



order, the law judge disposed of respondents' reply and motion to extend time to answer, which respondents filed on January 28, 2013, and reaffirmed his January 29 order. We deny respondents' appeal.

a. *Facts*

On December 22, 2011, the Administrator issued an order suspending Respondent Bandiola's airman mechanic certificate with airframe and powerplant ratings (A&P) for 120 days for various maintenance violations.<sup>2</sup> Also on December 22, 2011, the Administrator issued an order seeking a 90-day suspension of Respondent Bagamaspad's airman mechanic certificate with A&P rating and inspection authorization, based on Respondent Bagamaspad's failure to determine whether the aircraft met airworthiness requirements before returning it to service following an inspection, in violation of 14 C.F.R. § 43.15(a)(1).<sup>3</sup> Both respondents filed timely notices of appeal on January 11, 2012. The Administrator reissued the order in this case as the complaint on January 17, 2012.

Immediately after receiving respondents' notices of appeal, the NTSB Office of Administrative Law Judges sent case management letters to both respondents, explaining the Board's Rules of Practice, codified at 49 C.F.R. part 821, would govern the proceedings. The letters also advised, "[f]ailure to file an answer may be deemed an admission of the truth of the

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<sup>2</sup> Title 14 C.F.R. § 43.13(a) requires certificate holders to perform maintenance in accordance with the manufacturer's maintenance manual or Instructions for Continued Airworthiness, or in accordance with methods, techniques, and practices acceptable to the Administrator. The order alleged Respondent Bandiola violated 14 C.F.R. § 43.13(a) by failing to perform maintenance on a Partenavia P-68C aircraft as required under § 43.13(a). The Administrator's order also alleged Respondent Bandiola violated 14 C.F.R. § 43.15(a)(1) when he certified the aircraft as airworthy, notwithstanding numerous noteworthy maintenance discrepancies the Administrator identified, such as an incorrect routing of the control cables for the aircraft's rudder system.

<sup>3</sup> Section 43.15(a)(1) requires mechanics to perform each inspection "so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements."

allegations in the complaint. Therefore: THE FILING OF A TIMELY ANSWER IS A VERY IMPORTANT STEP IN THE PROTECTION OF RESPONDENT'S APPEAL RIGHTS."<sup>4</sup>

In lieu of filing an answer to the Administrator's complaints, on February 6, 2012, respondents filed a motion to dismiss the complaints based on the stale complaint rule, and a motion for judgment on the pleadings. The Administrator replied to the motions on February 21, 2012. Chief Administrative Law Judge Alfonso J. Montañó served an order denying the motions to dismiss on November 19, 2012. The Office of Administrative Law Judges then assigned the cases to Administrative Law Judge Geraghty, who consolidated the cases in an order dated November 28, 2012.

Under 49 C.F.R. § 821.17(a), when a respondent files a motion to dismiss the complaint in lieu of an answer, and the law judge does not grant the motion in its entirety, the respondent's answer is due within 10 days of the judge's ruling on the motion. Based on this time limit, respondents' answers were due to the law judge by November 29, 2012. However, respondents did not submit a pleading until January 28, 2013. Respondents' attorney asserted he "miscalendared" the deadline for the answer.<sup>5</sup> In the January 28 pleading, entitled "Reply and Opposition to Motion to Deem Allegations Admitted; Motion to Extend Time to Answer" respondents' attorney asserted he sent an email message to the Administrator's attorney on January 21, 2013, which contained the answers.<sup>6</sup> Respondents' attorney attached the answers, unsigned, to the January 28 pleading. Respondents' pleading also asserts the complaint is stale,

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<sup>4</sup> Case Management Letter, dated January 18, 2012 (emphasis in the original).

<sup>5</sup> Reply and Opposition, dated January 28, 2013, at 3.

