

SERVED: May 4, 2009

NTSB Order No. EA-5446

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 April, 2009

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LYNNE A. OSMUS,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18403
v.)	
)	
JET CENTER, INC.,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

Respondent, proceeding pro se, appeals the January 22, 2009 decisional order of Administrative Law Judge William A. Pope, II.¹ By that decision, the law judge granted the Administrator's motion to dismiss respondent's appeal of the Administrator's revocation of its air carrier certificate, based on an alleged

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

violation of 14 C.F.R. § 119.61(c).² The law judge granted the Administrator's motion to dismiss because respondent failed to file a notice of appeal within 20 days after the date on which the Administrator served the order, in accordance with 49 C.F.R. § 821.30(a). We deny respondent's appeal.

On September 10, 2008, the Administrator issued the revocation order at issue. The Administrator sent the order via certified mail, and date-stamped the order in the paragraph including the appeal instructions to indicate that September 10, 2008, was the date of service.³ By letter to the case manager in the Office of Administrative Law Judges, dated October 6, 2008, Ms. Rosa Montalvo, as president of Jet Center, Inc., stated, "[w]e have just received your letter dated September 20, 2008," and requested that the Board's Office of Administrative Law Judges allow respondent to "pursue the process." The Board's Office of Administrative Law Judges and the Administrator interpreted this first letter from respondent to be respondent's notice of appeal.

² Title 14 C.F.R. § 119.61(c) requires certificate holders to surrender their operating certificates within 30 days after terminating operations under 14 CFR part 135.

³ The relevant portion of the paragraph containing instructions for submitting an appeal states as follows: "[y]ou may appeal from this order within 20 days from the date it was served, which is SEP 10 2008 by filing a notice of appeal with the Case Manager, Office of Administrative Law Judges."

On November 24, 2008, the Administrator filed a "Motion to Dismiss Late Filed Appeal, and Motion to Dismiss for Failure to Answer," in which the Administrator contended that respondent's appeal was not timely, and that respondent did not establish good cause for its delay. The Administrator also alleged that respondent failed to file an answer, and that the law judge should therefore consider all allegations in the complaint to be admitted. The law judge granted the Administrator's motion to dismiss respondent's appeal on the basis that respondent's notice of appeal was untimely.⁴ The law judge's order stated that respondent did not file the appeal by September 30, 2008, which was the deadline following the Administrator's September 10 service of the order. The law judge found that respondent's appeal was 6 days late, and that, even if respondent did not receive the appeal until September 22, 2008, as respondent alleged and as the United States Postal Service tracking information confirmed, respondent still had an adequate amount of time to file a notice of appeal by September 30, 2008. The law judge also noted that a notice of appeal can consist of a one-line sentence, and that respondent could have called the toll-free telephone number for the Office of Administrative Law Judges to ask for help in filing a notice of appeal.

⁴ The law judge did determine at this juncture that respondent had filed a timely answer to the Administrator's complaint.

Respondent has appealed the law judge's order, and includes some argument concerning the merits of the case. With regard to the timeliness issue, respondent's president, Ms. Montalvo, contends that respondent received the Administrator's order on September 29, 2008. In the appeal brief, Ms. Montalvo also states that she believed that the date of receipt of the Administrator's order constituted the date of service, and that she responded to the correspondence "in good faith." Appeal Br. at 5.

The Administrator contests respondent's appeal, and has attached exhibits indicating that respondent received the Administrator's order on September 22, 2008. Reply Br. at Exh. B (certified mail receipt stamped September 22, 2008), Exh. C (United States Postal Service "Track & Confirm" web page indicating September 22, 2008, at 11:49 am, as date and time of delivery). The Administrator argues that respondent's excuse that the United States Post Office located in Puerto Rico is a "disorganized mess" does not constitute good cause for respondent's failure to submit a brief statement indicating respondent's intent to appeal within the 8-day period between respondent's receipt of the order and the deadline. Reply Br. at 4.

