

SERVED: June 10, 2015

NTSB Order No. EA-5748

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 9th day of June, 2015

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MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	
v.)	Docket SE-19703
)	
GREGORY B. BOYLAN,)	
)	
	Respondent.)	
)	
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ORDER DENYING RESPONDENT’S MOTION FOR RECONSIDERATION

Respondent and the Administrator both filed timely notices of appeal from the law judge’s oral initial decision, issued on October 22, 2014. The Board’s Rules of Practice require a notice of appeal be filed within 10 days after the oral initial decision or written order, and must be perfected by an appeal brief filed within 50 days after an oral initial decision.¹ The parties’ appeal briefs were due on December 11, 2014. The Administrator timely filed his appeal brief on December 11, 2014; however, respondent’s brief and accompanying certificate of service were dated December 15, 2014.

¹ 49 C.F.R. §§ 821.47(a), 821.48(a).

Upon the Administrator's motion, the NTSB General Counsel² dismissed respondent's cross-appeal for failure to file an appeal brief in a timely manner and for lack of good cause.³ Respondent filed an ex parte motion for reconsideration of the order dismissing the cross-appeal. The Administrator filed a reply opposing the motion. We deny respondent's motion for reconsideration for the reasons that follow.

Respondent argues the motion for reconsideration should be granted because his former counsel improperly calendared respondent's appeal brief. Respondent further argues he was unaware the appeal brief had been late filed. Respondent claims he will suffer irreparable harm if relief is not granted because the law judge's oral initial decision was erroneous.

We reject respondent's argument that good cause exists to excuse his untimely appeal brief. The Board strictly adheres to the standards of timeliness set out in our Rules, only excusing procedural defects upon a showing of good cause.⁴

Respondent argues the brief was not timely filed because his former counsel miscalendared it. We find this argument without merit. As original counsel of record, Mr. Robert Griscom bore sole responsibility to timely file the cross-appeal brief on behalf of respondent. Our prior caselaw clearly shows a counsel's procedural errors do not constitute good cause. In Administrator v. Hamilton, we noted, "[c]ounsel is expected to know and abide by procedural deadlines."⁵ We find no reason to depart from this long-established jurisprudence in the case *sub judice*.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's motion for reconsideration is denied.

HART, Chairman, DINH-ZARR, Vice Chairman, and SUMWALT and WEENER, Members of the Board, concurred in the above opinion and order.

² In accordance with 49 C.F.R. § 800.24(j), the NTSB General Counsel may dismiss late filed notices of appeal and appeal briefs for lack of good cause.

³ NTSB Order No. EA-5737.

⁴ Administrator v. Montague, NTSB Order No. EA-5617 at 4 (2012); 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); see also 49 C.F.R. § 821.11(a) (stating the Board may grant an extension of time to file any document upon a showing of good cause).

⁵ NTSB Order No. EA-3496 at n.4 (1992).