

SERVED: August 26, 2010

NTSB Order No. EA-5543

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

Issued under delegated authority (49 C.F.R. § 800.24)
on the 26th day of August, 2010

J. RANDOLPH BABBITT,)
Administrator,)
Federal Aviation Administration,)
Complainant,)
v.) Docket SE-18542RM
LANCE Z. RICOTTA,)
Respondent.)

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal that respondent has filed in this proceeding, because respondent did not perfect his appeal by filing a timely appeal brief, as Section 821.48(a) of the Board's Rules of Practice requires (49 C.F.R. § 821).¹ The Administrator's motion, to which respondent

¹ Section 821.48(a) provides as follows:

§ 821.48 Briefs and oral argument.

(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

replied, is granted.

The record establishes that respondent, through counsel, filed a timely notice of appeal from the law judge's May 14, 2010 written decision and order on remand.² Respondent, however, did not file an appeal brief by the deadline established by § 821.48(a), and has not provided good cause for his failure to do so.

To be timely, respondent had to file his appeal brief on or before June 14, 2010. He filed a brief with a certificate of service reflecting a date of June 16, 2010, with a postmark of June 17, 2010. Respondent did not request an extension of time to file his brief.

In response to the motion to dismiss, respondent's counsel stated that the law judge's office served the wrong counsel with the written decision on remand and that counsel intentionally failed to notify respondent or his current counsel of the service. Under the facts of this case, we find respondent's argument fails to provide good cause. As respondent's counsel himself points out in the response to the Administrator's motion to dismiss, he has been working this appeal on respondent's behalf since timely filing the initial notice of appeal on August 27, 2009. Also, in this case on remand, despite the late notice of the law judge's decision, respondent's counsel filed a timely appeal with the Board. Furthermore, respondent's counsel is aware of the requirements of 49 C.F.R. § 821.48(a) as he timely filed respondent's first brief on appeal in October 2009.

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. See Administrator v.

(..continued)

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.

² Upon remand, the law judge found that respondent was not entitled to a waiver of sanction under the ASRP/NASA program because he failed to meet his burden of proof to show the FAR violations charged were the result of inadvertence.

Hooper, 6 NTSB 559 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

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

Gary L. Halbert
General Counsel