

SERVED: July 28, 2026

NTSB Order No. EA-6030

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 28th day of July, 2026

_____	)	
BRYAN BEDFORD, ¹	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket SE-30970
	)	
ZACHARY E. BYERS,	)	
	)	
Respondent.	)	
_____	)	

OPINION AND ORDER

Respondent Zachary E. Byers, through counsel, appeals Administrative Law Judge V. Stuart Couch's Written Initial Decision, issued on March 19, 2024 (Decision).² By that Decision, the law judge affirmed the Administrator's suspension of respondent's airline transport pilot (ATP) certificate for a period of 270 days due to respondent's alleged violations of the following: 14 C.F.R. §§ 91.13(a) (Careless or reckless operation); 91.147(e) (Passenger-carrying

¹ The original caption for this matter was *Stephen M. Dickson, Administrator, Federal Aviation Administration v. Zachary E. Byers*.

² A copy of the law judge's Decision is attached.

flights for compensation or hire); 91.119(a), (b), and (d) (Minimum safe altitudes: General); and, 136.37(a)(2) (Overflights of national parks and tribal lands).

I. Background

A. Facts

The Administrator issued the subject order of suspension on April 20, 2021. The Administrator served the order via certified mail and first class mail on respondent at his correct address of record with the FAA.³ A courtesy copy of the order, which was addressed to respondent's counsel, however, contained a typographical error and was sent to "22 S. Cherry Street, Winston-Salem, NC 27101," rather than "224 S. Cherry Street, Winston-Salem, NC 27101."⁴ On May 4, 2021, respondent, through counsel, timely submitted a notice of appeal via fax.⁵ The Administrator filed the order of suspension as the complaint (Complaint) and served it on respondent's attorney via the attorney's correct email address on May 5, 2021.⁶ The NTSB's Office of Administrative Law Judges acknowledged receipt on May 6, 2021, and docketed the appeal.⁷

The Complaint alleges that on or about August 1, 2020, respondent acted as pilot-in-command of a helicopter (Aircraft N723RG), on a commercial air tour operation flight in North Carolina in the vicinity of Chimney Rock State Park and over Blue Ridge Parkway.⁸ Such air tour operations require specific authorization.⁹ Blue Ridge Parkway is a national park, and no

³ Administrator's Reply Br. at 3, n. 1.

⁴ *Id.*

⁵ *Id.*

⁶ Administrator's Reply Br. at 3, n. 2.

⁷ Administrator's Reply Br. at 3.

⁸ Complaint at 1.

⁹ *Id.*

such authorization was issued for respondent's flight.¹⁰ During that flight, respondent flew over an open-air assembly of people in the vicinity of Chimney Rock State Park at a dangerously low level.¹¹ The Complaint further alleges that respondent created a hazard and operated Aircraft N723RG at an impermissibly low altitude.¹² Finally, the Complaint alleges respondent operated Aircraft N723RG in a careless or reckless manner so as to endanger the life or property of another.¹³

The Complaint states that respondent thus violated the following Federal Aviation Regulations: 14 C.F.R. § 91.13(a), by operating an aircraft in a careless or reckless manner so as to endanger the life or property of another; § 91.147(e), by failing to comply with the provisions of the Letter of Authorization as the operator of a passenger-carrying flight for compensation or hire; § 91.119(a), by operating an aircraft at an altitude that did not allow an emergency landing without undue hazard to persons or property on the surface; 91.119(b), by operating an aircraft over an open air assembly of persons, below an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft; § 91.119(d), by operating a helicopter at less than the minimum safe altitudes prescribed in §§ 91.119(b) and (c) while creating a hazard to persons or property on the surface; and, § 136.37(a)(2), by conducting air tour operations as a commercial operator over a national park or tribal land contrary to the conditions and limitations prescribed for that operator by the FAA.¹⁴

B. Procedural History

Respondent filed a Notice of Appeal on May 4, 2021, and the Administrator filed the

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 2-3.

order of suspension as the Complaint on May 5, 2021.¹⁵ Respondent submitted a request on June 18, 2021, to file his answer out of time, after missing the deadline of May 25, 2021.¹⁶ On July 1, 2021, the Administrator filed both an objection to respondent's request and a motion for summary judgment, citing respondent's failure to meet the filing deadline.¹⁷ Respondent's counsel filed a motion to withdraw from the case on September 15, 2021, and, on September 23, 2021, new counsel entered an initial appearance and requested an extension of time to file an answer.¹⁸ On October 1, 2021, the law judge denied the new counsel's request for an extension of time to file.¹⁹

On October 30, 2023, the law judge issued a Minute Order construing the Administrator's motion for summary judgment as a motion for judgment on the pleadings, deeming the allegations in the Complaint admitted, and setting new deadlines in the case for briefings relegated to the issue of the appropriateness of the sanction.²⁰ Respondent requested leave to pursue an interlocutory appeal on November 22, 2023, and the law judge denied respondent's request on December 28, 2023.²¹ Pursuant to the law judge's January 29, 2024, Scheduling Order, the Administrator submitted documentary evidence on the issue of sanction along with Proposed Findings of Fact, Conclusions of Law, and Written Argument; respondent filed an Opposition.²² The law judge then issued his Written Initial Decision that is the subject of this appeal on March 19, 2024, and respondent filed a Notice of Appeal on April 25, 2024.²³ The

¹⁵ Administrator's Reply Br. at 3; Decision at 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Administrator's Reply Br. at 4.