<sup>6</sup> Id. at 2.

and should be dismissed pursuant to 49 C.F.R. § 821.33.<sup>7</sup> Respondents further contended the Administrator would not suffer prejudice if the law judge permitted an extension of time for respondents to file their answers.

b. *Law Judge's Orders*

The law judge's first decisional order, dated January 29, 2013, outlined the procedural history of the case, and summarized the requirement of § 821.17(a). The law judge also cited 49 C.F.R. § 821.31(b), which states a failure to deny the truth of the allegations the complaint contains may be deemed an admission of the validity of the allegations. In addition, the law judge's order noted the Administrator's motion to deem the allegations admitted was filed on January 9, 2013, and respondents did not submit a timely response by January 24, 2013.<sup>8</sup>

In his decisional order, the law judge granted the Administrator's motion to deem the allegations admitted, based on respondents' failure to file an answer and failure to establish good cause for not filing a timely answer. The law judge also affirmed the sanction the Administrator sought. Although respondents did not raise the issue of whether the proposed sanction was inappropriate, the law judge noted the sanctions were not excessive or arbitrary, but were in the interest of aviation safety.<sup>9</sup>

In his January 31, 2013 order, the law judge indicated he received respondents' reply in opposition to the motion to deem allegations admitted and their motion to extend the time to answer. However, the law judge noted such a reply was due by January 24, 2013, and was

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<sup>7</sup> The Board's stale complaint rule permits a respondent to move to dismiss allegations in a complaint that occurred more than six months prior to the Administrator advising the respondent of the reasons for the proposed action. 49 C.F.R. § 821.33.

<sup>8</sup> See 49 C.F.R. § 821.14(c), which states a response to a motion is to be made within 15 days of the service of the motion.

<sup>9</sup> Decisional Order, dated January 29, 2013, at 3 n.1.

therefore untimely. Nevertheless, the law judge addressed the motion by stating respondents' answers were approximately two months late, and respondents failed to articulate good cause for the delay. The law judge stated respondents' attorney's excuse that he "miscalendared" the date of filing did not constitute good cause.<sup>10</sup> The law judge denied respondents' motion to extend the time to accept their late-filed answers, and affirmed his previous decisional order.

*c. Issues on Appeal*

Respondents appealed the law judge's order, on the basis the law judge should have applied the standard of "excusable neglect" and accepted respondents' late-filed answers. Respondents also appear to assert the Chief Judge's denial of their motion to dismiss based on the stale complaint rule was erroneous.

**2. Decision**

On appeal, we review the law judge's decision *de novo*, as our precedent requires.<sup>11</sup>

*A. Excusable Neglect Theory*

We reject respondents' assertion that we must consider the overall age of the case and the lack of prejudice to the Administrator in deciding whether to accept late-filed answers. Our Rules of Practice specifically require us to employ the good cause standard for all late-filed documents. The text of 49 C.F.R. § 821.11(a) states the Board may grant an extension of time upon written request "...for good cause shown." In this regard, in Administrator v. Montague, we expressly rejected the excusable neglect theory, stating as follows:

The Board strictly adheres to the standards of timeliness set out in our Rules, only excusing procedural defects upon a showing of good cause. To the extent

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<sup>10</sup> Order, dated January 31, 2013, at 2.

<sup>11</sup> Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013), Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991).

respondent argues good cause exists under a theory of excusable neglect, we expressly refused to adopt this more lenient standard of excusable neglect in cases involving untimely appeals. We find no reason to depart from this long-established jurisprudence.<sup>12</sup>

In addition, in Administrator v. Diaz,<sup>13</sup> the Board stated the proper standard of review was whether a respondent could show good cause, not whether the Administrator could show the FAA suffered prejudice as a result of the delay. Based upon the Board's holdings in Montague and Diaz, we find no compelling reason to depart from our jurisprudence in the case *sub judice*.

#### B. *Application of Good Cause Standard*

Respondents' attorney asserts he "miscalendared" the deadline for the answers.

Respondents' attorney also contends the Administrator's attorney should have reminded him of when the answers were due. Such contentions do not constitute good cause for respondents' two month delay in submitting their answers.

