

SERVED: January 25, 2011

NTSB Order No. EA-5569

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 24th day of January, 2011

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

Petitioner seeks reconsideration of NTSB Order No. EA-5543, issued by the General Counsel under delegated authority,¹ on August 26, 2010, dismissing petitioner's appeal brief as untimely filed.

Procedurally, this case is back before us after a remand to the law judge. At the original hearing, the law judge found

¹ 49 C.F.R. § 800.24(j).

petitioner violated 14 C.F.R. §§ 91.13(a) and 91.123(a), and affirmed a 45-day suspension of petitioner's airline transport pilot certificate. The law judge also held that petitioner was not eligible for a waiver of sanction under the Aviation Safety Reporting Program (ASRP). We remanded the case to the law judge to explain more clearly his rationale for concluding that petitioner failed to carry his burden of proof regarding the "inadvertent and not deliberate" prong of the ASRP standard.

The law judge issued his written decision and order on remand on May 14, 2010. The law judge's office served petitioner's former counsel² with the law judge's written decision on remand, and it is represented by counsel that the former counsel intentionally failed to timely notify petitioner or his current counsel of the service. Petitioner was served a copy of the decision on May 24, 2010, and, through counsel, filed a notice of appeal that same day. Petitioner filed a brief with a certificate of service reflecting a date of June 16, 2010, and a postmark of June 17, 2010.

We find, under these limited circumstances, that petitioner filed his appeal brief within 30 days of May 24, 2010—the date he was served, via facsimile, a copy of the decision from the law judge's office. This submission was therefore in compliance with 49 C.F.R. § 821.48(a), which requires that appeal briefs be filed within 30 days of the date of service of a law judge's written initial decision or appealable order.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's petition for reconsideration is granted;

² Three different attorneys represented petitioner in this appeal—Mr. Gary Evans, Mr. Joseph Maridon, and Mr. Lloyd Kirschbaum. Mr. Evans withdrew as counsel several weeks prior to the original hearing in this case. Mr. Maridon represented petitioner at the original hearing before the law judge. Mr. Kirschbaum, petitioner's current counsel, entered his appearance with the Board by filing the original notice of appeal in this case on August 27, 2009. From this date on, Mr. Kirschbaum was the only counsel to actively represent petitioner and the only counsel for petitioner to appear on the service lists of the FAA and the NTSB until the law judge's office inadvertently served the May 14, 2010 decision and order on remand on Mr. Maridon, instead of Mr. Kirschbaum.

2. Petitioner's appeal brief is accepted as timely filed;
and

3. The Administrator's counsel will have 30 days from the date of this order to file a reply brief.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above order.