We have long held that we adhere to "a policy requiring the dismissal, absent a showing of good cause, of all appeals in

which timely notices of appeal, timely appeal briefs or timely extension requests to submit those documents have not been filed." Administrator v. Hooper, 6 NTSB 559, 560 (1988) (on remand from Hooper v. Nat'l Transp. Safety Bd., 841 F.2d 1150 (D.C. Cir. 1988)). Our Rules of Practice provide that, "[t]he appeal must be filed with the Board within 20 days after the date on which the Administrator's order was served on the respondent." 49 C.F.R. § 821.30(a). In enforcing this timeliness requirement, our Rules of Practice state that we will not grant requests for an extension of a deadline absent a showing of good cause. 49 C.F.R. § 821.11(a). In this regard, we have long applied the good cause standard to late-filed appeals. See, e.g., Administrator v. Beissel, NTSB Order No. EA-5153 at 4 (2005).

We find that respondent has provided no basis to overturn the law judge's decision. With regard to respondent's statement that the United States Post Office did not deliver the Administrator's order in a timely fashion, we find that this does not constitute good cause. We agree with the law judge's conclusion that respondent received the order with sufficient time prior to the deadline to submit a notice of appeal. In addition, we note that we have long considered the use of certified mail via the United States Postal Service to be sufficiently reliable for the service of documents.

Administrator v. Corrigan, NTSB Order No. EA-4806 at 4 (1999) (when the Administrator mails an order of suspension or revocation via certified mail, service is effective on the date of the mailing); see also Administrator v. Dunn, NTSB Order No. EA-4126 at 2 (1994) (holding that evidence that certified mail sent to respondent's correct address of record was not returned is sufficient to establish adequate service). Furthermore, we will apply our procedural rules, such as those concerning service of documents and filing deadlines, in a consistent manner, in accordance with Hooper, supra.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's appeal is denied.

ROSENKER, Acting Chairman, and HERSMAN, HIGGINS, and SUMWALT, Members of the Board, concurred in the above opinion and order.

Served: January 22, 2009

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

ACTING ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

Docket No.: SE-18403

JET CENTER, INC.,

Respondent.

ORDER GRANTING ACTING ADMINISTRATOR'S MOTION TO DISMISS APPEAL

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This matter is set for hearing on March 25, 2009, in Hato Rey, Puerto Rico.

On November 24, 2008, the Acting Administrator filed a motion, entitled, "Administrator's Motion to Dismiss Late Filed Appeal, and Motion to Dismiss for Failure to Answer." The Acting Administrator contends that the Respondent had until September 30, 2008, to file an appeal from the FAA's Order of Revocation, but did not file the appeal until November 11, 2008, some 42 days late. The Acting Administrator further states that even if a October 6, 2008, letter from Rosa Montalvo (president of Respondent) to the Case Manager, Office of Administrative Law Judges, is considered to be an appeal, it was still 7 days late. Even if the Respondent did not receive the Order of Revocation until late September 2008, it still could have filed the appeal before September 30, 2008, and the appeal would have been timely. The Acting Administrator states that late filed appeals should be dismissed absent a showing of good cause, and that a claim that the Post Office "misfiled" its mail is not enough to show good cause, without more. Therefore, the Respondent's late filed appeal should be dismissed. The Acting Administrator further contends that the Respondent did not file an answer to the complaint, and, has failed to offer any reason why it did not file an answer. Because the Respondent failed to file an answer, all of the allegations of the complaint may be deemed admitted. Therefore, the Law Judge should grant summary judgment in favor of the Acting Administrator, and affirm the Acting

Administrator's order. If it is determined that there should be a hearing, the hearing should be limited to sanction.

