

SERVED: August 9, 2017

NTSB Order No. EA-5825

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 4th day of August, 2017

_____	)	
MICHAEL P. HUERTA,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-30245
v.	)	
	)	
KEVIN DELGADO,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

***1. Background***

Respondent appeals the Order Granting the Administrator’s Motion to Dismiss Respondent’s Appeal as Untimely of Chief Administrative Law Judge Alfonso J. Montañó, issued December 16, 2016.<sup>1</sup> By that order, the law judge determined that respondent failed to submit a timely notice of appeal of the Administrator’s order of suspension, which the

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

Administrator issued for alleged violations of 14 C.F.R. §§ 91.13(a)<sup>2</sup> and 91.141.<sup>3</sup> For the reasons discussed below, we deny respondent's appeal.

*A. Facts*

The Administrator of the Federal Aviation Administration ("FAA") issued an order of suspension alleging that respondent operated, as pilot-in-command, civil aircraft N135EG on a flight originating at Miami Executive Airport, Miami, Florida, and entered temporary restricted airspace created by NOTAM FDC 5/6071.<sup>4</sup> The Administrator further alleged that respondent failed to obtain and squawk a discrete code prior to entering the restricted area and that respondent failed to maintain two-way communications with air traffic control while operating in the restricted area.<sup>5</sup>

The Administrator issued an order on February 1, 2016 suspending respondent's private pilot certificate for 30 days. The same day, the Administrator served the order, via certified mail and regular mail, to respondent's airman address of record on file with the FAA.<sup>6</sup> The order of suspension included the following language concerning respondent's deadline to appeal the order:

You may appeal from this order within 20 days from the date it is served, which is FEB 1 2016 [stamped], by filing a Notice of Appeal with the Case Manager,

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<sup>2</sup> Section 91.13(a) prohibits careless or reckless operation of an aircraft so as to endanger the life or property of another.

<sup>3</sup> Section 91.141 prohibits a pilot from "operat[ing] an aircraft over or in the vicinity of any area to be visited or traveled by the President, the Vice President, or other public figures contrary to the restrictions established by the Administrator and published in a Notice to Airmen (NOTAM)."

<sup>4</sup> Compl. at 1, ¶ 3.

<sup>5</sup> Compl. at 2, ¶¶ 4-5.

<sup>6</sup> Compl at 1 (showing respondent's address where the order of suspension was sent); Order at 1-2; see also Motion to Dismiss Appeal as Untimely Filed at Exhs. A and B.

Office of Administrative Law Judges, National Transportation Safety Board, 490 L'Enfant Plaza East, SW, Washington, DC 20594 ....

The National Transportation Safety Board's (NTSB's) Rules of Practice in Air Safety Proceedings, 49 C.F.R. part 821, would apply to such an appeal and are available through the NTSB's website at <http://www.nts.gov/legal/lj>.<sup>7</sup>

On June 7, 2016, respondent, through counsel, filed a notice of appeal with the NTSB's Office of Administrative Law Judges. In his notice of appeal, respondent stated that he did not receive the order of suspension until May 31, 2016, because it was "mailed to an incomplete address in that it [did] not contain [r]espondent's apartment number."<sup>8</sup>

### *B. Procedural Background*

On June 14, 2016, the Administrator moved to dismiss respondent's appeal as untimely and argued that respondent could not establish good cause for his untimely appeal. In this regard, the Administrator contended that respondent, by omitting his apartment number, failed to provide the FAA with a complete address of record and that respondent's own failure cannot serve as the basis for determining that he had good cause to excuse his late-filed appeal.<sup>9</sup> In his reply to the Administrator's motion to dismiss his appeal, respondent did not dispute that his appeal was untimely filed, but noted that the FAA's online change of address form did not specifically instruct airmen to include an apartment number when submitting their address.<sup>10</sup> Respondent also argued that his late-filed appeal did not prejudice the Administrator.<sup>11</sup>

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<sup>7</sup> Compl. at 3.

