SERVED: August 24, 2021

NTSB Order No. EA-5905

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 August, 2021

STEPHEN M. DICKSON,[1] Administrator, Federal Aviation Administration, Complainant, v. HARVINDER SINGH PUJJI, Respondent.	)	Docket SE-30635

OPINION AND ORDER

1. ***Background***

Respondent appeals Chief Administrative Law Judge Alfonso J. Montaño's June 13, 2019, Order Entering Judgment on the Pleadings in Favor of the Administrator.[2] By that order, the law judge found that respondent failed to file his Answer within 20 days after the date on

[1] The original caption for this matter was *Daniel K. Elwell, Acting Administrator, Federal Aviation Administration v. Harvinder Singh Pujji.*
[2] A copy of the law judge's order is attached.

which the Administrator served the Complaint, in accordance with 49 C.F.R. § 821.31(b).[3] Therefore, the law judge found no basis to accept respondent's appeal of the Administrator's Emergency Order of Revocation (Emergency Order) of his mechanic certificate with Airframe and Powerplant (A&P) ratings and inspection authorization (IA) based on alleged violations of 14 C.F.R. §§ 42.13(a)(1) and 43.15(a)(1).[4] For the reasons set forth below, we deny respondent's appeal and affirm the law judge's decision.

A. Facts

On March 25, 2019, the Administrator issued an Emergency Order of Revocation for respondent's mechanic certificate with A&P ratings and IA based on alleged violations of 14 C.F.R. §§ 42.13(a)(1) and 42.15(a)(1) for entries made in N855C's propellor logbook on September 4, 2016, and October 2 and 4, 2017.

As reflected in the Certificate of Service, the Administrator served the Emergency Order via "FedEx overnight delivery, U.S. certified mail return-receipt requested, and First-Class mail" to respondent's FAA address in St. Louis, Missouri.[5] On April 4, 2019, respondent's counsel, Michael Moulis, filed a timely Notice of Appeal and Notice of Appearance to the Administrator's Order of Revocation, providing his office address and waiving the emergency.

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[3] Section 821.31(b) provides that "respondent shall . . . file with the Board an answer to the complaint within 20 days after the date on which the complaint was served by the Administrator, and shall simultaneously serve a copy of the answer on the Administrator."

[4] **14 C.F.R. § 42.13 Maintenance records: Falsification, reproduction, or alteration.**

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part.

14 C.F.R. § 43.15 Additional performance rules for inspections.

(a) General. Each person performing an inspection required by part 91, 125 or 135 of this chapter, shall—

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements.

[5] Emergency Order of Revocation (Emergency Order), at 10.

On April 5, 2019, the Administrator filed the Emergency Order of Revocation as the Complaint. The Certificate of Service indicated that a copy of the Complaint had been served on the NTSB's Office of Administrative Law Judges (OALJ) via e-mail and on respondent and Mr. Moulis "by Federal Express-Overnight Delivery."[6] That same day, Robert Combs, the OALJ Case Manager, sent respondent's counsel a letter via e-mail docketing respondent's appeal, acknowledging respondent's waiver of emergency procedures, and alerting him to the requirement under § 821.31(b) of filing a timely Answer. Mr. Combs explicitly advised respondent's counsel that "[t]o be timely, the [A]nswer must be filed within 20 days of the date the [C]omplaint is served (which is today)."[7] Respondent's deadline for filing his Answer was thus April 29, 2019;[8] however, he did not file a timely Answer.

Consequently, on May 2, 2019, the Administrator filed a Motion to Deem Allegations Admitted and for Judgment on the Pleadings, noting that "[t]o date, [r]espondent has not filed an Answer in this matter."[9] The Administrator argued that "[b]ecause [r]espondent has failed to timely file an Answer in this case, all allegations should be deemed 'admitted,' and the … Administrator is entitled to Judgment on the Pleadings. 49 C.F.R. § 821.17(c)."[10] The Administrator requested that the judge deem the factual allegations admitted, grant the Judgment

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[6] *Id.*
[7] OALJ Acknowledgement Letter, at ¶ 2 (Apr. 5, 2019) (emphasis added).
[8] Twenty days from the April 5, 2019, service of the Complaint was April 25, 2019; however, consistent with Federal Rule of Civil Procedure 6(d) and *Administrator v. Harless*, NTSB Order No. EA-5699 (2014), the Administrator included three days for service by mail, which made respondent's filing date April 28, 2019. Because that date fell on a Sunday, respondent's answer was due on Monday, April 29, 2019.
[9] *See* FAA Motion to Deem Allegations Admitted and for Judgment on the Pleadings, at 2 (May 2, 2019).
[10] *See id.* at 2-3. Section 821.17(c) provides, "A party may file a [M]otion for [J]udgment on the [P]leadings on the basis that no answer has been filed, or that the pleadings disclose that there are no material issues of fact to be resolved and that party is entitled to judgment as a matter of law."

on the Pleadings in favor of the Administrator, and affirm the Emergency Order. On May 3, 2019, respondent received the Complaint electronically.[11]

On May 6, 2019, the Administrator filed the FAA's Errata to the Complaint Cover Letter and Certificate of Service, which clarified that the Complaint had been sent to respondent and his counsel via First-Class U.S. Mail and not via Federal Express Overnight Delivery, as the Certificate of Service erroneously indicated. The Administrator attached an affidavit from Ms. Deborah Hervey, the FAA Legal Assistant who had executed the Certificate of Service and attested that on April 5, 2019, she "incorrectly indicated that the Complaint had been sent to [r]espondent and his counsel by FedEx. Instead, I mailed a copy of the [C]omplaint via [F]irst [-C]lass U.S. mail"[12] to their addresses.

