

SERVED: February 19, 1998

NTSB Order No. EA-4636

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 5th day of February, 1998

JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14903
v.)	
)	
JON M. LOWE,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from the August 29, 1997, order of Administrative Law Judge William E. Fowler, Jr., granting the Administrator's motion to dismiss respondent's appeal as untimely.¹ We will deny respondent's appeal and affirm the law judge's order.

On April 15, 1997, the Administrator issued an emergency

¹A copy of the law judge's order is attached. Respondent has filed an appeal brief. The Administrator has filed a reply.

order revoking respondent's airman certificate with commercial pilot privileges, under 49 U.S.C. § 44710(b) and 49 C.F.R. § 61.15(a)(2), which respondent does not dispute he received on April 18, 1997. Therefore, as the law judge noted, under Rule 55(a) of the Board's Rules of Practice, 49 C.F.R. § 821.55(a), the deadline for the filing of respondent's appeal from the emergency order of revocation was April 28, 1997.² Included with the revocation order was a statement detailing the appeal process and advising respondent that he may appeal the order within 10 days of service of the order. Respondent, however, filed his appeal on May 6, 1997.³

Respondent raises no issue in his appeal brief that would support a reversal of the law judge's order. In fact, but for a cursory statement that "there is no authority to dismiss the appeal," respondent argues only the merits of the case.⁴ As the

²Board Rule 55(a) states:

"(a) Time within which to appeal. The certificate holder may appeal within 10 days after the service of the Administrator's emergency or other immediately effective order. The certificate holder shall serve a copy of his appeal on the Administrator."

³That respondent waived the applicability of the emergency rules is of no consequence here since he did not do so until May 16, 1997. See Administrator v. Edwards, NTSB Order No. EA-4378 at 6-7 (1995), discussing Administrator v. Myers, 5 NTSB 997 (1986), where we noted that such a waiver must be filed before the expiration of the 10-day period in which to file an appeal in an emergency case.

⁴Respondent does not assert, in his appeal to the Board, that there was good cause for the late filing. In his response to the Administrator's motion to dismiss, however, respondent states that he was served with the emergency revocation order the

only question before us now is whether the law judge erred in dismissing the appeal as untimely, we will not address his other arguments.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's order dismissing respondent's appeal as untimely is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

(..continued)

same day on which he was released from a halfway house and that he acted with all possible speed to secure counsel while adjusting to life outside of the halfway house, thus implying, without specifically so arguing, that good cause existed for the delay. The law judge considered these reasons and found they did not constitute good cause for the late filing. We have been presented on appeal with no reason to overturn this finding.