Parties are responsible for knowing and adhering to the deadlines of our Rules of Practice, codified at 49 C.F.R. part 821. We have long held "[c]ounsel [are] expected to know and abide by procedural deadlines."<sup>14</sup> We reiterated this principle in more recent cases. In Administrator v. Mallory, we stated we expect parties to know our Rules of Practice.<sup>15</sup> In addition, in Administrator v. Shumate, we noted "unfounded mistakes regarding the calculation

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<sup>12</sup> NTSB Order No. EA-5617 at 4 (2012) (footnotes omitted) (citing Administrator v. TPI International Airways, Inc., NTSB Order No. EA-3931 (1993); Administrator v. Near, 5 NTSB 994 (1986); 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)).

<sup>13</sup> NTSB Order No. EA-4990 (2002), affirmed sub. nom., 65 Fed.Appx. 594 (9<sup>th</sup> Cir. 2003).

<sup>14</sup> Administrator v. Hamilton, NTSB Order No. EA-3496 at n.4 (1992).

<sup>15</sup> NTSB Order No. EA-5350 at 5 (2008). In addition, in Mallory, we noted the importance of timely submission of the respondent's answer.

of procedural deadlines do not allow for the acceptance of untimely notices of appeal, nor do they constitute good cause for noncompliance.”<sup>16</sup>

Based on our long-standing jurisprudence, respondents’ attorney’s failure to note the correct deadline for respondents’ answers on his calendar does not amount to good cause.

*C. Chief Judge’s Order on Stale Complaint Rule*

Respondents assert the Chief Judge’s denial of their motion to dismiss based on the stale complaint rule was erroneous. However, given the fact we affirm the law judge’s determination that respondents failed to timely file an answer or provide good cause to excuse such delay, we do not reach this issue on the merits. In accordance with our Rules of Practice, the Chief Law Judge disposed of respondents’ motion to dismiss based on the stale complaint rule, by order dated November 29, 2012. Under § 821.17(a), the subsequent step in the case was for respondents to submit their answers within 10 days. Assuming respondents sought to appeal the Chief Judge’s order denying their motions, respondents’ failure to submit their answers in a timely manner precluded them from doing so.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondents’ appeal is denied; and
2. The law judge’s orders and sanction are affirmed.

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

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<sup>16</sup> NTSB Order No. EA-5555 at 5 (2010) (citing Administrator v. Graham, NTSB Order No. EA-5337 (2007); Administrator v. Smith, NTSB Order No. EA-4485 (1996); Administrator v. Slay & Knowles, NTSB Order No. EA-3956 (1993)).

Served: January 29, 2013

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

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MICHAEL P. HUERTA, \*  
Administrator, \*  
Federal Aviation Administration, \*

Complainant, \*

v. \*

Dockets SE-19231  
SE-19232

RENE A. BANDIOLA and \*  
ALAN M. BAGAMASPAD, \*

Respondents. \*

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**DECISIONAL ORDER**

By Order entered herein on November 28, 2012, these two (2) cases were consolidated for the purpose of proceeding before the Board.

Complainant has filed a Motion to Deem Admitted the allegations of the respective Complaints issued against the individual Respondents for their failure to file the required Answer in their respective case. Complainant has attached supporting documentation to said Motion.

On January 11, 2012, Respondents, by their Counsel, filed their Notice of Appeal, and thereafter on January 17, 2012, Complainant re-filed the respective orders of Suspension as his Complaint in the two (2) matters.

Subsequently, both Respondents, by their Counsel, filed a Motion to Dismiss the Complaints as Stale and for Judgment on the Pleadings. The Complainant filed his response in opposition in both cases.

By a re-served corrected Order of November 19, 2012, the Chief Administrative Law Judge denied Respondents' Motion.

As Respondents did not file any response to the respective Complaints, other than their Motion to Dismiss and for Judgment, it must be concluded that Respondents' action was taken in accord with the provisions of Board Rule 821.17(a).