¹⁹ Administrator's Reply Br. at 5.

²⁰ Administrator's Reply Br. at 5; Decision at 1.

²¹ Administrator's Reply Br. at 5-6; Decision at 1-2.

²² Administrator's Reply Br. at 6.

²³ *Id.*

Administrator filed a motion to dismiss on May 31, 2024, and on June 7, 2024, the Board issued an order denying the Administrator's request.²⁴ In that same order, the Board granted respondent's motion to perfect his appeal to the Board out of time.²⁵

C. Issues on Appeal

Respondent submitted his appeal to the Board on June 7, 2024. Respondent asserts on appeal that the law judge abused his discretion when he granted the Administrator's motion for judgment on the pleadings and deemed the allegations in the Complaint admitted in accordance with 49 C.F.R. § 821.31(b) due to respondent's untimely answer.²⁶ Respondent also argues that the law judge denied respondent due process by failing to apply the excusable neglect standard under Rule 6 of the Federal Rules of Civil Procedure (FRCP), and that respondent's assertion that his delay resulted from the typographical error in respondent's counsel's mailing address would have met that standard.²⁷ The Administrator filed a reply brief on July 8, 2024, asserting that the law judge did not abuse his discretion in ruling that respondent failed to establish good cause for his untimely filing.²⁸ Further, the Administrator argues that the FRCP's excusable neglect standard does not apply, and that respondent failed to meet that standard regardless.²⁹

II. Decision

A. Standard of Review

On appeal, the Board reviews the law judge's conclusions of law in granting judgment on

²⁴ The Board's Order Denying Motion to Dismiss and Granting Request to Perfect Appeal Out of Time at 1-2.

²⁵ *Id.* (citing, *inter alia*, the hospitalization of respondent's counsel as good cause for the delay in filing respondent's appeal brief pursuant to 49 C.F.R. § 800.24).

²⁶ Appeal Br. at 1-5.

²⁷ *Id.*

²⁸ Administrator's Reply Br. at 1-10.

²⁹ *Id.* at 11-17.

the pleadings *de novo*.³⁰ The Board reviews the law judge's evidentiary determinations regarding good cause for late filings under a traditional abuse of discretion standard.³¹

B. Timeliness Requirement Strictly Enforced

As set forth since at least 1972, the Board strictly adheres to the standards of timeliness set out in its Rules of Practice, only excusing procedural defects upon a valid showing of good cause, because “undue laxity in the enforcement of our Rules of Practice will hinder the administration of justice in the long view by giving one party an unfair advantage over the other, and by removing the essential element of predictability from Board proceedings.”³² Parties are responsible for knowing the Rules of Practice and are expected to know and abide by deadlines.³³

C. Respondent's Answer Untimely

The Board finds no error in the law judge's determination that respondent's answer was untimely. As discussed *supra* at Section I.A., the Administrator properly served respondent's attorney with the Complaint in this case on May 5, 2021.³⁴ Though respondent alleges improper service based on a typographical error in his counsel's mailing address, the record shows that the Complaint was in fact sent to respondent's correct mailing address as well as respondent's

³⁰ *Administrator v. Jimenez*, NTSB Order No. EA-5779 at 4 (2016); *Administrator v. Smith*, NTSB Order No. EA-5646 at 8 (2013); *Administrator v. Frohmuth and Dworak*, NTSB Order No. EA-3816 at n.5 (1993); *Administrator v. Wolf*, NTSB Order No. EA-3450 (1991).

³¹ *Administrator v. Pujji*, NTSB Order No. EA-5905 at 12 (2021); *Administrator v. Bruington*, NTSB Order No. EA-5335 at 7 (2007); *Administrator v. Diaz*, NTSB Order No. EA-4990 at 5 (2002).

³² *Diaz*, *supra* n. 31 at 3 (quoting *Administrator v. Hayes*, 1 NSTB 2016, 2017 (1972)).

³³ *Pujji*, *supra* n. 31 at 15 (citing *Administrator v. Bruington*, NTSB Order No. EA-5335 (2007)).

³⁴ See 49 C.F.R. § 821.7(a)(3) (permitting service on the Board by electronic mail); 49 C.F.R. § 821.8(b)(1) (noting 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.”)

counsel's correct email address and that respondent received the acknowledgment letter, which noted that the Complaint had been filed on May 5, 2021.³⁵ The mailing address error was harmless as respondent in fact received the Complaint and his counsel timely filed a notice of appeal.³⁶ Such harmless error does not obviate respondent's obligation to timely file an answer to the Administrator's properly filed and served Complaint. Respondent had 20 days to file his answer, and the deadline was thus May 25, 2021.³⁷ Since respondent submitted his motion to file an answer out of time on June 18, 2021, more than 20 days after the deadline, the Board concurs with the law judge that the answer was untimely.³⁸

D. Law Judge's Grant of Motion for Judgment on the Pleadings Proper

A party may file a motion for judgment on the pleadings on the basis that, *inter alia*, no answer has been filed.³⁹ In response to the Administrator's motion for summary judgment, which the law judge construed as a motion for judgment on the pleadings, the law judge determined that the motion should be granted because respondent failed to timely file an answer.⁴⁰ The law judge further determined that this ruling did not violate respondent's rights.⁴¹ For the reasons discussed below, the Board concurs with the law judge's determination regarding respondent's untimely answer, and the Board also concurs that respondent's procedural rights were not violated by this determination.