<sup>8</sup> Notice of Appeal at 1.

<sup>9</sup> Motion to Dismiss Appeal as Untimely Filed at 1-3; see also Reply Br. at 2.

<sup>10</sup> Reply to Motion to Dismiss at ¶¶ 1-7.

<sup>11</sup> Id. at ¶ 8.

### *C. Law Judge's Order*

On December 16, 2016, the law judge issued an order granting the Administrator's Motion to Dismiss Respondent's Appeal as Untimely. The law judge found that respondent's lack of awareness that the Administrator issued an order of suspension was not due to circumstances beyond respondent's control, and thus respondent did not have good cause for the late submission of his appeal.<sup>12</sup> In addition, the law judge found that even if respondent's explanation as to why he remained unaware of the order's issuance until May 31, 2016, was the result of circumstances beyond respondent's control, respondent was not diligent because he waited seven days from then before filing his appeal.<sup>13</sup>

### *D. Issues on Appeal*

Respondent argues that the Board's interpretation and application of the good cause standard has been inconsistent and is arbitrary and capricious.<sup>14</sup> Respondent also alleges that the Board holds the Administrator to a more flexible, less onerous good cause standard under the stale complaint rule.<sup>15</sup>

## **2. Decision**

On appeal, we review the law judge's decision *de novo*, as our precedent requires.<sup>16</sup>

### *A. Respondent Has Not Established Good Cause to Excuse His Untimely Appeal*

In accordance with our Rules of Practice, the date of service for documents served by

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<sup>12</sup> Order at 4.

<sup>13</sup> Id.

<sup>14</sup> Appeal Br. at 4-8.

<sup>15</sup> Id. at 8-10.

<sup>16</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, 7 NTSB 1323, 1326 (1991).

mail is determined by the date of mailing, not the date of receipt.<sup>17</sup> The Administrator served the order on February 1, 2016; therefore, respondent's appeal should have been filed by February 22, 2016, to be timely.<sup>18</sup> Respondent states that he did not receive the order until May 31, 2016, and consequently did not appeal the order until June 7, 2016, because the order was mailed to an address that omitted his apartment number. Respondent admits that he did not include his apartment number when he provided the FAA with his airman address of record, and argues that the FAA's online change of address form did not explicitly instruct him to do so.<sup>19</sup> We are unpersuaded by this argument. The FAA's change of address form provided sufficient space for an airman to include an apartment number, if applicable.<sup>20</sup> While the FAA's change of address form did not specifically tell airmen to include an apartment number, it also did not specifically tell airmen to include a street, city, state, country, or postal code. It is the airman's responsibility to provide the FAA with a complete and accurate address of record so that mailings, including orders, will be received by the airman. We agree with the law judge that respondent's delay in receiving the order of suspension was not due to circumstances beyond his control and that respondent's delay in filing a notice of appeal until seven days following his receipt of the order

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<sup>17</sup> 49 C.F.R. §§ 821.7(a)(4) and 821.8(e); see also Federal Rule of Civil Procedure 5(b)(2)(C); In re Petition of Reza Amini, NTSB Order No. EA-5797 at 4 (2016).

<sup>18</sup> February 21, 2016, the 20th day after service of the order fell on a Sunday; in accordance with 49 CFR § 821.10, if the last day for doing an act falls on a Saturday, Sunday, or Federal holiday, that deadline extends to the next day that is not a Saturday, Sunday, or Federal holiday, which, in this case, was Monday, February 22, 2016.

<sup>19</sup> Appeal Br. at 2.

