

SERVED: April 3, 1998

NTSB Order No. EA-4649

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 2nd day of April, 1998

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JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15142
v.)	
)	
GEORGE L. MACUEN,)	
)	
Respondent.)	
)	
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ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the respondent's appeal because it was not perfected by the filing of a timely appeal brief, as required by Section 821.57 of the Board's Rules of Practice, 49 C.F.R. Part 821.¹ We will grant the motion.

¹Section 821.57(b) provides, in pertinent part, as follows:

§ 821.57 Procedure on appeal.

* * * * *

(b) Briefs and oral argument. Unless otherwise authorized by the Board, all briefs in emergency cases shall be served via overnight delivery or facsimile confirmed by first class mail. Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy upon the other parties. Within 7 days after service of the appeal brief, a reply brief may be filed, with copies served (as provided above) on other parties.... Appeals may be dismissed by the Board on its own initiative or on motion of a party, notably in cases

On March 11, 1998, respondent filed a timely notice of appeal from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., rendered in this emergency revocation proceeding on March 10.² Respondent did not, however, file an appeal brief within 5 days after that date.³

In the absence of good cause to excuse respondent's failure to comply with the time limit for filing an appeal brief, dismissal of his appeal is required by Board precedent. See Administrator v. Mahaffey, NTSB Order No. EA-4492 (1996); Administrator v. Mace, ⁷ NTSB 478 (1990), aff'd, 948 F.2d 781 (D.C. Cir. 1991); Administrator v. Hooper, ⁶ NTSB 559 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.

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

(..continued)

where a party fails to perfect the notice of appeal by filing a timely brief.

²The law judge affirmed an order of the Administrator revoking respondent's airman certificate with commercial pilot privileges and flight instructor certificate for his alleged violations of sections 61.59(a)(2), 61.189(a)(1), and 61.195(c) of the Federal Aviation Regulations, 14 C.F.R. Part 61. The order alleges, among other things, that the respondent made a fraudulent or intentionally false entry in a student pilot's logbook.

³As of the date of this order, respondent has not filed an appeal brief or a response to the Administrator's motion.

We note that the law judge erroneously told respondent that he had 10 days in which to file his appeal brief, not 5 as stated in section 821.57(b) of the Board's rules, 49 C.F.R. § 821.57(b). Given that respondent never filed an appeal brief, and more than 10 days has elapsed, this error was harmless.