

SERVED: October 13, 2006

NTSB Order No. EA-5254

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

Issued under delegated authority (49 C.F.R. 800.24)
on the 13th day of October, 2006

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|---------------------------------|---|----------------|
| _____ |) | |
| PETITION OF |) | |
| |) | |
| EDWARD L. OSBORNE |) | |
| |) | |
| for review of the denial by |) | Docket SM-4724 |
| the Administrator of the |) | |
| Federal Aviation Administration |) | |
| of the issuance of an airman |) | |
| medical certificate. |) | |
| |) | |
| _____ |) | |

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by petitioner 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 C.F.R. Part 821).¹ The motion, to which petitioner filed no responsive pleading, is granted.

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.

The record establishes that petitioner filed a timely notice of appeal from the law judge's July 5, 2006 order dismissing petition and terminating proceeding,² but he did not file an appeal brief within the time period prescribed by our rules, that is, by August 4, 2006.

In the absence of good cause to excuse petitioner'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 an appeal is required by Board precedent and policy. See Administrator v. Hooper, 6 NTSB 559 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

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

Gary L. Halbert
General Counsel

² The law judge dismissed petitioner's petition for review of the Administrator's final denial of his application for airman medical certification due to lack of jurisdiction.