The Board is bound under the Pilot's Bill of Rights to follow the FRCP to the extent

³⁵ Administrator's Reply Br. at 6, n. 6; Decision at 1.

³⁶ *Id.*

³⁷ 49 C.F.R. § 821.31(b).

³⁸ Administrator's Reply Br. at 10; Decision at 1-4.

³⁹ 49 C.F.R. § 821.17(c).

⁴⁰ Decision at 4.

⁴¹ *Id.* at 4-5.

practicable.⁴² FRCP Rule 6(b)(1) states that a federal court “may, for good cause, extend the time” when an act “may or must be done within a specified time.” The Rule further states that a party requesting an extension of time must show good cause by establishing the party failed to act due to “excusable neglect.” Though respondent argues that there was good cause for his initial failure to timely file an answer due to excusable neglect, the law judge assessed whether respondent’s failure to timely file his answer should be excused under the good cause standard established in Board precedent.⁴³ As the same result obtains regardless of whether the Board’s precedential good cause framework or FRCP Rule 6’s “excusable neglect” standard is applied, the Board need not rule on respondent’s assertion on appeal that the FRCP’s standard *must* always be applied pursuant to the Pilot’s Bill of Rights.⁴⁴

Each good cause standard will be discussed in turn. First, the law judge followed established Board precedent and thus examined: (1) whether circumstances beyond respondent’s control prevented his from either knowing of the order of suspension’s issuance or acting upon it within the prescribed filing period, despite the exercise of due diligence; and, (2) once respondent became aware of the order of suspension or was no longer prevented from acting upon it, whether respondent acted diligently in filing an answer.⁴⁵ The law judge held that the Administrator properly served the order of suspension as the Complaint on May 5, 2021, and that the answer “was not [filed] until 24 days [after the deadline] on June 18, 2021, which the Court

⁴² 49 C.F.R. § 821.5.

⁴³ Decision at 5.

⁴⁴ The Board has held that the FRCP’s definition of good cause does not necessarily control Board proceedings. *See, e.g., Administrator v. Kolodziejczyk*, NTSB Order No. EA-5909 at 42-43 (2021) (FRCP’s definition of good cause does not apply); *see also* Administrator’s Reply Br. at 11-13, Decision at 4-5.

⁴⁵ *See Administrator v. Miller*, NTSB Order No. EA-5921 at 3-4 (2022); *Administrator v. Harris*, NTSB Order No. EA-5875 at 7 (2020); *Administrator v. Capeles*, NTSB Order No. EA-5870 at 3 (2020).

finds was not sufficiently diligent to initiate the filing, and [respondent's] request for an extension of time to file an answer failed to demonstrate good cause."⁴⁶ The Board concurs with the law judge's determination that respondent was properly served with the Complaint and his allegation of improper service due to a typographical error in his counsel's mailing address failed to establish good cause for failing to timely file an answer.⁴⁷

Under FRCP Rule 6, respondent also fails to establish good cause. Rule 6 contains notably permissive language, and federal circuit court decisions have thus accorded wide discretion to federal district courts regarding determinations under the Rule.⁴⁸ Respondent contends that the law judge violated FRCP Rule 6 by refusing to adopt an excusable neglect standard.⁴⁹ Respondent fails, however, to explain how the law judge's Decision was not in accordance with the permissive language of Rule 6, which grants considerable deference to courts to extend, or not extend, a deadline upon a showing of good cause.⁵⁰ In federal decisions that delineate the line between ordinary and excusable neglect, failure to abide by an unambiguous court procedural rule rarely rises to the level of excusable neglect.⁵¹ Respondent's only proffered reason for the delay in the filing of his answer is respondent's contention that

⁴⁶ Decision at 5 (citing *Kolodziejczyk* (*supra* n. 44) at 43-44).

⁴⁷ As the timeliness of respondent's answer is the controlling issue in the instant appeal, the Board need not review the law judge's extensive analysis bolstering his determination that the sanction in this case is supported by a preponderance of the credible, probative, and reliable evidence and is not unwarranted in fact or unjustified in law.

⁴⁸ See, e.g., *Cohen v. Bd. Of Trustees of the Univ. of the D.C.*, 819 F.3d 476, 480 (D.C. Cir. 2016) (holding that "great deference" is given to a district court's Rule 6(b) decision.)

⁴⁹ Respondent's Br. at 8.

⁵⁰ *Supra* n. 48; Administrator's Reply Br. at 13.

⁵¹ See, e.g., *Dimmitt v. Ockenfels*, 407 F.3d 21, 24 (1st Cir. 2005) (stating that "inattention or carelessness, such as a failure to consult or to abide by an unambiguous court procedural rule, normally does not constitute 'excusable neglect.'"); *Advanced Estimating Sys., Inc. v. Riney*, 130 F.3d 996, 998 (11th Cir. 1997) (holding that "misunderstanding of the plain language of a rule cannot constitute excusable neglect such that a party is relieved of the consequences of failing to comply with a statutory deadline.")

service was not proper, which the Board does not concede given that it was actually and timely received.⁵² Therefore, even under the “excusable neglect” standard of FRCP Rule 6, respondent fails to establish good cause for his untimely answer.

