

SERVED: May 31, 2007

NTSB Order No. EA-5289

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 31st day of May, 2007

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MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	Docket SE-18003
	v.)	
)	
GEORGE HORACE MAZUFRI,)	
)	
	Respondent.)	
)	
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OPINION AND ORDER

Respondent, proceeding pro se, appeals the order of Chief Administrative Law Judge William E. Fowler, Jr., served in this emergency suspension proceeding on May 4, 2007.¹ By that decision, the law judge granted the Administrator's motion to

¹ A copy of the law judge's order is attached.

dismiss as untimely respondent's appeal to the Board of the Administrator's emergency² suspension order. The Administrator's order indicated that the suspension of respondent's mechanic certificate, with airframe and powerplant ratings, would remain effective until respondent had successfully completed a competency reexamination. We deny respondent's appeal.

On May 11, 2006, the Administrator sent her emergency suspension order via certified mail, Federal Express, and regular mail³ to respondent's official address of record, in Miami, Florida. The Miami address was on file with the FAA's Airman Certification Branch. Prior to issuing the suspension order, the Administrator had sent written correspondence to respondent on October 4, 2004, and July 5, 2005.⁴ Both letters advised respondent that the Administrator questioned his "qualifications to hold a mechanic certificate," and stated that

² The Administrator issued her suspension order against respondent pursuant to the terms of 49 U.S.C. § 44709(e)(2), which provides that, where safety in air commerce or air transportation requires immediate effectiveness of an order, such order may become instantly operative. The Board's regulations at 49 C.F.R. §§ 821.52–821.57 govern appeals of such orders.

³ Order Granting Administrator's Mot. to Dismiss Respondent's Appeal as Untimely, hereinafter "Law Judge's Order," at 3, 4.

⁴ The July 5, 2005 letter was sent by certified and regular mail to the Miami address. Law Judge's Order at 4. Although a copy of the October 4, 2004 letter does not exist in the record, the Administrator apparently sent it to the Miami address, as well.

the Administrator sought "a reexamination of [respondent's] competency to hold a mechanic certificate with airframe and powerplant ratings." Administrator's Mot. to Dismiss at Exh. 3. The Administrator's basis for questioning respondent's qualifications arose out of the Administrator's determination that respondent had received his certificate from Anthony R. St. George, who had "issued fraudulent mechanic certificates with airframe and/or powerplant ratings."⁵ The Administrator's letters to respondent also requested that respondent "contact a Flight Standards District Office to arrange for a reexamination," or provide evidence indicating that respondent should not be subject to reexamination. Id. In the absence of receiving a response to her letters from respondent, the Administrator issued her emergency suspension order of respondent's certificate, stating that, "[t]o date, you have failed to comply with the reexamination request," and that his mechanic certificate was suspended, effective immediately, until respondent had successfully completed the reexamination, and thereby established his qualifications, pursuant to 49 U.S.C. §§ 44709⁶ and 46105(c).⁷ Respondent's notice of appeal was due

⁵ See further discussion in the Law Judge's Order at 1-2.

⁶ 49 U.S.C. § 44709 provides that the Administrator may reexamine a certificate holder at any time.

on or before May 22, 2006, some ten months before any purported appeal document was actually filed.

After issuing her emergency suspension order, the Administrator did not hear from respondent, and did not receive respondent's mechanic certificate, as her order directed. Subsequently, the Administrator directed an investigation into respondent's location and mailing address, and discovered a Hollywood, Florida, address for respondent. The Administrator's regional counsel sent a letter on March 5, 2007, to respondent's Hollywood address, attaching a copy of the emergency suspension order, and advising him that his certificate remained suspended until he had successfully completed reexamination and that his refusal to surrender his certificate subjected him to a penalty of \$1,000 per day, as well as revocation of his certificate.

On March 14, 2007, respondent surrendered his certificate with a letter mailed to the Administrator's counsel. Respondent's letter indicated that he had been living in Hollywood, Florida, for seven years, and that he sought to maintain his right to an appeal. The record indicates that the Administrator's counsel received this letter on March 15, 2007,

(..continued)

⁷ 49 U.S.C. § 46105(c) provides emergency authority to the Administrator.

and later received a second letter, dated March 27, 2007. The Administrator filed her complaint on April 6, 2007, republishing and filing the May 11, 2006 emergency order of suspension as the complaint. On April 13, 2007, the Administrator moved to dismiss respondent's appeal as untimely, on the basis that, if respondent had not received notice in time to file his appeal before the deadline, it was due to respondent's failure to "comply with the regulatory requirement to keep his address of record up to date." Administrator's Mot. to Dismiss at ¶ 14. On May 4, 2007, the law judge granted the motion and terminated the proceeding.

In evaluating this case, we must determine: (1) whether the Administrator actually or constructively served respondent with her order of suspension; and (2) if the Administrator did serve respondent, whether respondent established that he had good cause for the untimely filing of his appeal. We have previously held that, when the Administrator mails an order of suspension or revocation via certified mail, service is effective on the date of the mailing. Administrator v. Corrigan, NTSB Order No. EA-4806 at 4 (1999). In addition, our precedent also infers that, when the Administrator mails the order to the certificate holder's permanent address on file with the Airman Certification Branch, the use of such address constitutes constructive notice.

Administrator v. Priester, 1 NTSB 1268, 1269-70 (1971) (stating that, "the record discloses that respondent's notice was sent to his permanent address"); see also Administrator v. Dunn, NTSB Order No. EA-4126 at 2 (1994) (holding that evidence that certified mail sent to respondent's correct address of record was not returned is sufficient to establish adequate service of notice and order).⁸

We have long recognized that certificate holders must keep their address and contact information up-to-date with the Administrator. Administrator v. Rourke, NTSB Order No. EA-4186 at 2 (1994) (citing Administrator v. Thibodeaux, NTSB Order No. EA-4144 (1994)). The Federal Aviation Regulations, at 14 C.F.R. § 65.21, require certificate holders to notify the Airman Certification Branch in Oklahoma City, Oklahoma, of a new address within 30 days after any change in permanent address. Failure to keep the Administrator informed of a change of address will preclude the certificate holder from successfully arguing that he or she never received proper service. Rourke,

⁸ We also note that the case at issue here is distinguishable from the facts of the cases in Administrator v. Lavigna, NTSB Order No. EA-5274 (2007); Yi Tu v. National Transportation Safety Board, 470 F.3d 941 (2006); and Jones v. Flowers, 547 U.S. 220 (2006). The question answered here is not whether respondent received the mail at his permanent address, but whether respondent updated the address that he represented to the Administrator as the address where he could receive notifications regarding his certificate.

supra, at 2.

Here, the record shows that respondent failed to update his permanent address until April 11, 2007. Administrator's Mot. at Exh. 2. The record also shows that the Administrator sent correspondence regarding respondent's certificate to his permanent address on record with the Administrator. Respondent's failure to notify the Airman Certification Branch of his current address resulted in his untimely filing of an appeal in this case. Certificate holders must ensure that they keep their official records, to include a permanent address of record at which they may receive official correspondence regarding their certificates, current.

Safety in air commerce dictates that we uphold the Administrator's suspension of respondent's mechanic certificate pending the establishment of his qualifications to hold said certificate. Respondent may have his certificate reinstated as soon as he successfully completes a reexamination. We cannot abide another result.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The order of the law judge dismissing respondent's appeal as untimely is affirmed.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.