

SERVED: April 28, 1999

NTSB Order No. EA-4755

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 28th day of April, 1999

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JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
	Complainant,)	
)	Docket SE-15385
	v.)	
)	
NIKOLAUS STEIGLER,)	
	Respondent.)	
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ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because the appeal 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 respondent filed a reply in opposition.

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.

The record establishes that respondent filed a timely notice of appeal from the written decision the law judge served on January 21, 1999,² but he did not file an appeal brief within 30 days after that date; that is, by February 20, 1999.³

In response to the Administrator's motion to dismiss, respondent attributes the late filing to calendar error induced by the need to enter schedule information from personal recollection following the installation of a computer hard drive upgrade. He also maintains in effect that his admittedly late appeal brief should be accepted because of the important issues the appeal assertedly raises.

Without good cause to excuse a failure to file an appeal brief on time, a party's appeal will be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988). In this connection, we do not find good cause for the tardy filing in respondent's reliance on memory to re-record a procedural deadline that could have been easily and quickly determined or ascertained by reference to the law judge's order or by contacting the Board. As to the respondent's second point, it is sufficient to note that the good cause standard does not take into account the merits of a brief that was not filed on time; it only looks to the reasons for the procedural default.

ACCORDINGLY, IT IS ORDERED THAT:

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

Daniel D. Campbell
General Counsel

²In his decision, the law judge, among other rulings, granted summary judgment on the Administrator's allegation that respondent's Operating Certificate (No. KS9C167Y) should be revoked pursuant to section 119.33 of the Federal Aviation Regulations, 14 CFR Part 119, because it does not meet citizenship requirements.

³Respondent's appeal brief was filed on February 26.