

SERVED: July 18, 2003

NTSB Order No. EA-5048

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 17th day of July, 2003

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MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-16887
v.)	
)	
DAVID A. DECUIR,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

The respondent has appealed from the written decision Administrative Law Judge William E. Fowler, Jr., served in this proceeding on June 6, 2003.¹ By that order, the law judge granted a motion filed by the Administrator to dismiss as untimely the respondent's appeal to the Board from an emergency order revoking his mechanic certificate for his alleged refusal to submit to a random drug test. We will deny the appeal.

¹A copy of the order is attached.

Although represented by counsel, respondent did not file an answer to the Administrator's motion to dismiss. Moreover, respondent in his appeal from the law judge's decision does not argue that the law judge erred in granting the motion. In these circumstances, denial of respondent's appeal is required, as no ground has been identified which would warrant overturning the law judge's decision.² We have, nevertheless, reviewed the law judge's order and find no basis for disturbing it.

In his order, the law judge concluded that respondent's May 19, 2003 appeal from the May 6th revocation order was untimely, as it was due within 10 days after service of the order, or no later than May 16, 2003. The service date of the revocation order was clearly indicated as May 6, 2003. Contrary to respondent's suggestion, we find no lack of clarity in the Administrator's advice as to when an appeal from the revocation order needed to be filed.³ The Administrator could reasonably assume that a certificate

²Our Rules of Practice, 49 C.F.R. Part 821.48(b), specify the requirements for an appeal brief:

§821.48 Briefs and oral argument.

* * *

(b) *Contents of appeal brief.* Each appeal brief shall set forth in detail the objections to the initial decision, and shall state whether such objections are related to alleged errors in the law judge's findings of fact and conclusions or alleged errors in his or her order. It shall also state the reasons for such objections and the relief requested.

³That respondent may have received incorrect advice from a union representative as to when an appeal needed to be filed does not provide any justification for not complying with the clearly explained deadline.

holder could compute when a ten-day period that started on May 6th would expire. Nevertheless, we believe that the confusion that precipitated the late appeal could have been eliminated had the Administrator's order reflected the actual date by which the appeal needed to be filed. The Administrator has embarked on a successful campaign to simplify rules and other written materials, and in this spirit of "plain English," we would urge the Administrator whenever practicable to advise recipients of orders of the date by which an appeal to the Board must be submitted. This would help ensure that appeals are decided on the merits and not on a procedural basis.

In sum, no reason appears for not sustaining the law judge's grant of the Administrator's motion to dismiss the respondent's appeal as untimely.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The June 6, 2003 order of the law judge is affirmed.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.