<sup>20</sup> See Appeal Br. at Exh. A (To illustrate that the FAA's online change of address form did not note the requirement that an apartment number be included, respondent attached to his appeal brief a blank copy of the FAA's paper change of address form). See also Motion to Dismiss Respondent's Appeal as Untimely at Exhs. A and B.

reflects a lack of due diligence.<sup>21</sup> Therefore, we find that respondent's failure to provide the Administrator with a complete address of record does not establish good cause for his untimely appeal.<sup>22</sup>

*B. The Board's Application of the Good Cause Standard to Late-Filed Appeals*

Respondent argues that nothing in the Board's Rules of Practice mandates a dismissal of his appeal in the absence of a showing of good cause and cites 49 CFR. § 821.11(a) and Administrator v. Hooper in support.<sup>23</sup> We reject this argument. The text of 49 C.F.R. § 821.11(a) states that the Board may grant an extension of time upon written request "for good cause shown." In Administrator v. Hooper, we stated our intent to "adhere uniformly to a policy requiring the dismissal, absent a showing of good cause, of all appeals in which timely notices of appeal, timely appeal briefs or timely extension requests to submit those documents have not been filed."<sup>24</sup> We have strictly adhered to this standard since our decision in Hooper.<sup>25</sup>

Respondent also argues that Board precedent regarding its good cause standard has been

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<sup>21</sup> We also note that under the good cause standard, it is irrelevant whether the Administrator suffered prejudice because of the late-filed appeal. In re Petition of Reza Amini, *supra* n. 17 at 5 (citing Administrator v. Bandiola and Bagamaspad, NTSB Order No. EA-5677 at 5 (2013)).

<sup>22</sup> See, e.g., Administrator v. Sepulveda, NTSB Order No. EA-5229 at 2 (2006) (rejecting good cause argument when the respondent kept his father's address as his official address with the FAA, but did not check that address for mail because he was living elsewhere); Administrator v. Beissel, NTSB Order No. EA-5153 at 2-3 (2005) (stating that the respondent's failure to change his address on file with the FAA, *inter alia*, did not constitute good cause), recon. denied, NTSB Order No. EA-5173 (2005).

<sup>23</sup> Administrator v. Hooper, 6 NTSB 559 (1988), on remand from Hooper v. Nat'l Transp. Safety Bd., 841 F.2d 1150 (D.C. Cir. 1988).

<sup>24</sup> *Supra* n. 23 at 560 (emphasis added).

<sup>25</sup> See e.g., In re Petition of Reza Amini, *supra* n. 17 at 3; Administrator v. Sadiq, NTSB Order No. EA-5793 at 6 (2016); Administrator v. Oates, NTSB Order No. EA-5788 at 7 (2016); Administrator v. Dangberg, NTSB Order No. EA-5694 at 8-9 (2013); Administrator v. Smith, NTSB Order No. EA-5672 at 3-4 (2013).

inconsistent and, therefore, is arbitrary and capricious, requiring reversal of the law judge's decision which relied on the alleged inconsistencies.<sup>26</sup> In this regard, respondent contends that the Board holds certificate holders to a "much higher, nearly unattainable standard of good cause" than it does the Administrator.<sup>27</sup> Specifically, respondent relies upon a line of cases in which a respondent cited the action, or inaction, of counsel as the reason for failing to timely file an appeal, answer, or brief.<sup>28</sup> Respondent also cites Administrator v. Croll, a case in which we declined to conclude that the respondent's absence from the country established good cause to excuse his late-filed appeal.<sup>29</sup> In citing these cases, respondent opines that the conduct therein was beyond the control of each respondent and should have established good cause, yet the Board did not find such.

The cases cited by respondent undercut his argument and illustrate that we do not distinguish between the culpability of a party and the party's counsel in evaluating whether good cause exists to excuse a late appeal, answer, or brief. In that regard, we hold both respondents and the Administrator to the same standard of timeliness.<sup>30</sup> Moreover, in the case *sub judice*, it was respondent's own failure that resulted in the Administrator not having a complete address of record. Therefore, we find no merit in this argument.

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<sup>26</sup> Appeal Br. at 4.

<sup>27</sup> Id. at 4-5.