An e-mail chain among the parties and the OALJ dated from May 20 – 21, 2019, included a message from Mr. Moulis' paralegal, Rae Burrows, who revealed that respondent's counsel was not in receipt of the Complaint and that Mr. Moulis was hospitalized at the time. Specifically, when the Administrator inquired about the status of his Motion to Deem Allegations Admitted and for Judgment on the Pleadings,[13] the OALJ's Legal Technician, Karen Marquess, explicitly asked Mr. Moulis whether respondent was withdrawing his appeal.[14] Ms. Burrows responded on his behalf by stating, "We have not decided to withdraw. We have yet to received [sic] a [C]omplaint. Opposing counsel has also indicated that they never sent it to us via FedEx, certified mail or UPS [United Parcel Service] through some type of inadvertence on their behalf.

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[11] Answer to Complaint and Motion to Dismiss Late Filed Complaint, at 1 (May 23, 2019). Respondent acknowledged his May 3, 2019, electronic receipt of Administrator's Complaint.
[12] *See* FAA's Errata to the Complaint Cover Letter and Certificate of Service (May 6, 2019).
[13] E-mail from David Kessler to Karen Marquess (May 20, 2019, 9:54 AM).
[14] E-mail from Karen Marquess to Michael Moulis (May 20, 2019, 10:01 AM).

We never received a copy via regular mail as well."[15] She added, "Mr. Moulis has been hospitalized for the past week and intends to file a Motion to Dismiss."[16]

Ms. Marquess e-mailed respondent that his reply to the Administrator's Judgment on the Pleadings was due on May 17, 2019, and that he failed to meet that deadline.[17] In response, Ms. Burrows reiterated that "Mr. Moulis has been hospitalized on an emergency for over a week. He is presently still in the hospital. I will, if necessary provide proof of same."[18] Ms. Burrows disputed the April 5th date of receipt of the Complaint and the April 25th due date to answer, stating that the Administrator "did not provide this office with a copy of the [C]omplaint until 5/3/2019, therefore making the Answer due on 5/23. As stated above, we received an e[-]mail from Mr. Kessler [the Administrator's counsel] stating that his secretary made a clerical error and sent the [C]omplaint U.S. Mail which made it not able to track…. Mr. Moulis was under the impression after speaking to Mr. Kessler that based on the aforementioned that the [Motion for Judgment on the Pleadings] was either moot or will be withdrawn."[19]

In response, the Administrator clarified that the Motion for Judgment on the Pleadings was not withdrawn and that he "strongly contest[ed] Mr. Moulis' paralegal's representations."[20] On May 23, 2019, respondent filed an "Answer to Complaint" and a "Motion to Dismiss Late [-]Filed Complaint" (Motion to Dismiss). In his request to dismiss, respondent asserted that he received the Complaint on May 3, 2019, which he claimed was filed 50 days late.[21] Respondent

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[15] E-mail from Michael Moulis to Karen Marquess (May 20, 2019, 1:45 PM).
[16] *Id*.
[17] E-mail from Karen Marquess to Michael Moulis (May 20, 2019, 1:57 PM).
[18] E-mail from Michael Moulis to Karen Marquess (May 20, 2019, 2:10 PM).
[19] *Id*.
[20] E-mail from David Kessler to Karen Marquess (May 20, 2019, 3:24 PM).
[21] Opposition to Respondent's Answer to Complaint and Motion to Dismiss Late-Filed Complaint (Motion to Dismiss), at 3.

further claimed that the Administrator had an obligation to withdraw the Administrator's Motion for Judgment on the Pleadings and include the "correct information, instead of allowing the Motion to go forward with the erroneous information."[22]

On May 31, 2019, the Administrator filed its Opposition to Respondent's Answer to Complaint and Motion to Dismiss Late-Filed Complaint. He recalled that "[w]hen the undersigned asked [r]espondent's counsel if he received the Complaint by other means, [r]espondent's [c]ounsel refused to answer and reiterated he had not received it by FedEx."[23] The Administrator asserted that the Complaint was timely served under § 821.8(a)[24] because "service" is the date of mailing.[25] He further asserted that the United States Postal Service (USPS) First-Class mail is an NTSB-authorized method of service.[26] Acknowledging that the Complaint incorrectly reflected service by FedEx, he argued that "this oversight does not … lead to the conclusion that the Complaint had not been properly served on [r]espondent and his counsel by USPS [F]irst-[C]lass mail."[27]

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[22] *Id*. at 2.
[23] Complainant's Opposition to Respondent's Answer to Complaint and Motion to Dismiss Late-Filed Complaint (Complainant's Opposition), at 2.
[24] Section 821.8(a) provides in relevant part that "[c]opies of all documents filed with the Board must be simultaneously served on (*i.e.*, sent to) all other parties to the proceeding, on the date of filing, by the person filing them. A certificate of service shall be a part of each document and any copy or copies thereof tendered for filing, and shall certify concurrent service on the Board and parties." Notably, § 821.8(e) states that "[t]he date of service shall be determined in the same manner as the filing date is determined under § 821.7(a)(4)." Section § 821.7(a)(4) provides in pertinent part that "[d]ocuments shall be deemed filed . . . on the mailing date shown on the certificate of service."
[25] *See, e.g.*, *Administrator v. Corrigan*, NTSB Order No. EA-4806, at 7 (1999).
[26] Complainant's Opposition, at 3-4.
[27] *Id*. at 4.

