

SERVED: September 29, 2016

NTSB Order No. EA-5793

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 27th day of September, 2016

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|----------------------------------|---|-----------------|
| _____                            | ) |                 |
| MICHAEL P. HUERTA,               | ) |                 |
| Administrator,                   | ) |                 |
| Federal Aviation Administration, | ) |                 |
|                                  | ) |                 |
| Complainant,                     | ) |                 |
|                                  | ) | Docket NA-30022 |
| v.                               | ) |                 |
|                                  | ) |                 |
| NAZAL H. SADIQ,                  | ) |                 |
|                                  | ) |                 |
| Respondent.                      | ) |                 |
|                                  | ) |                 |
| _____                            | ) |                 |

**OPINION AND ORDER**

**1. Background**

Respondent appeals Chief Administrative Law Judge Alfonso J. Montañó’s August 30, 2016 Order Not Accepting Appeal.<sup>1</sup> By that order, the law judge did not accept respondent’s appeal and terminated the proceeding. We deny respondent’s appeal.

*a. Facts*

<sup>1</sup> A copy of the law judge’s order is attached.

On June 7, 2016, the Administrator of the Federal Aviation Administration (FAA) issued an emergency order revoking respondent's Airline Transport Pilot (ATP) and Mechanic certificates and any other airman certificates he held. The Administrator served the emergency order of revocation (EOR) on June 7, 2016, by FedEx-overnight delivery, U.S. certified mail, and first class mail to respondent's residence.<sup>2</sup> The EOR alleged respondent violated 14 C.F.R. § 61.59(a)(2)<sup>3</sup> and (3),<sup>4</sup> and included appeal instructions notifying respondent that he could appeal the EOR within 10 days from the date of its service.<sup>5</sup> Respondent did not waive the procedures applicable to emergency cases.

Respondent was not living at his residence in San Leandro, California, when the EOR was served, but rather was at the home of a relative caring for an ailing family member.<sup>6</sup> A relative living at respondent's residence in San Leandro received the EOR when it was served and gave respondent the FAA attorney's phone number provided therein.<sup>7</sup> On June 8, 2016, respondent contacted the FAA attorney, discussed appealing the EOR, and provided his certificate information.<sup>8</sup> On the following day, June 9, 2016, respondent executed an Affidavit of

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<sup>2</sup> Complaint at 1; Reply Br. at 6.

<sup>3</sup> Section 61.59(a)(2) prohibits any person from making, or causing to be made, "[a]ny fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of a certificate, rating, or authorization under this part."

<sup>4</sup> Section 61.59(a)(3) prohibits any person from making, or causing to be made, "[a]ny reproduction for fraudulent purpose of any certificate, rating, or authorization, under this part."

<sup>5</sup> 49 C.F.R. § 821.53(a).

<sup>6</sup> Answer at 6. Citations to respondent's Answer treat his supplemental statement as pages 6 and 7 of the Answer.

<sup>7</sup> Id. at 6-7.

<sup>8</sup> Id. at 7.

Loss, certifying that he no longer had possession of his ATP and Mechanic certificates and that he was submitting the affidavit to FAA in lieu of surrendering the certificates.<sup>9</sup>

On August 25, 2016, respondent attempted to file three documents with the National Transportation Safety Board's (NTSB) Office of Administrative Law Judges (OALJ) by online submission through the NTSB's website;<sup>10</sup> however, two of the documents were corrupted and unreadable.<sup>11</sup> The remaining document consisted of two pages containing a copy of a certified mail receipt showing the recipient to be an FAA attorney located in Renton, Washington, and a receipt from a United Parcel Service (UPS) store in San Leandro, California, showing that an unidentified person shipped a package from this location on August 25, 2016.<sup>12</sup> Staff in the OALJ contacted the FAA attorney shown on the certified mail receipt to ascertain what the unreadable documents may have been and who may have transmitted them, and the FAA attorney responded on August 26, 2016.<sup>13</sup> Before the FAA attorney replied, however, respondent contacted the OALJ on August 26 to confirm receipt of his appeal. After speaking with OALJ staff, respondent successfully transmitted an emergency notice of appeal, a copy of the EOR, an Answer, and the aforementioned certified mail and UPS receipts.<sup>14</sup> Respondent appended a supplemental statement to his Answer explaining that while the service date of the EOR was June 7, 2016, he was not at the residence to receive it personally, but that relatives provided him the phone number of the FAA attorney listed in the EOR, to whom respondent spoke and later

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<sup>9</sup> Affidavit of Loss executed by Nazal Sadiq (June 9, 2016).

<sup>10</sup> See generally [http://www.nts.gov/legal/alj/Pages/online\\_submission.aspx](http://www.nts.gov/legal/alj/Pages/online_submission.aspx).

<sup>11</sup> Order at 2.

<sup>12</sup> Id.

<sup>13</sup> Id.; see also Email from Kyle Lomazow to OALJ (August 26, 2016, 1:15 pm ET).