<sup>28</sup> Id. at 5-7 (citing Administrator v. Bandiola and Bagamaspad, *supra* n. 21; Administrator v. Montague, NTSB Order No. EA-5617 (2012); Administrator v. Gallaway, NTSB Order No. EA-5487 (2009)).

<sup>29</sup> NTSB Order No. EA-5009 (2002).

<sup>30</sup> See, e.g., Administrator v. Bernard, NTSB Order No. EA-5789 (2016) (a decision issued under delegated authority, finding that the Administrator failed to establish good cause for an extension of time to file an appeal brief where the Administrator's counsel was unavailable due to overseas travel).

*C. The Board's Application of the Good Cause Standard under the Stale Complaint Rule*

Respondent alleges that the Board arbitrarily and capriciously “gives considerable latitude to the Administrator when the FAA “delays under the stale complaint rule, which is also founded on ‘just cause.’”<sup>31</sup> Citing a line of cases involving the stale complaint rule, respondent further argues that the Board has engaged in impermissible “ad hocery” by holding the Administrator to a less onerous good cause standard under the stale complaint rule.<sup>32</sup>

We previously rejected this argument in our decision in Administrator v. Beissel,<sup>33</sup> wherein we denied reconsideration and explained:

This is a question of fact, specific to each case. Whether the Board is applying this standard uniformly to notices of appeal and appeal briefs is determined by reviewing other cases involving late filing of notices of appeal and appeal briefs, not by comparing this case with other, entirely different types of cases that also happen to use the good cause test.<sup>34</sup>

We continue to find this argument unavailing. It is clear in this case, as in all such cases, that “[i]n the context of late-filed notices of appeal and appeal briefs, the Board consistently follows the good cause policy established [by Hooper].”<sup>35</sup> In contrast, “[t]he Board's stale complaint rule is meant to assure that the Administrator's investigation and prosecution of regulatory violations are pursued with reasonable diligence.”<sup>36</sup> The stale complaint rule applies

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<sup>31</sup> Appeal Br. at 8. We note that respondent incorrectly states, repeatedly, that the Board applies a “just cause” standard to cases involving the stale complaint rule. As discussed *infra*, the stale complaint rule requires a showing of “good cause” under certain circumstances.

<sup>32</sup> Appeal Br. at 8-10 (citing Administrator v. Shrader, NTSB Order No. EA-4971 (2002); Administrator v. Minter, NTSB Order No. EA-4697 (1998); Administrator v. Brea, NTSB Order No. EA-3657 (1992); Ramaprakash v. FAA and NTSB, 346 F.3d 1121 (D.C. Cir. 2003)).

<sup>33</sup> *Supra* n. 22.

<sup>34</sup> NTSB Order No. EA-5173 at 2 (2005).

<sup>35</sup> Administrator v. Beissel, *supra* n. 22 at 4.

<sup>36</sup> Administrator v. Dill, NTSB Order No. EA-4099 at 3 (1994).



“[w]here the complaint states allegations of offenses which occurred more than 6 months prior to the Administrator’s advising the respondent as to the reasons for proposed action....”<sup>37</sup> In cases where the Administrator’s complaint does not allege a lack of qualifications, the stale complaint rule requires that the Administrator show that “good cause” existed for the delay in advising the respondent as to the reasons for the proposed action or that the imposition of a sanction is warranted in the public interest.<sup>38</sup>

Our application of the “good cause” standard under the stale complaint rule considers whether the Administrator acted promptly after discovering a possible violation. That presents a very different issue from our consideration of whether a party was prevented from filing a timely appeal, answer, or brief by circumstances beyond his or her control. This contextual disparity necessitates the difference with which the good cause standard is applied to appeals and to facially stale complaints.