The Administrator argued that because the Complaint has not been returned to him, "it may be presumed to have been delivered to [r]espondent's [c]ounsel."[28] The Administrator also noted that he sent the Complaint directly to respondent using the same address as the Emergency Order, which respondent timely appealed; the Administrator noted that the Complaint was not returned to sender; thus, the Administrator presumed service to respondent and that the Complaint was effective on April 5, 2019. The Administrator argued that by not serving an answer until after April 29, 2019, respondent's Answer was untimely.

Even assuming arguendo that respondent did not receive the Complaint in April but in May, the Administrator argued that respondent failed to provide good cause for his untimely May 23, 2019, Answer even knowing the existence of the Complaint at least by May 2, 2019, when the Administrator filed its Motion to Deem Allegations Admitted. The Administrator noted that respondent's counsel waited a full 20 days after electronically receiving the Complaint via e-mail on May 3, 2019, before filing an Answer. Based on precedent, the Administrator asserted that the Board should not entertain late-submitted answers without a showing of good cause.[29]

On June 7, 2019, respondent served a Motion to Correct the Record of Facts Submitted by FAA Response to Administrator's Motion to Dismiss Late Filed Complaint. He reiterated that the Complaint "was never received by [r]espondent's [c]ounsel."[30] Further, respondent clarified

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[28] *See* Declaration of Deborah Hervey, attachment to FAA's Opposition to Respondent's Answer and Motion to Dismiss Late-Filed Complaint (May 30, 2019). *See, e.g.*, *Mahon v. Credit Bureau of Placer County, Inc.*, 171 F.3d 1202 (9th Cir. 1999) (In connection with documents sent via First-Class mail, the Court observed that "[u]nder the common law Mailbox Rule, 'proper and timely mailing of a document raises a rebuttable presumption that it is received by the addressee…'").

[29] *Administrator v. Diaz*, NTSB Order EA-4990 (2002). *Accord Administrator v. Jimenez*, NTSB Order No. EA-5779 (2016); *Administrator v. Bandiola and Bagamaspad*, NTSB Order No. EA-5677 (2013).

[30] Motion to Correct the Record of Facts Submitted by FAA Response to Administrator's Motion to Dismiss Late Filed Complaint, at 1 (June 7, 2019).

that when asked "'if [Mr. Moulis] received the Complaint by other means, [c]ounsel for the FAA represented to the Court that '[r]espondent's [c]ounsel refused to answer . . . .' This statement is categorically untrue."[31] Mr. Moulis maintained that he did not know whether respondent had knowledge of the Complaint and insisted that his law office did not receive it in April.

B. Law Judge's Order

On June 13, 2019, the law judge denied respondent's Motion to Dismiss the Administrator's Complaint, granted the Administrator's Motion to Deem the Allegations of the Complaint admitted, and terminated the proceeding after entering judgment on the pleadings in favor of the Administrator.[32] At the outset, the law judge cited to 49 C.F.R. § 821.31, which governs the complaint-and-answer process in non-emergency air safety cases before the NTSB.[33]

The law judge noted that where the Board's emergency rules are inapplicable, the parties may serve documents by First-Class mail in which service occurs on the date of mailing.[34] He noted that the Administrator served copies of the Complaint to respondent and Mr. Moulis by First-Class mail on April 5, 2019. The law judge found that the Administrator's misidentification

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[31] *Id*. at 2.
[32] Order Entering Judgment on the Pleadings in Favor of Administrator, at 6.
[33] 49 C.F.R. § 821.31 Complaint procedure. (a) *Filing, time of filing and service on respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint. The Administrator shall . . . file the complaint with the Board within 10 days after the date on which he . . . was served with the appeal by the respondent, and shall simultaneously serve a copy of the complaint of the respondent . . . .

(b) *Answer to complaint*. The respondent shall . . . file with the Board an answer to the complaint within 20 days after the date on which the complaint was served by the Administrator, and shall simultaneously serve a copy of the answer on the Administrator. Failure the respondent to deny the truth of any . . . allegations in the complaint may be deemed an admission of the truth of the allegations not answered. The answer shall also identify any affirmative defenses the respondent intends to raise at the hearing.
[34] Order Entering Judgment on the Pleadings in Favor of Administrator (Order Entering Judgment), at 4.

of the method of service as FedEx "neither invalidates the [C]omplaint's service by [F]irst[-C]lass mail nor requires a finding that service occurred after April 5."[35]

Because the Administrator served the Complaint within the 10-day timeframe per § 821.31(a), the law judge denied respondent's Motion to Dismiss the Complaint. The law judge noted that based on precedent, "a late-filed [C]omplaint is not necessarily fatal to an enforcement case, and . . . unless it is shown that the respondent's ability to defend against the charges was prejudiced by the delay, the lateness provides no grounds for dismissal."[36]