On January 14, 2009, Ms. Montalvo, on behalf of the Respondent, sent a letter addressed to me, in which she stated that the Respondent did not receive the FAA's Order of Revocation until September 22, 2008, and she was under the impression that she had 20 days from then to answer it, and began research by requesting assistance and guidance on filing responses. She said that the Respondent did not receive the certified copy of the Acting Administrator's motion to dismiss, and that the first the Respondent knew of it was when the NTSB Office of Administrative Law Judges forwarded a copy on January 12, 2009. She said that the Respondent has been in contact with the local FAA office, and has requested their authorization to proceed with a substitute aircraft and are awaiting their decision. She requested that the Respondent's unintentional late filing be accepted and that the Respondent be allowed to continue with the procedure.

The Acting Administrator's Order of Revocation was dated and served by certified mail on the Respondent on September 10, 2008¹. (Exhibit A, Administrator's Motion to Dismiss Late Filed Appeal, and Motion to Dismiss for Failure to Answer.) The Order of Revocation was filed as the complaint and served by certified mail on the Respondent on October 22, 2008. (Exhibit E, Administrator's Motion to Dismiss Late Filed Appeal, and Motion to Dismiss for Failure to Answer.) Under § 821.30(a) of the Board's Rules of Practice in Air Safety Proceedings, the Respondent's appeal was due 20 days after service of the Order of Revocation, or by September 30, 2008. Under § 821.31(b) of the Board's Rules, the Respondent's answer was due 20 days after the complaint was served, or by November 11, 2008. The Respondent's appeal and answer were mailed on November 10, 2008, by Ms. Montalvo (president of the Respondent). (Exhibit D, Administrator's Motion to Dismiss Late Filed Appeal, and Motion to Dismiss for Failure to Answer; NTSB Office of Administrative Law Judges case file.)

In a letter addressed to the Case Manager, Office of Administrative Law Judges, National Transportation Board, Room 4704, 490 L'Enfant Plaza East, S.W. Washington, D.C. 20594, dated October 6, 2008, signed by Rosa A. Montalvo, President of JCI, received by the Office of Judges on October 14, 2008, Ms. Montalvo stated that it appeared the Acting Administrator's letter of September 10, 2008, was misfiled by the Post Office, and it was not received by the Respondent until late September 2008. The letter stated that the Respondent was working with the local FAA office on the confirmation of a Lear 35A, and requested that it be permitted to pursue the process. (Exhibit G, Administrator's Motion to Dismiss Late Filed Appeal, and Motion to Dismiss for Failure to Answer.)

In a telephone conversation with Ms. Montalvo on October 17, 2008, a member of the staff of the Office of Administrative Law Judges ascertained from Ms. Montalvo that she intended her October 6, 2008, letter to be a Notice of Appeal from the FAA's Order of Revocation of Respondent Jet Center, Inc.'s, Part 135 air carrier certificate, and explained the complaint procedure to Ms. Montalvo and advised her that she must file a timely answer. Ms. Montalvo said she had not been advised by the Post Office that it had a certified letter for Jet Center, Inc. She described the Post Office in Puerto Rico as a disorganized mess. (Exhibit F,

¹ The Order of Revocation charges that the Respondent does not presently, nor since November 17, 2006, have any aircraft listed on its operations specification, nor does it presently employ a director of operations or chief pilot, and, that in violation of FAR § 119.61(c), despite the fact that it has ceased operations, it has failed to return its air carrier certificate and operations specifications to the FAA, as requested.

Administrator's Motion to Dismiss Late Filed Appeal, and Motion to Dismiss for Failure to Answer.)

The Case Manager of the NTSB Office of Administrative Law Judges in a letter to Ms. Montalvo, dated October 21, 2008, acknowledged receipt of the Respondent's appeal by the Office of Administrative Law Judges on October 14, 2008. The letter advised Ms. Montalvo that Section 821.31(b) of the Board's Rules of Practice in Air Safety Proceedings require an answer to the FAA's complaint within 20 days after service of the complaint.²

The case file maintained by the Office of Administrative Law Judges contains the Respondent's answer to the complaint, which has a certification by Ms. Montalvo that it was mailed on November 10, 2008. That is within 20 days from the date of service of the complaint, October 22, 2008, and, therefore, the answer was timely.