Similarly, what constitutes due diligence is different in the context of late-filed appeals and briefs and in the context of a stale complaint analysis. The former involves a respondent filing a document stating he or she is appealing, which is a straightforward task. In contrast, the latter involves the Administrator, upon learning that a violation may have occurred, undertaking some form of investigation, deciding whether a violation occurred, and deciding if the violation warrants legal enforcement action. “If the Administrator fails to... show[] that he exercised reasonable prosecutorial diligence after his receipt of the information concerning the possible violations, the Board has not hesitated in finding that the FAA has failed to overcome the

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<sup>37</sup> 49 C.F.R. § 821.33 (2017).

<sup>38</sup> Id.

presumption that a respondent has been prejudiced....”<sup>39</sup> However, given the vastly different circumstances the two situations present, it is not arbitrary and capricious for us to conclude an airman did not exercise due diligence in filing an appeal but not find a lack of due diligence on the part of the Administrator where a greater amount of time had elapsed.<sup>40</sup>

In conclusion, we reject respondent’s argument that we arbitrarily and capriciously hold the Administrator to a less onerous good cause standard under the stale complaint rule.

Moreover, we agree with the law judge that respondent has failed to establish good cause to excuse his late-filed appeal.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent’s appeal is denied;
2. The law judge’s Order Granting the Administrator’s Motion to Dismiss Respondent’s Appeal as Untimely is affirmed;
3. The Administrator’s 30-day suspension of respondent’s private pilot certificate is affirmed; and

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<sup>39</sup> Administrator v. Dill, *supra* n. 36 at 4; see also Administrator v. Armstrong, NTSB Order No. EA-5629 at 9-11 (2013) (finding the Administrator failed to act with diligence in pursuing prosecution), recon denied, NTSB Order No. EA-5660; Administrator v. Shrader, NTSB Order No. EA-5100 at 3 (2004) (dismissing the Administrator’s order of suspension in accordance with the stale complaint rule for failure to exercise prosecutorial due diligence).

<sup>40</sup> Compare Administrator v. Croll, *supra* n. 29 at 2 with Administrator v. Hart, NTSB Order No. EA-5536 at 7-8 (2010).

4. The suspension of respondent's private pilot certificate shall begin 30 days after the service date indicated on this opinion and order.<sup>41</sup>

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

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<sup>41</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(f).

Served: December 16, 2016

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.

Docket SE-30245

KEVIN DELGADO,

Respondent.

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**ORDER GRANTING ADMINISTRATOR'S MOTION  
TO DISMISS RESPONDENT'S APPEAL AS UNTIMELY**

Service: Stuart A. Goldstein, Esq.  
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*(BY CERTIFIED MAIL  
AND FAX)*

Christopher R. Stevenson, Esq.  
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*(BY FAX)*

On February 1, 2016, the Administrator of the Federal Aviation Administration ("FAA") issued an order suspending respondent's private pilot certificate for 30 days, for alleged violations of §§ 91.13(a) and 91.141 of the Federal Aviation Regulations ("FAR," codified at 14 C.F.R.). On June 7, 2016, respondent, through counsel, filed an appeal, which stated, in part, that although the order of suspension is dated February 1, 2016, respondent did not receive the order until May 31, 2016, after it was re-mailed to him, and that the "original Order of Suspension appears to have been mailed to an incomplete address in that it does not contain Respondent's apartment number."

On June 14, 2016, the Administrator filed a motion to dismiss the appeal, on the basis that it was not timely-filed under Rule 30(a) of the Board's Rules of Practice in Air Safety Proceedings (49 C.F.R. § 821.30(a)). Respondent submitted a reply to that

motion on June 24, 2016, and the Administrator filed a response to that reply on July 8, 2016.<sup>1</sup> Having thoroughly reviewed those filings and the record, I will, for the reasons set forth below, grant the motion to dismiss and terminate this proceeding.

I.