As for respondent's late-filed Answer, the law judge stated that the standard to accept such an Answer is whether the respondent has shown good cause for the delayed submission.[37] Here, the law judge did not find good cause and explained that Mr. Moulis "has engaged in the litigation of air safety enforcement cases before the Board for many years, should have been well-aware of the [C]omplaint's allegations—and ready to admit, deny or otherwise respond to them—before the revocation order was formerly filed and served . . . as the [C]omplaint."[38]

The law judge acknowledged Mr. Combs' letter dated on April 5, 2019, informing Mr. Moulis that the Complaint had been served that day.[39] The law judge concluded that "for respondent's counsel to ignore this and proceed as if service of the [C]omplaint remained outstanding without making any inquiries of this office or the Administrator's counsel during the following four weeks is strongly suggestive of a lack of diligence on his part."[40] The law judge clarified that he did not consider the Administrator's argument of also serving the Complaint to

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[35] *Id*. at 4.
[36] *Id*. n. 4.
[37] *Diaz, supra* note 29, *aff'd sub nom, Diaz v. Dep't of Transp.*, 65 Fed. App. 594 (9th Cir. 2003).
[38] Order Entering Judgment, at 5.
[39] *Id*.
[40] *Id*.

the respondent "because, once his counsel entered an appearance as his representative in this proceeding, said counsel was the proper person to be served with all documents."[41]

The law judge noted that even when receiving the Complaint electronically on May 3, 2019, Mr. Moulis' "failure to submit an answer within a reasonable amount of time following such receipt must be viewed as demonstrative of a lack of due diligence."[42] He further acknowledged the paralegal's e-mail regarding Mr. Moulis' hospitalization "for over a week"; the law judge found that Mr. Moulis had ample opportunity (approximately 10 days) after receiving the Complaint by e-mail to file an Answer before his hospitalization.[43] Thus, the law judge found no good cause for the delay in the submission of respondent's Answer.[44] Accordingly, the law judge affirmed the Administrator's revocation, entered a judgment on the pleadings in favor of the Administrator, and terminated this proceeding on that basis.[45]

C. Issues on Appeal

Respondent does not challenge the sufficiency of the pleadings in the Complaint or the FAA's basis for revoking his mechanic certificate and IA. Rather, he argues that he was improperly served the Complaint, and challenges the law judge's finding that his Answer was untimely and that good cause did not exist to justify his delinquency. Specifically, respondent argues that the technical error in the Certificate of Service attached to the Complaint effectively nullified its service. Moreover, respondent argues that he did not actually receive the Complaint until the Administrator e-mailed it to him on May 3, 2019, and thus, that the Complaint was late.

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[41] *Id*. n. 7.
[42] Order Entering Judgment, at 5.
[43] *Id*. n. 8.
[44] *Id*. at 5.
[45] *Id*. at 6.

Respondent disagrees that Mr. Moulis should have been "well-versed" in the NTSB's appeal process and "well aware" of the Administrator's allegations.[46] Insisting that the Administrator failed to send the Complaint in April 2019, respondent argues that "the[re] is no rule that permits the [FAA] to forgo service of process because [c]ounsel for the [r]espondent is 'well versed' in what may transpire during the enforcement process."[47] He further insists that Mr. Combs' April 5, 2019, letter "is not sufficient to place the undersigned on notice that a [c]omplaint had been filed since it too does not comply with the rules."[48] Also, respondent disputes the law judge's finding that he lacked good cause for his untimely Answer, stating that the law judge knew Mr. Moulis "was fighting a life-threatening illness during this period."[49]

The Administrator asserts that the law judge's determination that respondent's Answer was untimely is in accordance with the Board's Rules of Practice and applicable precedent. First, the Administrator argues that respondent does not and cannot establish prejudice from the technical error in the Certificate of Service.[50] Second, the Administrator maintains that respondent's contention that service did not occur until he received the Complaint is not supported by the Board's Rules of Practice or case law, and respondent is unable to cite any legal support for his position.[51] Third, the Administrator disputes respondent's bald assertion that "the [FAA] via its lower[-]level employees are attempting to convince this Court that service was proper when it was not made at all . . . ."[52] The Administrator notes that there were no statements submitted from Mr. Moulis' office secretaries, who respondent claimed were "all willing to

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[46] Appeal Br., at 2.
[47] *Id*.
[48] *Id*.
[49] *Id*. at 3.
[50] Reply Br., at 7.
[51] *Id*. at 8.
[52] *Id*. at 9.

testify under oath that no document came from the FAA during this [unspecified] period."[53] Furthermore, respondent never provided his own sworn statement about not receiving the Complaint.[54] Finally, the Administrator argues that it was not an abuse of discretion for the law judge to conclude that respondent lacked good cause for his untimely Answer to the Complaint.

