

SERVED: June 28, 2006

NTSB Order No. EA-5237

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 June, 2006

_____)	
MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-17512
v.)	
)	
GREGORY T. WILCOX,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss respondent's appeal in this proceeding because it was not perfected by the filing of an appeal brief within 30 days of Judge William A. Pope II's written order, as required by Section 821.48(a) of the Board's Rules of Practice (49 C.F.R. Part 821).¹ The law judge served

¹ Section 821.48(a) provides as follows:

§ 821.48(a) **Briefs and oral argument.**

(a) Appeal brief....each appeal must be perfected, within 50 days after the date on which the oral initial decision was rendered, or 30 days after the date on which the written initial decision or appealable order was served, by the filing, and simultaneous service on the other parties, of a brief in support of the appeal. An appeal may be dismissed by the Board, either on its own initiative or on motion of another party, where a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

his "Order Regarding Sanction"² on March 29, 2006. Accordingly, respondent's appeal brief was due by April 28, 2006. However, respondent has not to date filed an appeal brief. Instead, following the Administrator's motion to dismiss (and after the time period for responding to that motion had expired), respondent's newly-retained counsel filed a "Motion for Extension of Time to File an Appeal Nunc Pro Tunc."³ Respondent's new counsel argues that respondent "was the innocent victim of gross negligence and ineffective assistance of his [previous] counsel throughout this proceeding,"⁴ and as a result, "good cause exists for the granting of an extension of time to file an appeal brief." (Respondent's motion for extension of time, at p. 4.)

In the absence of good cause to excuse a failure to file a timely notice of appeal, or to file a timely appeal brief or extension request, dismissal of an appeal is required by Board precedent and policy. See Administrator v. Hooper, 6 NTSB 559 (1988). Respondent's claim of ineffective assistance of counsel does not constitute good cause for his failure to file a timely appeal brief. Respondent is bound by the actions of his counsel. Any recourse he may have for ineffective assistance lies against his attorney, not the FAA or the NTSB. See Administrator v. Santana, NTSB Order No. EA-5152 (2005) at 4, citing Administrator v. Richard, et. al, 5 NTSB 2198, 2201 (1987) (decision by respondent's counsel to leave during the evidentiary portion of the hearing is a matter between him and his clients and whatever problems respondents had in representing themselves at the hearing are not attributable to reversible error by the law judge).

² Because all of the allegations in the Administrator's complaint were deemed admitted as a result of respondent's earlier failure to file a timely answer to the complaint, on December 5, 2005, the chief administrative law judge granted partial summary judgment, leaving only the issue of sanction for resolution by Judge Pope.

³ The term "nunc pro tunc" means "now for then," and is used to refer to an act that "has effect as of an earlier date, or takes place after a deadline has expired." *Merriam-Webster's Dictionary of Law*, 1996 Merriam-Webster, Inc.

⁴ Specifically, counsel points out that respondent's previous counsel (1) failed to file a timely answer to the complaint; (2) failed to reply to the Administrator's motion for summary judgment; and (3) failed to perfect the instant appeal by filing a timely appeal brief.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted;
2. Respondent's motion for extension of time to file an appeal brief is denied; and
3. Respondent's appeal is dismissed.

Gary L. Halbert
General Counsel