E. Conclusion

The law judge did not abuse his discretion in determining that respondent failed to establish good cause for untimely filing his answer to the Administrator’s filing of respondent’s order of suspension as the Complaint. Further, Board precedent fully supports the law judge’s granting of the Administrator’s motion for judgment on the pleadings on that basis.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent’s appeal is denied;
2. The law judge’s Written Initial Decision is affirmed; and
3. The Administrator’s order of suspension is affirmed.

HOMENDY, Chairwoman; GRAHAM, Vice Chairman; CHAPMAN and DELEEUEW, Members of the Board, concurred in the above opinion and order.

⁵² See *supra* Section II.C.

Served: March 19, 2024

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

MICHAEL G. WHITAKER, ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

ZACHARY E. BYERS,

Respondent.

Docket: SE-30970

WRITTEN INITIAL DECISION

This is a proceeding before the National Transportation Safety Board (“Board”) pursuant to 49 U.S.C. § 44709(d) on the appeal of Zachary E. Byers (“the respondent”) from an order of suspension issued by the Federal Aviation Administration (“FAA” or “Administrator”). The parties are represented by counsels Zachary Berman for the Administrator, and Robert Schulte for the respondent.

For the reasons set forth below, the Court will deny the respondent’s appeal and affirm the Administrator’s Complaint.

I. Procedural history

On April 20, 2021, the FAA issued an order of suspension of the respondent’s airline transport pilot (“ATP”) certificate. On May 5, 2021, the respondent, through prior counsel, appealed the FAA’s order of suspension via email.¹ The same day, the Administrator filed the order of suspension as the Complaint in these proceedings. The respondent, through prior counsel, attempted to file an untimely answer on June 18, 2021. The Administrator filed a motion for summary judgment on July 1, 2021, which the Court granted as a motion for judgment on the pleadings in a Minute Order entered on October 30, 2023. In the same order the Court scheduled a hearing solely on the issue of sanction appropriateness.

On November 22, 2023, the respondent moved for reconsideration and requested leave to

¹ The respondent’s prior counsel signed the written notice.

pursue an interlocutory appeal of the Court's decision granting judgment on the pleadings. The Court denied the motion and the request in an order entered on December 28, 2023, which is adopted and incorporated by reference. In that order the Court also directed the parties to submit documentary evidence on the limited issue of sanction appropriateness, and to file any objections to the resolution of this case without an in-person hearing by January 25, 2024. In the absence of any such objections, the Court entered a scheduling order on January 29, 2024, and set deadlines for the submission of additional documentary evidence and any proposed findings or written arguments of counsel.

On February 8, 2024, the Administrator filed evidence on the issue of sanction appropriateness in the form of four witness affidavits and an excerpt from FAA Order 2150.3C, and moved for an extension of time to file his proposed findings of fact, conclusions of law, and written argument on the issue of sanction appropriateness. That same day the respondent filed objections to the Administrator's evidence and the Court's consideration of it in the absence of live witness testimony. In a Minute Order entered on February 14, 2024, which is adopted and incorporated by reference, the Court admitted the Administrator's evidentiary exhibits to the record over the respondent's objections, and granted the motion to extend the deadlines for both parties to submit proposed findings and written arguments.

On February 22, 2024, the Administrator filed proposed findings of fact, conclusions of law, and written argument of counsel ("Administrator's Argument"). The respondent filed his opposition to them, and the record was closed, on February 29, 2024.

II. Federal Aviation Regulation Violations

In its order of suspension issued on April 20, 2021, the FAA alleged that the respondent conducted a low-level helicopter flight near Chimney Rock State Park and the Blue Ridge National Parkway in North Carolina, as pilot-in-command of a commercial air tour operation. *See Complaint*, ¶¶ 2-12. Specifically, the Administrator alleged the respondent violated six Federal Aviation Regulations ("FARs"): 14 C.F.R. § 91.13(a) (operate an aircraft in a careless or reckless manner so as to endanger the life or property of another); 14 CFR § 91.147(e) (operate a passenger carrying flight for compensation or hire and fail to comply with the provisions of a Letter of Authorization); 14 C.F.R. § 91.119(a) (operate an aircraft at an altitude that did not allow, if a power unit failed, an emergency landing without undue hazard to persons or property on the surface); 14 C.F.R. § 91.119(b) (operate an aircraft over an open air assembly of persons, below an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft); 14 C.F.R. § 91.119(d) (operate a helicopter at less than the minimum safe altitudes prescribed in 14 C.F.R. § 91.119(b) and (c) while creating a hazard to persons or property on the surface); and 14 C.F.R. § 136.37(a)(2) (as a commercial operator conduct air tour operations over a national park or tribal land contrary to the conditions and limitations prescribed for that operator by the FAA).