2. *Decision*

On appeal, we review the law judge's decision *de novo*.[55]

A. Proof of Service

For non-emergency cases, § 821.7(a)(4) provides in relevant part, "[d]ocuments shall be deemed filed on the . . . mailing date shown on the certificate of service…." Moreover, § 821.8(b)(1) states that "[s]ervice of documents by any party on any other party shall be accomplished by any method prescribed in § 821.7(a)(3) for the filing of documents with the Board,"[56] including USPS First-Class mail or overnight delivery service.[57] Here, the record establishes that the Administrator served the Complaint on respondent and his counsel via First-Class Mail. Furthermore, the Administrator correctly used one of the NTSB's legally-prescribed methods of service, and mailed the Complaint to the address of record provided by respondent's

[53] *Id*.
[54] *Id*.
[55] *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); *Administrator v. Schneider*, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).
[56] 49 C.F.R. § 821.8(b)(1).
[57] 49 C.F.R. § 821.7(a)(3).

counsel.[58] We find the Administrator's typographical error regarding the method of service immaterial because it did not affect the due date of respondent's Answer to the Complaint.[59]

Notably, the Administrator never stated that the April 5, 2019, date reflected in the Certificate of Service was incorrect. Ms. Hervey clarified in her affidavit that only the type of service was incorrectly documented. Nevertheless, respondent argues that the Administrator "had an obligation to withdraw and change the Motion to include the correct information, instead of allowing the Motion to go forward with erroneous information."[60] The Board is unaware of any law or regulation mandating such an action, and indeed, notes that the Administrator filed an errata, correcting the non-material typographical error on the Certificate of Service.

Respondent's argument that his actual receipt of the Complaint on May 3, 2019, serves as the appropriate service date is belied by both Board precedent and our Rules of Practice. As we have previously held, where documents are served via First-Class mail, the date of service is the date of mailing.[61] Since the Administrator served the Complaint by mail on April 5, 2019, the due date for respondent to Answer would have been no later than April 29, 2019. Because respondent submitted his Answer approximately one month later on May 23, 2019, we agree with the law judge that respondent's Answer was untimely.

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[58] Under 821.8(c), "[e]xcept for electronic mail, personal service, parties shall be served at the address appearing in the official record…."

[59] The Board acknowledges the Administrator's argument that the Complaint was not returned to him, implying that it was delivered to Mr. Moulis. However, the Board will not address this argument as it has been established that the date of service is April 5, 2019, as reflected by the Certificate of Service.

[60] Appeal Br., at 3.

[61] *See Administrator v. Delgado*, NTSB Order No. EA-5825, at 4-5 (2017) ("the date of service for documents served by mail is determined by the date of service, not the date of receipt.").

B. Application of the Good Cause Standard

Respondent asserts good cause for his late-filed response by stating that Mr. Moulis was hospitalized with a life-threatening illness. The Board, however, has long held that it will not entertain untimely appeals without a showing of good cause for the delay[62] and strictly adheres to this standard of timeliness.[63] Good cause for untimely appeals is defined by two criteria: factors outside of respondent's control prevented him from knowing or acting upon the Emergency Order, and once he was aware, he diligently initiated his appeal. Here, respondent's arguments for his untimely Answer do not meet the good cause criteria.

The Board notes that the Administrator did not forgo service of process of the Complaint, as Mr. Moulis asserts. The type of service reflected on the Certificate of Service was merely a typographical error. Again, the Administrator presented an affidavit that the Complaint was served on April 5th. The judge noted that "respondent's counsel, who has engaged in the litigation of air safety enforcement cases before the Board for many years, should have been well-aware of the [C]omplaint's allegations—and ready to admit, deny or otherwise respond to them . . . ."[64] And given his experience, Mr. Moulis could have prepared an Answer knowing that the Emergency Order would later serve as the Complaint, especially when the wording in both documents was the same. Moreover, the Board agrees with the law judge that with 37 years of practice, Mr. Moulis should have acted with greater due diligence when Mr. Combs explicitly notified him that the Administrator filed a Complaint on April 5th and reminded Mr. Moulis of his duty to timely file an Answer. As we have noted in *Administrator v. Diaz*,[65] "failure to file a

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[62] 14 C.F.R. § 821.11(a); *Administrator v. Hooper*, 6 N.T.S.B. 559, 560 (1988), on remand from *Hooper v. Nat'l Transp. Safety Bd*., 841 F.2d 1150 (D.C. Cir. 1988).
[63] *Hooper*, note 81.
[64] Order Entering Judgment, at 5.
[65] *Diaz, supra* note 29, *aff'd sub nom*, *Diaz v. Dep't of Transp.*, 65 Fed. App. 594 (9th Cir. 2003).

timely Answer was due to counsel's interpretive error, an error the Board found not to constitute good cause in light of the clear instructions in the case manager's letter and our rules."[66] Thus, one would expect Mr. Moulis, in a timely manner, to inform Mr. Combs and/or the Administrator that he did not receive the Complaint. Instead, Mr. Moulis inexplicably waited until May 20, 2019, to have his paralegal e-mail, "we have yet to receive a [C]omplaint."[67]

Moreover, parties are responsible for knowing our Rules of Practice and are expected to know and abide by deadlines.[68] Here, respondent timely filed a Notice of Appeal to the Emergency Order, which exemplifies his awareness of the Board's Rules of Practice.[69] Also, respondent is represented by counsel, who with over three decades of experience should be familiar with the Board's rules. The Board notes that the Administrator timely served Mr. Moulis, and while there was no legal obligation for the case manager to do so, Mr. Combs explicitly notified Mr. Moulis of when the clock started running on respondent's Answer.