<sup>14</sup> Order at 2; see also Email from Nazal Sadiq to OALJ with attachments (August 26, 2016, 12:52 pm ET).

submitted his certificate information.<sup>15</sup> Respondent also stated that the Administrator “did not follow procedure” in issuing the EOR because respondent “was not given the proper documents.”<sup>16</sup>

On August 28, 2016, respondent emailed a letter to OALJ wherein he stated that he spoke with OALJ staff who informed him that “it would be difficult” to appeal the EOR because the 10-day time period in which to appeal had expired.<sup>17</sup> Respondent then went on to explain that he did not receive the EOR until August 25, 2016, which was the same day he filed a notice of appeal.<sup>18</sup> Consequently, staff in OALJ contacted the FAA attorney to ascertain what day he spoke with respondent about the EOR after it was served on June 7, and the FAA attorney indicated he spoke with respondent on June 8, 2016.<sup>19</sup> The FAA attorney further stated that respondent informed him that he lost his ATP and Mechanic certificates and that respondent executed an Affidavit of Loss on June 9 and provided it to FAA.<sup>20</sup>

b. *Law Judge’s Order*

The law judge stated that in an emergency proceeding, an appeal from an emergency order must be filed within 10 days after the EOR was issued; in the case *sub judice*, the EOR was issued on June 7, 2016.<sup>21</sup> The law judge noted respondent “provided no additional information to support or establish the validity of his assertions,” but that circumstances indicated that respondent received the EOR before the expiration of time in which to file an appeal and weeks

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<sup>15</sup> Answer at 6-7.

<sup>16</sup> Id. at 6.

<sup>17</sup> Email from Nazal Sadiq to OALJ with attachment (August 28, 2016, 10:39 pm ET).

<sup>18</sup> Id.

<sup>19</sup> Order at 2.

<sup>20</sup> Id.; see also Affidavit of Loss executed by Nazal Sadiq (June 9, 2016).

<sup>21</sup> Order at 1.

before he filed a notice of appeal on August 25, 2016.<sup>22</sup> The law judge, therefore, determined that respondent's explanation that he was away from his residence caring for an ailing relative when the EOR was served did not establish good cause to excuse his untimely appeal.<sup>23</sup>

*c. Issues on Appeal*

Respondent argues that the OALJ's act of contacting the Administrator's counsel to inquire about the identity of the person to whom the EOR was issued and when the first contact between the FAA attorney and respondent occurred after the EOR was issued constituted impermissible *ex parte* communication. Respondent further argues that the law judge erred in rejecting respondent's explanation that he received the EOR on August 25, 2016 due to living away from his residence while caring for a relative.

**2. Decision**

We review the law judge's decision *de novo*, as our precedent requires.<sup>24</sup>

*a. Ex Parte Communications*

Respondent argues that the OALJ staff's contact with the Administrator's counsel was impermissible *ex parte* communication. Our Rules of Practice state, and we have previously held, that while *ex parte* communications relevant to the merits of the proceeding are

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<sup>22</sup> Id. at 1-2.

<sup>23</sup> Id. at 2.

<sup>24</sup> Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013) (citing Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972)).

impermissible,<sup>25</sup> either party may contact the OALJ on a procedural matter.<sup>26</sup> In the case *sub judice*, OALJ staff communications with both respondent and the FAA attorney were limited to ascertaining the identity of the unknown sender of the corrupted files and the timeliness of respondent's appeal, both of which are purely procedural matters. Because the communications involved no discussion of the underlying merits of the matters alleged in the EOR, we find that no impermissible *ex parte* communication occurred.

b. *Timeliness of Respondent's Appeal from the Administrator's EOR*

The Board strictly adheres to the standards of timeliness set out in our Rules of Practice, only excusing procedural defects upon a showing of good cause.<sup>27</sup> Respondent argues good cause exists to excuse his late-filed appeal because he was living away from his residence at the time the EOR was served on June 7, 2016 and that he did not receive the EOR until August 25, 2016 and was unaware FAA served the EOR.<sup>28</sup> We reject respondent's argument in this regard. Respondent admitted in his Answer that the Administrator served the EOR at respondent's residence on June 7, 2016.<sup>29</sup> Respondent further admitted that while he was living away from his residence at the time, his relatives who were living there received the EOR, gave respondent the

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<sup>25</sup> 49 C.F.R. § 821.61(b)(1) ("No interested person outside the Board shall make or knowingly cause to be made to any Board decisional employee an *ex parte* communication relevant to the merits of the proceedings"); see also Administrator v. Jean Marie and McMath, NTSB Order No. EA-5346 at 6 (2007).

<sup>26</sup> 49 C.F.R. § 821.61(b)(2) ("Ex parte communications solely relating to matters of Board procedure or practice are not prohibited by this section"); see also Administrator v. Jean Marie and McMath, *supra* n.25 at 6; Administrator v. Baehr, NTSB Order No. EA-4075 at 4 (1994).

<sup>27</sup> 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); see also 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>28</sup> Notice of Appeal of the Law Judge's Decision at 1.

