

SERVED: April 26, 1995

NTSB Order No. EA-4352

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 19th day of April, 1995

Application of)	
)	
DAVID R. NEEL)	
)	
for an award of attorney and)	Docket 210-EAJA-SE-13573
expert consultant fees and)	
related expenses under the)	
Equal Access to Justice Act)	
(EAJA).)	

ORDER DISMISSING APPEAL

On October 10, 1994, the applicant, by counsel, filed a notice of appeal from the written initial decision Administrative Law Judge William A. Pope, II, served in the proceeding on September 28, 1994, denying the applicant's application for attorney fees and other expenses under the Equal Access to Justice Act. However, the applicant did not file an appeal brief until October 31, 1994. Since the brief was not filed within 30 days after service of the law judge's decision, the applicant's appeal, in the absence of good cause to excuse the untimeliness,¹ is subject to dismissal under section 821.48(a)

¹See Administrator v. Hooper, 6 NTSB 559 (1988).

of the Board's Rules of Practice.² See 49 CFR Part 821.³

ACCORDINGLY, IT IS ORDERED THAT:

The applicant's appeal is dismissed.

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above order.

²Section 821.48(a) provides as follows:

§ 821.48 Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief.

³Section 821.48(a) is applicable to an appeal from an EAJA decision pursuant to Section 826.38, 49 CFR Part 826.