A. Motion for Judgment on the Pleadings²

After the respondent filed his notice of appeal, the Administrator filed the order of suspension as the Complaint via email on May 5, 2021. *See* Exh. ALJ-1 at 1; 49 C.F.R. § 821.31(a). The following day, the Court’s case management analyst sent a letter via email attachment to the respondent’s prior counsel at email address “jdbyers@jdbyers.com” advising him the respondent had 20 days from the service of the Complaint to file an answer, which was May 25, 2021. *See* Exh. ALJ-1 at 4 (citing 49 C.F.R. § 821.31(b)); *see also* 49 C.F.R. § 821.10 (computation of time). The letter specifically advised the respondent that “[f]ailure to file a timely answer may be deemed an admission of the truth of the allegations not timely answered” and that “[a]ll filings during the pandemic must be via email.” *Id.*

On June 18, 2021, the respondent, through counsel, attempted to file an answer to the Complaint accompanied by a motion to “file an answer out of time.” In the motion, the respondent’s prior counsel asserted he “was not properly served with the Complaint” because the FAA mailed the Complaint to an incorrect address. The Court notes that this claim was not supported by evidence as it is merely a statement of counsel. Moreover, the Court finds this claim is demonstrably false as the respondent’s prior counsel was advised that all filings in these proceedings must be made via email; the record demonstrates the Complaint was sent to the counsel’s correct email address “jdbyers@jdbyers.com,” and was received and read by someone in his office. Exh. ALJ-1 at 4-6; 49 C.F.R. § 821.8(d)(3) (presumption of service when document transmitted by email and there is evidence to confirm its successful transmission to the intended recipient). The fact that the respondent’s prior counsel filed a motion to file an answer out of time did not automatically alter or extend the deadline for filing a timely answer in response to the Administrator’s Complaint. *See* 49 C.F.R. § 821.14(e). The Court finds that the purported answer filed by the respondent on June 18, 2021, is untimely and therefore appropriately stricken from the record.

In the absence of a timely answer, the Administrator filed an objection to the respondent’s motion to file an answer out of time along with a motion for summary judgment on July 1, 2021. The Court finds that the respondent’s prior counsel failed to file a reply to this summary judgment motion within 15 days after the service date, July 16, 2021. *See* 49 C.F.R. § 821.14(c). The respondent’s prior counsel withdrew his representation on September 15, 2021. His current counsel promptly filed a motion to extend the time to file a response to the Administrator’s motion for summary judgment on September 23, 2021, which the Court denied as untimely and for lack of good cause. *See* 49 C.F.R. §§ 821.11(a), 821.14(c).

B. Analysis

Due process in administrative proceedings requires only “the opportunity to be heard at a meaningful time and in a meaningful manner.” *See Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *Administrator v. Choure*, NTSB Order No. EA-5829 at 12 (2017) (due process requires notice and opportunity to be heard at a meaningful time and in a

² The Court hereby supplements its rulings stated in the Minute Order entered on October 30, 2023, which is adopted and incorporated by reference. The Court appends to the record various email communications with the parties as Exhibit ALJ-1. *See* 49 C.F.R. § 821.40.

meaningful manner) (cleaned up). When determining whether administrative procedures satisfy due process, courts generally weigh three elements: (1) “the Government’s interest”; (2) “the private interest”; and (3) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.” *See Busic v. Transportation Sec. Admin.*, 62 F.4th 547, 549-50 (D.C. Cir. 2023) (citing *Jifry v. F.A.A.*, 370 F.3d 1174, 1183 (D.C. Cir. 2004) (quoting *Mathews v. Eldridge*, 424 U.S. at 335)).

A party may file a motion for summary judgment on the basis that the pleadings and other supporting documents establish that there are no material issues of fact to be resolved and that the moving party is therefore entitled to judgment as a matter of law. 49 C.F.R. § 821.17(d). A party may file a motion for judgment on the pleadings 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. 49 C.F.R. § 821.17(c).

The respondent, through counsel, claims he has not been afforded due process in these proceedings because the Court did not consider an “untimely but otherwise non-prejudicial late Answer.” *See* Respondent’s Opposition to Administrator’s Argument of February 29, 2024, at 1. The respondent contends that the Court should ignore the “good cause” standard established by Board precedent for untimely filed answers because the Pilot’s Bill of Rights requires it to apply the “good cause” provision found in Federal Rule of Civil Procedure (FRCP) 6(b)(1). *See* Respondent’s Motion to Pursue Interlocutory Appeal Pursuant to 49 C.F.R. § 821.16 of November 22, 2023, at 2-5.

The respondent’s contention that FRCP 6(b)(1) controls has been specifically rejected by the Board. *Administrator v. Kolodziejczyk*, NTSB Order No. EA-5909 at 42-43 (2021) (“FRCP’s definition of ‘good cause’ does not apply”). The Court is therefore obliged to determine whether the respondent has made a showing of good cause for delay in filing an answer, and will not adopt the more lenient standard under FRCP 6(b)(1) for excusable neglect. *Id.* at 43 (citations omitted).

The Court finds that the respondent has been afforded ample due process as required by the governing statute and implementing regulations. *See* 49 U.S.C. § 44709(d); 49 C.F.R. Part 821; *see also Kolodziejczyk, supra*, at 44 (citations omitted). Based upon the record presented, the Court finds that the respondent’s explanations for his untimely answer are contradicted by the evidence and do not constitute good cause. From the outset of this case the respondent was represented by counsel J. Darren Byers as reflected in his Notice of Appeal filed via email on May 5, 2021. While the Court recognizes that the street address and email address reflected in the Administrator’s certificate of service for the Complaint contain scrivener’s errors,³ the record clearly demonstrates that the respondent, through counsel, received the Complaint via email at the correct address “jdbyers@jdbyers.com” on May 5, 2021. Exh. ALJ-1 at 1. Therefore, the respondent’s prior counsel’s claim (subsequently repeated by his current counsel) that he was “not properly served with the Complaint” is simply not true. *See* Respondent’s Motion to File Answer Out of Time of June 18, 2021; Respondent’s Motion to Extend Time to File Response to

³ The order of suspension lists “22 S. Cherry Street” in the mailing address. The Complaint certificate of service lists “jdbyers@jdbeyrs.com” as counsel’s email address.

the Administrator's Motion for Summary Judgement of September 23, 2021, at 2.

