

SERVED: March 19, 1993

NTSB Order No. EA-3836

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 15th day of March, 1993

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JOSEPH M. DEL BALZO,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-12821
v.	)	
	)	
LARRY R. RIVERS,	)	
	)	
Respondent.	)	
	)	

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**ORDER DENYING RECONSIDERATION**

By NTSB Order EA-3787 (served February 3, 1993), the Board dismissed respondent's "Motion to Strike Testimony and Enter Dismissal of the Amended Emergency Order of Revocation" in this proceeding on the ground that it was essentially an attempt to file a late appeal whose untimeliness was not excusable for good cause shown.<sup>1</sup> Respondent, in a motion for reconsideration of

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<sup>1</sup>The Board in Order EA-3753, served December 18, 1992, had affirmed an emergency order of the Administrator revoking the respondent's private pilot certificate for several alleged violations of the Federal Aviation Regulations (FAR) involving, among other things, his reckless operation of an overweight aircraft. Order EA-3753 dealt exclusively with the Administrator's appeal from the law judge's modification of sanction in the case.

that order, in effect contends, inter alia, that the difficulty he encountered in securing an affidavit from one of two witnesses who allegedly overheard improper attempts by counsel for the Administrator to influence his witnesses' testimony should be deemed to establish good cause for the delay in filing the motion to strike.<sup>2</sup> We do not agree and will deny the motion for reconsideration.

Even if the respondent could be said to have acted with diligence in obtaining the affidavit from one of two witness, a view with which the Administrator persuasively and vigorously disagrees, it would not show error in our good cause analysis or otherwise provide a valid reason for reconsidering it. Respondent cites no authority for the notion that he needed to have all of the documentation on which he intended to rely in hand before alerting the Board to the possible necessity to entertain an additional challenge to the law judge's decision.<sup>3</sup> We therefore continue to believe that respondent's tardiness cannot be excused in light of his failure "to seek leave to file what amounted to a late appeal as soon as he learned of conduct by the Administrator's counsel which he obviously believed early on should have a significant bearing on the Board's consideration of the law judge's decision" (Order EA-3787 at 3).

**ACCORDINGLY, IT IS ORDERED THAT:**

The respondent's motion for reconsideration is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

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<sup>2</sup>The Administrator has filed an opposition to the motion for reconsideration.

<sup>3</sup>Respondent's suggestion that a motion without evidentiary support properly would have been rejected by the Board does not advance his position. Respondent had, or could have had, an affidavit from the other one of his two witnesses (namely, his wife) to the alleged misconduct by counsel for the Administrator at least two weeks before the motion to strike was filed. He thus could have filed the motion, along with at least one affidavit, much earlier than he did.