Rule 30(a) provides that an appeal from an order of the Administrator affecting an FAA-issued certificate must be filed with the Board within 20 days after the date the order was served on the certificate holder. When an appeal is filed beyond that time, it must be dismissed unless the certificate holder establishes good cause for the delay.<sup>2</sup>

The Administrator's suspension order was transmitted to respondent, by certified mail and regular mail, at 8730 SW 133rd Avenue, Miami, Florida 33183-5385, on February 1, 2016. That order included appeal rights, which informed respondent:

You may appeal from this order within 20 days from the date it is served, which is FEB 1 2016 [stamped], by filing a Notice of Appeal with the Case Manager, Office of Administrative Law Judges, National Transportation Safety Board, 490 L'Enfant Plaza East, SW; Washington, DC 20594 ....

The ... NTSB's ... Rules of Practice in Air Safety Proceedings, 49 C.F.R. part 821, would apply to such an appeal and are available through the NTSB's website at <http://www.nts.gov/legal/alj>.

Attached to the Administrator's motion to dismiss, as Exhibits A and B, are copies of pages downloaded from the "My FAA" multi-system access tool on July 22, 2015 and May 6, 2016, which reflect that respondent's official address of record on file with the FAA throughout that time was precisely the same address to which the suspension order was transmitted on February 1, 2016. Based on that information, the Administrator relates that respondent's official address did not include an apartment number, and avers that, because he did not provide one with the address information he gave to the FAA, *he* was the one responsible for any adverse effect the absence of an apartment number may have had on the delivery of the order to him.

In the reply to that motion, respondent disputes the contention that he should be deemed responsible for providing the FAA with an address that did not include his apartment number because he utilized its on-line change of address form in providing his address to the FAA, and "there are no instructions on-line as to the requirement to

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<sup>1</sup> On July 11, 2016, respondent filed a motion to strike the response to his reply on the basis that it was an unauthorized filing. The Board's Rules of Practice neither provide for nor bar the submission of responses to replies in opposition to motions (*see* Rule 14, § 821.14), and it is my practice to consider such filings to the extent they lend clarification to matters raised in the motion and reply. Accordingly, the motion to strike is denied.

<sup>2</sup> *See* Rule 11(a) of the Board's Rules (§ 821.11(a)), and *Adm'r 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).

note an apartment or unit number.” To illustrate this, respondent attached to his reply a blank copy of the FAA’s paper change of address form, and noted that it “does not ask for apartment or unit numbers. There are no instructions to airmen using the form that they must include apartment or unit numbers.” The reply adds that the Administrator has not produced a copy of his on-line change of address submission so the Administrator has not shown whether or not his on-line change of address notification did or did not contain an apartment number. It also notes that the copy of order that respondent ultimately received on May 31, 2016 was mailed to his address, including his apartment number. In addition to the contentions concerning the omission of the apartment number from the address to which the order was originally sent on February 1, 2016, the reply maintains that the motion to dismiss should be denied because there is no prejudice to the Administrator if this matter proceeds to a hearing.

The Administrator’s response to respondent’s reply notes that he “does not argue, much less provide evidence, that the lack of ... an explicit instruction [to include an apartment number] caused his failure to provide a complete address,” and that he has not shown that he was somehow prevented from entering his apartment number on the on-line form on which he provided the FAA with his current address.

## II.

The Board has previously held that, where the Administrator transmits a certificate order by certified or registered mail, the date of service is the date it was mailed to the certificate holder, but, where the order is transmitted solely by other means (e.g., regular mail or overnight delivery service, such as Federal Express), the date of service is the date the certificate holder actually or constructively received the order. *Compare Administrator v. Corrigan*, NTSB Order EA-4806 (1999), and *Administrator v. Carlos*, NTSB Order EA-4936 (2002). The order in this matter must, therefore, be deemed to have been served on February 1, 2016, and his Rule 30(a) period for filing an appeal from that order consequently expired on February 22, 2016.<sup>3</sup> Because respondent did not file his appeal in this matter until June 7, 2016, he must, in order to avoid dismissal, establish good cause for the delay in its submission.