Further, Mr. Moulis did not submit information regarding his hospitalization. In general, the Board has held in the past that an attorney's illness does not amount to good cause, particularly where no documentation has been offered to support the hospitalization.[70] Here,

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[66] *Id*. at 5 (citing *Administrator v. Browning*, 6 N.T.S.B. 500 (1998)).
[67] OALJ Acknowledgement Letter, at ¶ 2 (emphasis added).
[68] *Administrator v. Bruington*, NTSB Order No. EA-5335 (2007) (citations omitted). S*ee also Diaz*, *supra* note 29 at 4 (citing *Administrator v. Hamilton*, NTSB Order No. EA-3496 (1992)).
[69] In *Ricotta*, respondent's counsel was aware of the requirements of 49 C.F.R. § 821.48(a) as he timely filed respondent's first brief. *Administrator v. Ricotta*, NTSB Order No. EA 5543 (2010). Section 821.48(a) provides that "each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, or a brief in support of the appeal."
[70] *Administrator v. Gallaway*, NTSB Order No. EA-5487 (2009) (The Board found respondent did not establish good cause and noted that "respondent did not provide any evidence, such as affidavits or other records, to support his statement that his original attorney had been hospitalized."); *Administrator v. Horna*, NTSB Order No. EA-5720 (2014) (The Board

even if he did submit such evidence, the Board notes that it was on May 20th that Ms. Burrows informed the OALJ that Mr. Moulis was hospitalized for over a week. One week from the date of that e-mail would date the onset of his hospitalization to May 13, 2019, which is after the April 29th due date of his Answer. Thus, Mr. Moulis did not establish good cause for his untimely Answer.

Therefore, respondent failed to demonstrate the first criterion of the justification for good cause to accept the late-filed Answer; we are unconvinced that circumstances beyond respondent's control prevented him from knowing about the Complaint. Because respondent failed to meet this first criterion, the second criterion requiring diligence need not be reviewed. Thus, we do not find that respondent had good cause for filing his untimely Answer.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The law judge's Order Entering Judgment on the Pleadings in Favor of the Administrator is affirmed.

HOMENDY, Chair, LANDSBERG, Vice Chairman, GRAHAM, CHAPMAN, Members of the Board, concurred in the above opinion and order.

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contrasted *Horna* with *Administrator v. Bond*, NTSB Order No. EA-5671 (2013): "The medical records . . . in *Bond* established [that Mr. Bond]'s attorney was in the hospital on the date Mr. Bond's appeal brief was due, whereas in the case at hand, [Mr. Horna]'s attorney was in the hospital approximately six weeks before the appeal commenced.").

Served: June 13, 2019

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

* *

DANIEL K. ELWELL,
ACTING ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v. Docket SE-30635

HARVINDER S. PUJJI,

Respondent.

* *

ORDER ENTERING JUDGMENT ON THE PLEADINGS IN FAVOR OF ADMINISTRATOR

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On March 25, 2019, the Administrator of the Federal Aviation Administration ("FAA") issued an order revoking, on an emergency basis, respondent's airman mechanic certificate with airframe and powerplant ratings and inspection authorization, for alleged violations of §§ 43.12(a)(1) and 43.15(a)(1) of the Federal Aviation Regulations ("FAR," codified at 14 C.F.R.). Respondent, through counsel, filed an appeal from that order and waived the applicability of the Board's rules governing emergency proceedings in this matter on April 4, 2019. This Order stems from motions filed by the parties relating to this proceeding's complaint and answer process following the submission of respondent's appeal and waiver.

I. Rules Governing the Complaint and Answer Process

The complaint and answer process in non-emergency air safety enforcement proceedings before the National Transportation Safety Board is governed by Rule 31 of the Board's Rules of Practice (49 C.F.R. § 821.31), which provides:

> § 821.31 Complaint procedure.
>
> (a) *Filing, time of filing and service on respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint. The Administrator shall ... file the complaint with the Board within 10 days after the date on which he or she was served with the appeal by the respondent, and shall simultaneously serve a copy of the complaint on the respondent....
>
> (b) *Answer to complaint.* The respondent shall ... file with the Board an answer to the complaint within 20 days after the date on which the complaint was served by the Administrator, and shall simultaneously serve a copy of the answer on the Administrator. Failure by the respondent to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered. The answer shall also identify any affirmative defenses that the respondent intends to raise at the hearing.

II. Pertinent Information and Filings

The Administrator reissued the revocation order as the complaint in this proceeding and filed it with this office by e-mail on April 5, 2019. The complaint's certificate of service stated that it was served on that date on both respondent (at the same address to which the order was sent to him) and his counsel (at the address appearing in the service section of this order) by Federal Express ("FedEx") overnight delivery service.

Subsequently on April 5, 2019, this office's Case Manager transmitted to respondent's counsel by e-mail a letter acknowledging the receipt of respondent's appeal, which informed him (emphasis added):

> The appeal you filed yesterday, on behalf of Mr.Pujji .... will be handled in accordance with the Board's Rules of Practice (49 CFR Part 821) ....
>
> Rule 821.31(b) requires you to file an answer that contains an admission or denial of each allegation in the complaint. Failure to respond to each allegation may be deemed an admission of any charges not answered. *To be timely, the answer must be filed within 20 days of the date the complaint is served (which is today).* An answer form is available ... on our website. You must also serve FAA counsel.

