

SERVED: October 9, 1998

NTSB Order No. EA-4709

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 October, 1998

Application of)
)
)
ROSS EMORY DIEHL)
)
for an award of attorney fees and) Docket 258-EAJA-SE-15047
expenses under the Equal Access)
to Justice Act.)
)
)
_____)

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the applicant in this proceeding because it was not perfected by the filing of a timely appeal brief, as required by Section 821.48(a) of the Board's Rules of Practice (49 CFR Part 821).¹ We will grant the motion, to which the applicant filed no answer.

The record establishes that the applicant, by counsel, filed a timely notice of appeal from the law judge's April 17, 1998 written initial decision, but he did not file an appeal brief

¹Section 821.48(a) provides as follows:

§ 821.48(a) **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.

within 30 days after the denial; that is, by May 17.²

In the absence of good cause to excuse applicant's failure to file a timely appeal brief, his appeal must be dismissed. Administrator v. Hooper, 6 NTSB 559 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

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

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

²The law judge's decision denied an application for an award of attorney fees and expenses.