

SERVED: February 5, 2004

NTSB Order No. EA-5079

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

Issued under delegated authority (49 C.F.R. 800.24)
on the 5th day of February, 2004

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|----------------------------------|--|---|-----------------|
| _____ | |) | |
| MARION C. BLAKEY, | |) | |
| Administrator, | |) | |
| Federal Aviation Administration, | |) | |
| | |) | |
| Complainant, | |) | |
| | |) | Docket SE-16298 |
| v. | |) | |
| | |) | |
| BARRY M. CORNISH, | |) | |
| | |) | |
| Respondent. | |) | |
| | |) | |
| _____ | |) | |

ORDER DISMISSING APPEAL

On November 20, 2003, the respondent filed a notice of appeal from the oral initial decision the law judge rendered in this proceeding on November 18, 2003.¹ However, because respondent's appeal brief was not filed on its due date of January 7, 2004, the Administrator opposed respondent's request for leave to have the brief accepted out of time and asks that the appeal be dismissed under section 821.48(a) of the Board's Rules of Practice.² See 49 CFR Part 821. The motion for leave

¹The law judge affirmed an emergency order of the Administrator that revoked respondent's mechanic certificate for his alleged violation of section 65.23(b) of the Federal Aviation Regulations, 14 CFR Part 65.

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

to file the late brief will be denied.³

In the absence of good cause to excuse respondent's failure either to perfect his appeal by filing a timely appeal brief or to submit a timely extension request for filing the brief after the deadline, dismissal of his appeal is required by Board precedent. See Administrator v. Hooper, 6 NTSB 559 (1988). Counsel's mistake in determining when the appeal brief was due for filing does not constitute good cause.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's appeal is dismissed.

Ronald S. Battocchi
General Counsel

(..continued)

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.

³The Administrator has also filed a motion to dismiss the appeal brief, in which her arguments in opposition to the motion for leave to file it out of time are repeated.