No answer to the complaint had been received as of May 2, 2019, and, on that date, the Administrator's counsel filed a motion to deem the complaint's allegations admitted and for the entry of a judgment on the pleadings in favor of the Administrator based on respondent's failure to file a timely answer.

On May 6, 2019, counsel for the Administrator submitted to this office an "Errata" to the complaint, which noted that its certificate of service had "incorrectly indicated that the Complaint had been sent to Respondent and his counsel by FedEx," when, in actuality, the legal technician who transmitted copies of the complaint to respondent and his counsel had done so via first-class mail.[1] A copy of the errata was sent to respondent's counsel by e-mail on May 6.

On May 20, 2019, counsel for the Administrator sent this office an e-mail, copied to respondent's counsel, which inquired as to the status of the Administrator's motion to deem the complaint's allegations admitted and for judgment on the pleadings. In a subsequent May 20 e-mail, a paralegal associated with respondent's counsel's practice related that counsel for the Administrator "did not provide this office with a copy of the complaint until 5/3/2019 .... we received an e-mail from [the Administrator's counsel] stating that his secretary made a clerical error and sent the complaint U.S. Mail which made it not able to track." The paralegal stated that she "went through every mail in this office and ... have not found a copy of the complaint via mail." She added that respondent's counsel "was under the impression," after speaking to counsel for the Administrator, "that the motion was either moot or will be withdrawn." She also noted that respondent's counsel "has been hospitalized on an emergency for over a week," and that he was still in the hospital and expected to be released on May 23, 2019.

On May 23, 2019, counsel for respondent filed an answer to the complaint, along with a motion to dismiss the complaint for lack of timely filing. That motion begins by asserting that the answer was timely filed because respondent's counsel: (1) "inquired to ... Counsel for the Administrator concerning the whereabout of the overdue Complaint" after not receiving it; (2) was informed "that the Certificate of Service ... was incorrect" due to a clerical error; (3) "never received" the copy of the complaint that was sent to his office by first-class mail; and (4) "first ... learned of a Complaint ... May 3, 2019," as a result of which the answer was due 20 days after *that* date.

In arguing that the complaint should be dismissed, respondent's motion contends, "Since the complaint was wholly mis-filed and Respondent's counsel received the Complaint via email on May 3, 2019," it "was approximately 50 days late."

That filing also asserts that the Administrator's motion to deem the complaint's allegations admitted and for judgment on the pleadings should not be considered because it contains "erroneous material information."

On May 31, 2019, counsel for the Administrator submitted a reply to respondent's motion, which maintains that the complaint was served on respondent

[1] Copies of the complaint and errata are attached hereto.

and his counsel by proper (although initially misidentified) means within 10 days of the appeal's service, and it was therefore timely under Rule 31. As to respondent's counsel's contention that the answer in this matter was not due until May 23 because he first received the complaint when counsel for the Administrator sent him a copy by e-mail on May 3, that filing observes that the first-class mailing of the complaint to respondent's counsel was not returned to the FAA office that issued it, and posits that it should, therefore, "be presumed to have been delivered." In support of this, the reply notes that, when counsel for respondent contacted the Administrator's counsel after receiving the motion to deem the complaint's allegations admitted and for judgment on the pleadings "and informed him that the Complaint was not delivered via FedEx," the Administrator's counsel "asked ... if he received the Complaint by other means," and respondent's counsel "refused to answer and reiterated he had not received it by FedEx." The reply further points out that the complaint was "also sent ... to Respondent himself, at his address of record" by first-class mail that was not returned; thus, "it can be reasonably presumed" that respondent personally received it.

On June 7, 2019, counsel for respondent filed a "Motion to Correct the Record of Facts Submitted" in the reply, in which he disputes the Administrator's counsel's account of the May 3 telephone conversation they had as "categorically untrue," and relates that he informed said counsel that he "had never seen ... heard of" or "had knowledge of" the complaint, and his "statements during that phone conversation were to locate a Complaint because I had not received it by any method including FedEx; Regular US Mail; email; or any other service."

III. Analysis

In cases where the Board's emergency rules are not applicable, parties may serve documents on each other by first-class mail,[2] and service by that means is deemed to have occurred on the date of mailing.[3] Here, both respondent and his counsel were served with the Administrator's complaint by first-class mail on April 5, 2019. Although the certificate of service initially erroneously indicated the complaint was served on them by FedEx overnight delivery, the Administrator later amended it to accurately reflect that such service was accomplished by first-class mail. Despite respondent's counsel's suggestions to the contrary, the Administrator's initial mistake in identifying the method of service neither invalidates the complaint's service by first-class mail nor requires a finding that service occurred after April 5.[4] Accordingly,

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[2] *See* Rules 7(a)(3) and 8(b)(1) (49 C.F.R. §§ 821.7(a)(3) and 8(b)(1)).

[3] *See* Rules 7(a)(4) and 8(e) (49 C.F.R. §§ 821.7(a)(4) and 8(e)).