The Court finds that the respondent failed to demonstrate sufficient factors outside of his control prevented him from knowing about or acting upon the Administrator's order of suspension. *See Kolodziejczyk, supra*, at 44 n.318 (citing *Administrator v. Capeles*, NTSB Order No. EA-5870 at 6 (2020)). The Court further finds that the respondent failed to timely file an answer within 20 days after the Complaint was served by the Administrator, or no later than May 25, 2021. *See* 49 C.F.R. § 821.31(b). The next filing by the respondent's counsel was not made until 24 days later on June 18, 2021, which the Court finds was not sufficiently diligent to initiate the filing, and his request for an extension of time to file an answer failed to demonstrate good cause. *See Kolodziejczyk, supra*, at 43-44; 49 C.F.R. § 821.11(a). The Court therefore finds that the respondent did not demonstrate good cause for failing to timely answer. *Id.* at 45; *see also Administrator v. Steel*, NTSB Order No. EA-5958 at 14 (2023) (parties to an aviation certificate enforcement hearing are responsible for knowing the Board's rules whether respondent is represented by counsel or not); *Administrator v. Chesser*, NTSB Order No. EA-5924 at 6 (2022) (citation omitted) (Board precedent is to not entertain untimely filings without a showing of good cause for the delay and strictly adheres to standard of timeliness). Accordingly, the Court deems the factual allegations in the Complaint are admitted as true by the respondent, and concludes the Administrator is entitled to judgment on the pleadings. 49 C.F.R. §§ 821.31(b), 821.17(c).

In light of the respondent's admissions, the Court finds the following adjudicative facts:

1. That the respondent holds Airline Transport Pilot ("ATP") Certificate No. 3268602.
2. That on or about August 1, 2020, the respondent acted as pilot-in-command of a Robinson R44 helicopter, registration number N723RG ("aircraft N723RG"), on a commercial air tour operation flight for compensation or hire with passengers aboard in the vicinity of Chimney Rock State Park, Chimney Rock, North Carolina, and then over the Blue Ridge Parkway, North Carolina, on behalf of Upstate Helicopters, LLC.
3. That the commercial air tour operations in aircraft N723RG were subject to the requirements of a Letter of Authorization issued by the FAA.
4. That the Letter of Authorization provided that overflights over national parks and/or abutting tribal lands require specific authorization and the issuance of operation specification B057.
5. That the Blue Ridge Parkway, North Carolina, is a national park.
6. That there was no specific authorization or operation specification issued for the flight over the Blue Ridge Parkway, North Carolina.
7. That during the August 1, 2020, flight the respondent operated aircraft N923RG over an open air assembly of persons in the vicinity of Chimney Rock State Park, including people standing on the rock observation point and a parking lot filled with people in automobiles.
8. That the respondent operated aircraft N923RG at a dangerously low level over the open air assembly of persons at Chimney Rock State Park, specifically at an altitude of approximately 44 feet over the rock observation point and at an altitude of approximately 250 feet over the parking lot.
9. That the respondent thus created a particular hazard for the people assembled on the

- rock observation point, because they had to quickly depart to avoid aircraft N923RG and risked tripping in the surrounding steep and heavily wooded terrain.
10. That the respondent thus operated aircraft N923RG in the vicinity of Chimney Rock State Park at an altitude that did not allow, if a power unit had failed, for an emergency landing without undue hazard to persons and property on the surface.
 11. That the respondent thus operated aircraft N923RG in the vicinity of Chimney Rock State Park in such a way as to create a hazard to persons and property on the surface.
 12. That the respondent thus operated aircraft N923RG in the vicinity of Chimney Rock State Park in a careless or reckless manner so as to endanger the life or property of another.

The Court finds that these adjudicative facts support the six regulatory violations listed in section II, *supra*. The Court concludes that the Administrator has proven by a preponderance of reliable, probative, and credible evidence that the respondent violated the enumerated FARs under Parts 91 and 136 as noticed in paragraphs A through F of the Complaint. *See Acting Administrator v. Morrison*, NTSB Order No. EA-5619 at 3-5 (2012) (discussing burdens of proof for violations under 14 C.F.R. §§ 91.13(a), 91.119(a), and 91.119(d)); *Administrator v. Cole*, NTSB Order No. EA-5665 at 7 (2013) (discussing violation of 14 C.F.R. § 119(b)); *Administrator v. Gomes*, NTSB Order No. EA-5810 at 7 (2017) (violation of 14 C.F.R. § 91.147(e)).

III. Sanction

Under the Pilot's Bill of Rights enacted in 2012, the Court is obliged to review the Administrator's decision to suspend the respondent's ATP certificate for 270 days. *See* Public Law 112-153 (striking language from 49 U.S.C. §§ 44703(d)(2), 44709(d)(3), and 44710(d)(1)); Complaint at 3, ¶ (1); *see also Administrator v. Steel*, NTSB Order No. EA-5958 at 14 (respondent's failure to file a timely answer shall act to limit any hearing to the matter of sanction) (cleaned up).