<sup>29</sup> Answer at 6.

phone number of the FAA attorney listed therein, and that he spoke with the FAA attorney about appealing the EOR and thereafter submitted his certificate information to FAA.<sup>30</sup> While respondent later contradicted himself in his August 28 letter to OALJ and in his appeal brief by arguing that he did not receive the EOR until August 25, 2016, the record shows that he executed an Affidavit of Loss, in the presence of a notary, on June 9, 2016.<sup>31</sup> Respondent's June 9 affidavit is inconsistent with his current contention that he did not receive the EOR until August 25, 2016 and was unaware it had been served. Rather, the affidavit demonstrates that respondent, at minimum, was aware of the EOR on June 9, 2016, more than two months before his late-filed notice of appeal on August 25, 2016. Therefore, we find that respondent's explanation that he was not living at his residence when the EOR was served and that he did not receive it until August 25, 2016 does not establish good cause to excuse his untimely appeal.<sup>32</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The law judge's Order Not Accepting Appeal is affirmed.

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

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<sup>30</sup> Id. at 6-7.

<sup>31</sup> See Appeal Br. at 1; Affidavit of Loss executed by Nazal Sadiq (June 9, 2016).

<sup>32</sup> See Administrator v. Jimenez, NTSB Order No. EA-5779 at 5 (2016) (rejecting respondent's argument that the fact his counsel did not receive the complaint until after the time allotted for filing the answer had passed because he was not in the office at the time the complaint was served established good cause to excuse his late-filed answer).

Served: August 30, 2016

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

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In the matter of

NAZAL H. SADIQ,

Appellant.

Docket NA-30022

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**ORDER NOT ACCEPTING APPEAL**

Service: Nazal H. Sadiq  
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*(VIA ELECTRONIC MAIL AND  
UPS OVERNIGHT DELIVERY)*

Kyle E. Lomazow, Esq.  
FAA Enforcement Division, Western Team  
1601 Lind Avenue, SW  
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*(VIA FAX)*

On June 7, 2016, the Administrator of the Federal Aviation Administration (FAA) issued an emergency order revoking appellant's Airline Transport Pilot and Mechanic Certificates for violation of 14 CFR 61.59(a)(2) and (3). On August 25, 2016, the appellant apparently attempted to appeal the emergency order online, but was unsuccessful in doing so. On August 26, 2016, the appellant successfully submitted his appeal to this office via electronic mail. To be timely, the appellant had to file his appeal within ten days of June 7, 2016. His appeal was filed over two months late. He submitted an explanation with his appeal, stating that he "was not personally served this appeal nor did [he] sign any documents that [he] received the emergency order of revocation which was submitted to [his] house on June 7, 2016. [He] was not at [his] house because [he] was at [his] family's house taking care of [his] father who is very sick." He also says that "the emergency order of revocation states [he has] 10 days to appeal. However the FAA did not follow procedure; because [he] was not given the proper documents." The appellant provided no additional information to support or establish the validity of his assertions, and he did not indicate when he received the emergency order.

On August 28, 2016, however, the appellant submitted an additional document (which we received on August 29, 2016) in which he stated that he "[is] just receiving this [emergency order of revocation] on August 25, 2016." The appellant provided no evidence

supporting his statement that he received the revocation order on the same day that he attempted to submit his appeal. The additional submission does, however, require further discussion of the circumstances surrounding the processing of this appeal. On August 25, 2016, this office received an electronic submission of three documents, two of which were "corrupted" and unreadable. The remaining document consisted of two pages, containing a copy of a certified mail receipt with the name of an FAA attorney, and a receipt from a UPS store in San Leandro, California. In order to determine what the other documents were and who transmitted them, the case manager directed the office's paralegal to contact the FAA attorney and ask if he received an appeal from someone in San Leandro, California, or if any orders had been issued to someone there. The FAA attorney identified the appellant, but not before the appellant called this office to make sure we received his appeal. Our paralegal then facilitated the successful transmission of all of the documents to this office.

In his August 26, 2016 email identifying the appellant, the FAA attorney indicated he "repeatedly told [the appellant] leading up to the expiration of his time to appeal that he had ten days to do so..." Subsequently, the FAA attorney indicated via email that the appellant called him the day after the emergency order was issued, and that the appellant indicated that he no longer had his certificates. The FAA attorney said that the appellant executed an Affidavit of Loss on June 9, 2016 and forwarded that affidavit to the FAA attorney. In light of these indications that the appellant received the order before the expiration of the time to file an appeal, and weeks before August 25, 2016, his explanation does not establish good cause for the untimely filing of his appeal.

In view of these circumstances, the undersigned must find that the appellant's emergency appeal was not timely filed, and that he has not shown good cause for his untimely filing. Under these circumstances, the undersigned is compelled to issue this order not accepting the appeal because it is untimely filed.

THEREFORE, IT IS ORDERED that appellant's appeal is NOT ACCEPTED, and that this proceeding is hereby TERMINATED on that basis.

Entered this 30<sup>th</sup> day of August, 2016, at Washington, D.C.



Alfonso J. Montañó  
Chief Administrative Law Judge