's denial of petitioner's airman medical certificate, on the basis that res judicata barred the petition.

² Section 821.47 provides, in part, as follows:

§ 821.47 **Notice of Appeal.**

(a) *Time within which to file notice of appeal.* A party may appeal from a law judge's initial decision or appealable order by filing with the Board, and simultaneously serving upon the other parties, a notice of appeal, within 10 days after the date on which the oral decision was rendered or the written initial decision or appealable order was served....

appeal from a decision of a law judge be filed within 10 days after service of the law judge's order. Moreover, the law judge's decision in this case indicated that appellant(s) must file any notice of appeal within 10 days after service of the law judge's order; the date of service appears on the face of the order.

In this case, the time for filing a notice of appeal from the law judge's decision expired on March 5, 2007, based on § 821.10 of the Board's Rules of Practice. Petitioner's undated submission consisted of a copy of the law judge's February 22, 2007 order, and correspondence from United States Senator Bill Nelson. The submission contained a note from petitioner typed on the correspondence from Senator Nelson; the note was dated March 27, 2007, and the Safety Board's Office of General Counsel received it on April 4, 2007.

Given that petitioner's note, which we may construe to be his Notice of Appeal, was dated March 27, 2007, and not received until April 4, 2007, the Notice of Appeal is not timely. Moreover, petitioner did not include a certificate of service in this submission, nor was there a postmark on the envelope in which it was enclosed. Overall, the evidence in this record indicates that petitioner did not file his appeal by the required deadline, which was March 5, 2007.

Without good cause to excuse a failure to file a timely notice of appeal, or a request to file one out of time before it is due, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559, 560 (1988). Petitioner has not articulated good cause for this untimely submission.

ACCORDINGLY, IT IS ORDERED THAT:

Petitioner's notice of appeal is dismissed.

Gary L. Halbert
General Counsel