That Rule – 821.17(a) – provides that a Respondent may, within the time allowed for filing an Answer, file in lieu thereof a motion to dismiss. The Rule further mandates that wherein, as is the event herein, the motion to dismiss is not granted in its entirety, that an Answer must be filed within ten (10) days of the service of the Order on the motion.

As noted above, Respondents' Motions were denied, in total, by the Chief Judge's Order of November 19, 2012. By Rule, therefore, Respondents were required to file their respective Answer no later than November 28, 2012.

As of the date of this Order, no Answer has been filed by either Respondent. Board rule 821.31(b), provides that a failure to Answer – deny the truth of the Complaint's allegations – may be deemed an admission of the validity of those allegations.

Further, Complainants' Motion to Deem Allegations Admitted was served on Respondent's Counsel on January 9, 2013. Board Rule 821.14(c), provides that a response to a motion is to be made within fifteen (15) days of the service of said motion. A response by Respondents was, therefore, required to be submitted no later than January 24, 2013.

No response to Complainant's Motion to Deem Allegations admitted has been received.

As no good cause has been shown for Respondents' failure to timely file their Answer, following the denial of their Motions by the Order of November 19, 2012, and as discussed, Respondents have not made timely or any response to Complainant's pending Motion.

Upon consideration of all circumstances as discussed herein, it is concluded that for failure to file required Answer, and to show any good cause as to excuse that failure, Complainants' Motion should be and hereby is: **GRANTED**.

Accordingly, all allegations of the respective Complainants are deemed established by admission. It follows, therefore, that the charges of violation of those Federal Aviation Regulations (FARs), as cited in the respective Complainants are also found to having been established.

As all allegations in the Complainants are established, as are all the specific charged violation of the FARs cited in the respective Complaints, it further follows that the Order of Suspension/Complaint, as issued to the individual Respondent, is held as affirmed as issued.<sup>1</sup>

SO ORDERED.

ENTERED this 29<sup>th</sup> day of January, 2013, at Denver, Colorado.

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PATRICK G. GERAGHTY  
JUDGE

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<sup>1</sup> The respective sanction sought as to each Respondent is well within Board precedent for similar FAR violations, and on consideration of the admitted factual allegations are not excessive nor arbitrary and in the public interest in aviation safety.

## **APPEAL (DISPOSITIONAL ORDER)**

Any party to this proceeding may appeal this order by filing a written notice of appeal within 10 days after the date on which it was served (the service date appears on the first page of this order). An original and 3 copies of the notice of appeal must be filed with the:

National Transportation Safety Board  
Office of Administrative Law Judges  
490 L'Enfant Plaza East, S.W.  
Washington D.C. 20594  
Telephone: (202) 314-6150 or (800) 854-8758

That party must also perfect the appeal by filing a brief in support of the appeal within 30 days after the date of service of this order. An original and one copy of the brief must be filed directly with the:

National Transportation Safety Board  
Office of General Counsel  
Room 6401  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594  
Telephone: (202) 314-6080  
FAX: (202) 314-6090

The Board may dismiss appeals on its own motion, or the motion of another party, when a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

A brief in reply to the appeal brief may be filed by any other party within 30 days after that party was served with the appeal brief. An original and one copy of the reply brief must be filed directly with the Office of General Counsel in Room 6401.

**NOTE: Copies of the notice of appeal and briefs must also be served on all other parties to this proceeding.**

An original and one copy of all papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel in Room 6401. Copies of such documents must also be served on the other parties.

The Board directs your attention to Rules 7, 43, 47, 48 and 49 of its Rules of Practice in Air Safety Proceedings (codified at 49 C.F.R. §§ 821.7, 821.43, 821.47, 821.48 and 821.49) for further information regarding appeals.

**ABSENT A SHOWING OF GOOD CAUSE, THE BOARD WILL NOT ACCEPT LATE APPEALS OR APPEAL BRIEFS.**