Good cause for the belated filing of an appeal generally requires a certificate holder to show both that: (1) circumstances beyond his control prevented him from either knowing of the Administrator’s order or acting upon it prior to the appeal filing deadline, and (2) once he gained such knowledge or ability to act, he exercised due diligence in filing an appeal.

In this case, respondent blames his lack of knowledge of the Administrator’s order prior to May 31, 2016 on the fact that it was originally mailed to him at an address that did not include his apartment number, and maintains that he received the order on

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<sup>3</sup> February 21, 2016, the tenth day after service of the order, fell on a Sunday. As a result, respondent’s deadline for filing an appeal extended to the next day that was not a Saturday, Sunday or Federal holiday, which was Monday, February 22, 2016. See Rule 10 (§ 821.10).

that date only after it was re-mailed "to his address, including his apartment number." In response to the Administrator's showing that the address (without the apartment number) to which the order was initially sent was respondent's official address of record as *he* provided it to the FAA, respondent has intimated that the reason for this was that there was neither a place on the on-line change of address form to designate an apartment number nor any instruction associated with that form which directed him to include the apartment number as part of his address. While respondent has not provided a printout image of the on-line form or instructions, he has furnished a blank copy of the paper change of address notification form as representative of the on-line form. That paper form provides four lines for the entry of a new address, and nowhere indicates whether, if the street address provided is for a multi-occupancy building, a sub-designation, such as an apartment or suite, should or should not be included. Because there are no designated lines for entering street address, city, state and zip code, logic would dictate that a person would enter all pertinent address information in the four-line area.<sup>4</sup> Since respondent, thus, could not have rationally concluded that he was restricted from providing his apartment number as part of his address on the form, he must be deemed responsible for his failure to have received the original mailing of the suspension order if, indeed, the lack of inclusion of an apartment number in the address prevented it from being delivered.<sup>5</sup> Given this, I conclude that respondent's lack of awareness of the issuance of the Administrator's order of suspension upon its initial mailing to him was not due to circumstances beyond his control. It therefore follows that he did not have good cause for the belated submission of his appeal.

However, had respondent's explanation as to why he remained unaware of the order's issuance until May 31, 2016 been sufficient to support a finding that his delayed receipt of the order until that time was due to circumstances beyond his control, his delay in filing an appeal until seven days following such receipt reflects a lack of diligence on his part, which is also contradictory to a finding of good cause.<sup>6</sup>

Because respondent, thus, lacked good cause for the belated submission of his appeal in this matter, that appeal must be dismissed.

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<sup>4</sup> With regard to respondent's observation that the Administrator did not produce a copy of his on-line change of address submission, and his associated proposition that it could not, therefore, be determined whether or not that submission included an apartment number, I note that this is at odds with the reasons he provided for believing the form he completed neither allowed nor required him to include his apartment number as part of his address.

<sup>5</sup> It should, however, be noted that it is not uncommon for mail that is sent to occupants of multi-occupancy buildings to be addressed to the building's street address without an apartment, suite or unit number included as part of the address, and that such mail is generally duly delivered to the occupant to whom it was sent.

<sup>6</sup> As to respondent's assertion that the motion to dismiss should be denied because the Administrator will not be prejudiced if the matter were permitted to go to hearing, it is well-established that good cause, and not lack of prejudice, is the standard to be applied in determining whether an appeal that is submitted beyond the filing deadline should be dismissed for lack of timeliness. See n.2, *supra*.

THEREFORE, IT IS ORDERED that the Administrator's motion to dismiss respondent's appeal for lack of timeliness is GRANTED, and that this proceeding is hereby TERMINATED on that basis.

Entered this 16th day of December, 2016, at Washington, D.C.

A handwritten signature in black ink, appearing to read 'Alfonso J. Montaña', is written over a horizontal line.

Alfonso J. Montaña  
Chief Administrative Law Judge