While the Court is no longer bound to give deference to the Administrator's choice of sanction under the Federal Aviation Act, 49 U.S.C. §§ 40101 *et seq.*, it is entitled to some weight under the Supreme Court decision of *American Power & Light Company v. S.E.C.*, 329 U.S. 90, 112-13 (1946). *See Pham v. Nat'l Transp. Safety Bd., et al.*, 33 F.4th 576, 583 (D.C. Cir. 2022); *Acting Adm'r v. Pham*, NTSB Order EA-5936 (2022) (the Board is to manifest proper deference to the FAA's sanction choice and review it only for justification in law and fact). The Court must therefore determine whether the FAA's choice of remedy is unwarranted in law or is without justification in fact. In applying the principles of judicial deference to the interpretations of law, regulations, and policies that the FAA carries out, the Court must analyze and weigh the facts and circumstances in each case to determine if the sanction is appropriate. *Administrator v. Bonnet & Benitez Maldonado*, NTSB Order No. EA-5962 at 29 (2023) (Board considers the Administrator's recommendation and its precedent in determining appropriate sanction).

A. Evidence presented

The parties were afforded a full opportunity to offer evidence and make arguments in

support of their respective positions. The Court’s decision to resolve the narrow issue of sanction appropriateness on a documentary record was well within its adjudicatory power as authorized by regulation, and consistent with its duty to ensure due process to the parties. *See* Minute Order entered December 28, 2023, at 3; 49 C.F.R. §§ 821.35(b)(6), (9), 821.40; *Mathews v. Eldridge*, 424 U.S. at 333 (due process in administrative proceedings requires only “the opportunity to be heard at a meaningful time and in a meaningful manner.”). Moreover, neither party objected to the Court’s decision to proceed in this manner without a hearing by the deadline set. *Id.*

The Court admitted the Administrator’s exhibits A-1 through A-5 to the record, and considered them over the evidentiary objections of the respondent. *See* Minute Order entered February 14, 2024. The Court takes judicial notice of FAA Order 2150.3C. *See Administrator v. Bonnet & Benitez Maldonado*, NTSB Order No. EA-5962 at 28 n.190 (judicial notice of FAA Order 2150.3C is permissible under Fed. R. Evid. 201(b) because of the routine use of its sentencing guidelines in enforcement cases before the Board and its unquestioned accuracy as a publicly available resource) (citations omitted). The respondent did not timely file any documentary evidence for inclusion in the record by the deadline. Therefore, the Court has not considered Exhibit 1 appended to his brief in response.⁴ *See* Respondent’s Opposition to Administrator’s Argument of February 29, 2024. That evidence which is not specifically mentioned in the Court’s analysis below is either corroborative or does not materially affect the disposition of the issues presented.

B. Analysis

As a predicate matter, the Court notes the respondent, through counsel, asserts he was not a party to the Letter of Authorization (LOA) issued by the FAA to the commercial air tour operator Upstate Helicopter Tours, LLC, that owns aircraft N923RG. Following this logic, the respondent contends, “any violation(s) premised upon a violation of the LOA are, as a matter of law, without merit, including 14 C.F.R. § 91.147(e) and 14 C.F.R. § 136.37(a)(2).” *See id.*, ¶ 4.

The respondent is wrong. The Administrator alleged that the respondent acted as pilot-in-command of aircraft N7723RG on a commercial air tour operation flight for compensation or hire with passengers on behalf of Upstate Helicopters, LLC, and that at the time such operations in aircraft N7723RG were subject to the requirements of a LOA issued by the FAA. *See* Complaint, ¶¶ 2, 3. For the reasons discussed in Section II, *supra*, those allegations were deemed an admission of the truth of the allegations not answered by the respondent. *See* 49 C.F.R. § 821.31(b). As such, the respondent meets the definition of “operator” as “any person conducting non-stop passenger-carrying flights in [a] ... helicopter for compensation or hire,” and “commercial air tour operator” as “any person who conducts a commercial air tour operation.” *See* 14 C.F.R. §§ 91.147(a), 136.33(a). The Court therefore concludes that the respondent is subject to sanction for, *inter alia*, violations of 14 C.F.R. §§ 91.147(e) and 136.37(a)(2).

The Administrator provided a detailed explanation of how the respondent’s sanction was determined. *See* Administrator’s Argument at 5-8. After consideration of the record, the Court finds that the FAA’s choice of a 270-day suspension of the respondent’s ATP certificate is an appropriate sanction that is warranted in law and justified in fact for the following reasons. *See*

⁴ The Court’s Scheduling Order entered January 29, 2024, is adopted and incorporated by reference.

Administrator v. Palmer, NTSB Order No. 5947 at 48 (2023) (citing *Pham v. Nat'l Transp. Safety Bd.*, et al., 33 F.4th 576, 583 (D.C. Cir. 2022)) (cleaned up).

