

SERVED: March 9, 2010

NTSB Order No. EA-5512

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

Issued under delegated authority (49 C.F.R. 800.24)
on the 9th day of March, 2010

APPLICATION OF)
)
ROBERT JOSEPH HAYES)
)
)
)
)
For an award of attorney) Docket 344-EAJA-SE-18415
fees and expenses under the)
Equal Access to Justice Act)
)
)
_____)

ORDER DISMISSING APPEAL

Applicant has moved to dismiss the appeal that the Administrator filed in this proceeding, because the Administrator did not perfect the appeal by filing a timely appeal brief, as the Board's Rules of Practice require.¹ Applicant's motion, to

¹ Title 49 C.F.R. § 821.48(a), entitled "Briefs and oral argument," provides as follows:

(a) Appeal brief ... each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. An appeal may be dismissed by the Board, either on its own initiative or on motion of another party, where a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

which the Administrator filed no responsive pleading, is granted.²

The record establishes that the Administrator filed a timely notice of appeal from the law judge's December 23, 2009 written initial decision and order granting applicant's application for attorney fees and expenses.³ The Administrator, however, did not file an appeal brief by the deadline in accordance with § 821.48(a).

To be timely, the Administrator had to file his appeal brief on or before January 22, 2010. Although the Administrator's appeal brief was dated January 22, 2010, and his certificate of service stated the brief was served by overnight mail on January 22, 2010, the Federal Express tracking data indicates a pickup date of January 25, 2010.

Without good cause to excuse a failure to file a timely appeal brief, or a request to file one out of time before it is due, a party's appeal will be dismissed. Administrator v. Hooper, 6 NTSB 559 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. Applicant's motion to dismiss is granted; and
2. The Administrator's appeal is dismissed.

Gary L. Halbert
General Counsel

² Subsequent to the Board's established deadline for the Administrator to respond to applicant's motion, the Administrator filed a notice of withdrawal, dated February 22, 2010, which we need not address, as disposition of this motion renders the matter moot.

³ The law judge's written initial decision and order granted applicant's application for an award of attorney fees and expenses under the Equal Access to Justice Act in the amount of \$20,788.00.