The Respondent's appeal, however, was not timely filed within 20 days after service of the Order of Revocation on September 10, 2008. The 20-day period for filing an appeal expired on September 30, 2008. Even accepting Ms. Montalvo's letter dated October 6, 2008, as an appeal, it was six days late.

Ms. Montalvo, as president of Jet Center, Inc., acknowledged in her October 6, 2008, letter to the NTSB Office of Administrative Law Judges, which was not actually received until October 14, 2008, that she received the Order of Revocation in late September 2008.³ The FAA's Order of Revocation, dated September 10, 2008, specifically states that Jet Center, Inc., "may appeal from this order within 20 days from the date it was served, which is SEP 10 2008 by filing a notice of appeal with the Case Manager, Office of Administrative Law Judges, National Transportation Safety Board, Room 4704, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20594 (telephone (800) 854-8758 or (202) 314-6150; FAX (202) 314-6158)."

I find that Ms. Montalvo and the Respondent had an adequate amount of time remaining to file an appeal within the required 20-day period, which expired on September 30, 2008. Even assuming that the Respondent did not actually receive the FAA's Order of Revocation until September 22, 2008, as stated by Ms. Montalvo, the Respondent still had 8 days in which to file an appeal. At the very least, before or on September 30, 2008, Ms. Montalvo, for the Respondent as its president, could have faxed a brief (one-line sentence) statement to the Office of Administrative Law Judges saying the Respondent appeals the FAA's Order of Revocation, or, even more minimally could have called the Office of Administrative Law Judges, using the toll-free 800 number, and asked for help in filing the appeal. For unexplained reasons best known to her, Ms. Montalvo, as the president of Jet Center, Inc., and the Respondent, did none of these, and, consequently, the Respondent's appeal, in the form of Ms. Montalvo's letter of October 6, 2008, was not timely filed.

The Board has long held that it adheres to "a policy requiring the dismissal, absent a showing of good cause, of all appeals in which timely notices of appeal, timely appeal briefs or a timely extension of time request to submit those documents have not been made." *Administrator v. Warfel*, NTSB Order No. EA-5418 (2008), at page 4-5; *Administrator v. Binks*, NTSB Order No. EA-5296 (2007); *Administrator v. Lavigna*, NTSB Order No. EA-5274 (2007).

² The Acting Administrator's complaint was served by certified mail on October 22, 2008. The answer to the complaint was due within 20 days, or by November 11, 2008.

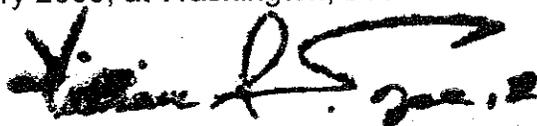
³ Ms. Montalvo said in a letter to the Law Judge, dated January 14, 2009, that the Respondent did not receive the FAA's Order of Revocation until September 22, 2008.

Even assuming, without further proof from the Respondent, that the Order of Revocation served by certified mail on September 10, 2008, for some reason, possibly, but not proven, as a result of the fault of the Post Office, did not reach the Respondent until September 22, 2008, the Respondent still had adequate time to file an appeal on or before September 30, 2008, and has not shown good cause for not doing so. I find, therefore, that the Respondent had both adequate notice and adequate time to file an appeal before the 20-day period for filing an appeal expired.

Based on the record before me, I find that the Respondent did not file a timely appeal from the FAA's Order of Revocation, and has not made a showing of good cause for its failure to file a timely appeal.

Accordingly, the Respondent's Motion to Dismiss Late Filed Appeal is GRANTED. The Respondent's appeal is DISMISSED, and the proceeding is TERMINATED.

ENTERED this 22nd day of January 2009, at Washington, D.C.

A handwritten signature in black ink, appearing to read "William A. Pope, II", with a date "Jan 12" written below it. The signature is written over a horizontal line.

WILLIAM A. POPE, II
Judge