[4] Since the complaint was, thus, filed and served within the 10-day timeframe designated in Rule 31(a), respondent's motion to dismiss it for lack of timeliness will be denied. However, even if the complaint could not be deemed to have been served prior to May 3, respondent's counsel's argument that dismissal must follow is mistaken, as the Board has held that "a late-filed complaint is not necessarily fatal to an enforcement case, and ... unless it is shown that the respondent's ability to defend against the charges was prejudiced by the delay, the lateness provides no grounds for dismissal." *Application of Eden*, NTSB Order EA-4218 at 6 (1994), citing *Adm'r v. Callender and Watkins*, NTSB Order EA-3934 at 5 n.5 (1993). *See also Adm'r v. May*, 2 NTSB 2578 (1976), and *Adm'r v. Kolek*, 5 NTSB 1437, 1438 (1986).

respondent's Rule 31(b) deadline for filing an answer to the complaint was April 25, 2019, and the submission of his answer on May 23, 2019 was belated.

In *Administrator v. Diaz*, NTSB Order EA-4990 (2002), affirmed *sub nom.*, *Diaz v. Department of Transportation*, 65 Fed. Appx. 594 (9th Cir. 2003), the Board, noting that the submission of an answer is critical to the air safety enforcement appeal litigation process, affirmed an administrative law judge's ruling not accepting a respondent's late-filed answer, and, on the basis of the resulting deemed admissions, entering a judgment on the pleadings against him. There, the Board held that the standard to be applied in deciding whether a late-filed answer should be accepted is whether the respondent has shown good cause for the delay in its submission.[5]

Here, although counsel for respondent has represented that his initial receipt of the complaint occurred via e-mail on May 3, 2019 (after he contacted the Administrator's counsel following his receipt of the motion to deem the complaint's allegations admitted and for judgment on the pleadings), it must be noted that Rule 31(a) provides that the order from which an appeal is taken shall serve as the complaint. Thus, respondent's counsel, who has engaged in the litigation of air safety enforcement cases before the Board for many years, should have been well-aware of the complaint's allegations — and ready to admit, deny or otherwise respond to them — before the revocation order was formally filed and served for pleading purposes as the complaint. Additionally, the letter the Case Manager sent him on April 5, 2019, acknowledging this office's receipt of respondent's appeal, specifically informed him that the complaint had been served on that date. For respondent's counsel to ignore this and proceed as if service of the complaint remained outstanding without making any inquiries of this office or the Administrator's counsel during the following four weeks is strongly suggestive of a lack of diligence on his part. Finally, even if his inaction prior to receiving a copy of the complaint by e-mail on May 3, 2019 could be deemed suitable under the circumstances, his failure to submit an answer within a reasonable amount of time following such receipt must be viewed as demonstrative of a lack of due diligence.[6] As a result, I must find that that there was no good cause for the delay in the submission of respondent's answer here.[7] Accordingly, I will, pursuant to *Diaz*, deem all of the complaint's factual allegations to have been admitted by respondent under Rule 31(b).

Such allegations include two counts intentional falsification pertaining to aircraft maintenance logbook entries respondent made in 2016 and 2017. Since those

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[5] NTSB Order EA-4990 at 4-5. *See also 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).

[6] While I note that a paralegal from counsel for respondent's office related on May 20 that he had been hospitalized "for over a week," this would indicate that he had ample opportunity (approximately 10 days) after receiving a copy of the complaint by e-mail to file respondent's answer before he was hospitalized.

[7] In making this determination, I did not consider the service of the complaint that was made directly on respondent because, once his counsel entered an appearance as his representative in this proceeding, said counsel was the proper person to be served with all documents. *See* Rules 7(f) and 8(a)(2) (49 C.F.R. §§ 821.7(f) and 8(a)(2)).

allegations have been deemed admitted and are sufficient to establish the violations of FAR § 43.12(a)(1) alleged in the complaint, and the Board has consistently held that intentional falsification, if proven (or, as in this case, deemed admitted), establishes that the falsifier lacks the qualifications — in terms of care, judgment and responsibility — to be the holder of *any* FAA-issued certificate,[8] I will, without reference to respondent's additional violations of FAR § 43.15(a)(1), find that affirmance of the Administrator's revocation action is warranted. Accordingly, I am compelled to enter a judgment on the pleadings in favor of the Administrator and terminate this proceeding on that basis.

THEREFORE, IT IS ORDERED that respondent's motion to dismiss the Administrator's complaint is DENIED;

IT IS FURTHER ORDERED that the Administrator's motion to deem the allegations of the complaint admitted and for judgment on the pleadings is GRANTED; and

IT IS FURTHER ORDERED that a judgment on the pleadings is hereby ENTERED in favor of the Administrator, and this proceeding is terminated on that basis.

Entered this 13th day of June, 2019, at Washington, D.C.

Alfonso J. Montaño
Chief Administrative Law Judge

[8] *See, e.g., Adm'r v. McCarthney, et al.*, 7 NTSB 670, 672 (1990); *Adm'r v. Croll*, NTSB Order EA-4660 at 7 (1996).

APPEAL (DISPOSITIONAL ORDER)

Important: All appeal-related filings described below must also be simultaneously served on all other parties to this proceeding.

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) to:

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
FAX: (202) 314-6158
E-mail: aljappeals@ntsb.gov

Please note: The Office of Administrative Law Judges prefers to receive appeals via e-mail.

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. That brief must be filed directly with the:

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

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 directly with the Office of General Counsel within 30 days after that party was served with the appeal brief.

All papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel.

The Board directs your attention to Rules 7, 8, 43, 47, 48 and 49 of its Rules of Practice (49 C.F.R. §§ 821.7, 821.8, 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.