First, the Court finds the Administrator's alternative analysis that the severity level of the respondent's conduct should be based, in part, upon the "careless" nature of the respondent's violation of 14 C.F.R. § 91.13(a) is supported by the record. *See* Administrator's Argument at 8 n.2. In fairness to the respondent, the Court considered his statement to a FAA investigator that he did "not believe that [he] was operating the aircraft in a dangerous fashion and believed that [he] was doing what [he] could to mitigate risks of flying in mountainous terrain while providing [his] passengers a safe and unique view of one of [his] favorite local places." Exh. A-5, IOP 13; *see also* Declaration of Todd Kuhn, para. 6. However, the respondent's subjective belief that he conducted the flight safely is inconsistent with the adjudicative facts of record. The Court therefore finds the Administrator correctly determined the respondent's overflight of the Blue Ridge Parkway was a Severity Level 2 violation as a "failure to comply with operating limitation" that warrants a "moderate" sanction range, and the overflight of Chimney Rock State Park was a Severity Level 3 violation as a "failure to maintain required minimum altitude – congested area" that warrants a "high" sanction range. *See* FAA Order 2150.3C, Fig. 9-9-b, para. 33, 35; Fig. 9-1. The Court concurs with the Administrator's determination that the Severity 2 violation (Blue Ridge Parkway) has a specific sanction range of 60 to 120 days, and the Severity 3 violation (Chimney Rock State Park) is 90 to 150 days. *Id.*, Fig. 9-2.

Second, the fact that the respondent holds an ATP certificate and is therefore held to a higher standard of safety serves as an aggravating factor in the background of this case. *See* Exh. A-1 at 9-7; Complaint ¶ 1. *Administrator v. Street*, NTSB Order No. EA-5791 at 18 (2016) (citations omitted) (ATP certificate holder held to a high standard of care and accountability). The Court also finds aggravating the fact that the respondent conducted these overflights with passengers aboard as an operator for compensation or hire. *See* Complaint ¶ 2.

Third, the Court considered the witness statements submitted by the Administrator. Exh. A-2, A-3, A-4, and A-5. However, the Court afforded no weight to the witness statements that the respondent's overflight was unprecedented when compared with other flights over Chimney Rock State Park, as the issue in this case is limited to the conduct of the respondent and not that of others. *See* Exh. A-3, para. 4, 6; Exh. A-4, para. 6, 8.

Fourth, the Court finds that a photograph taken by an eyewitness depicts the respondent's overflight of an open air assembly of persons at Chimney Rock State Park at a dangerously low altitude. *See* Exh. A-3, IOP 5. Given that the photograph clearly depicts a person in the cockpit, the registration number N723RG on the helicopter's tail boom, and people standing on an observation deck above the level of the helicopter, the Court considers this evidence to be *res ipsa loquitur* ("the thing speaks for itself") to demonstrate the respondent's unsafe overflight. *See also Jacobellis v. State of Ohio*, 378 U.S. 184, 197, 84 S. Ct. 1676, 1683, 12 L. Ed. 2d 793 (1964) (Potter, J. concurring) ("I know it when I see it[.]")

Fifth, the respondent has submitted no mitigation evidence to the record.

Applying the aggravating factors to the specific sanction ranges described above, the

Court concurs with the Administrator's determination that the respondent's conduct warrants a sanction at the upper end of the ranges for both violations, resulting in the Severity 2 violation (Blue Ridge Parkway) for 120 days, and the Severity 3 violation (Chimney Rock State Park) for 150 days. The Court therefore concludes the aggregate of 270 days' suspension of the respondent's ATP certificate is reasonable and justified in fact. *See Administrator v. Bonnet & Benitez Maldonado*, NTSB Order No. EA-5962 at 29; *Administrator v. Norwitch*, NTSB Order No. EA-5914 at 11 (2021) (citing *Administrator v. Jones*, NTSB Order No. EA-5647 at 20-21 (2013)) (consideration of both aggravating and mitigating factors in evaluating reasonableness of an imposed sanction). The Court also concludes that the Administrator's proposed sanction of a certificate suspension of 270 days is consistent with Board precedent for sanctions involving low flight and therefore warranted in law. *See Administrator v. Sumler*, NTSB Order No. EA-5353 at 2-5 (2008) (affirming 150-day suspension); *Acting Administrator v. Morrison*, NTSB Order No. EA-5619 at 6 (2012) (affirming a 120-day suspension); *Acting Administrator v. Bourgeois*, NTSB Order No. EA-5427 at 6 (2009) (affirming 60-day suspension).

IV. Conclusion

For the reasons stated above, the Court concludes the Administrator has demonstrated by a preponderance of the credible, probative, and reliable evidence that the respondent committed violations of FARs 14 C.F.R. § 91.13(a), 14 CFR § 91.147(e), 14 C.F.R. § 91.119(a), 14 C.F.R. § 91.119(b), 14 C.F.R. § 91.119(d), and 14 C.F.R. § 136.37(a)(2) as charged in the Complaint. Given Board precedent and appropriate judicial deference afforded the FAA, the Administrator's sanction of suspension of the respondent's ATP certificate for 270 days is not unwarranted in fact or unjustified in law. It is neither arbitrary and capricious, nor violative of law. Consequently, the Court finds that safety in air commerce or air transportation, as well as the public interest, requires suspension of the respondent's airman certificate for 270 days.

Accordingly, the Court enters the following

ORDERS

IT IS ORDERED that Respondent's appeal is DENIED and the Administrator's Order of Suspension dated April 20, 2021, is AFFIRMED.

SO ORDERED this 19th day of March, 2024, at Washington D.C.



V. STUART COUCH
Administrative Law Judge