

SERVED: October 31, 2007

NTSB Order No. EA-5332

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

Issued under delegated authority (49 C.F.R. 800.24)
on the 31st day of October, 2007

ROBERT A. STURGELL,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-18040
v.)	
)	
HECTOR DELACRUZ MERCADO,)	
)	
Respondent.)	

ORDER DISMISSING APPEAL

Respondent, through counsel, filed a notice of appeal from the law judge's July 27, 2007 order granting the Administrator's motion to dismiss respondent's appeal as untimely.¹ Section 821.47(a) of the Board's Rules of Practice (49 C.F.R. Part 821),²

¹ The Administrator issued an order suspending, on an emergency basis, respondent's mechanic certificate with airframe rating, pending his satisfactory demonstration of his qualifications to hold such a certificate by successfully completing a competency reexamination. Respondent waived the expedited procedures applicable to emergency suspension proceedings under the Board's rules.

² Section 821.47 provides, in part, as follows:

§ 821.47 **Notice of Appeal.**

- (a) (a) *Time within which to file notice of appeal.*
A party may appeal from a law judge's initial decision or appealable order by filing with the

requires that an appeal from a decision of a law judge be filed within 10 days after service of the law judge's order. Moreover, the law judge's decision in this case indicated that respondent must file any notice of appeal within 10 days after service of the law judge's order; the date of service appears on the face of the order.

To be timely, respondent had to file his notice of appeal on or before August 6, 2007. Although he filed the notice of appeal with a certificate of service reflecting a date of August 6, 2007, the envelope is postmarked August 8. Section 821.7(a)(4) states that where a "document bears a postmark that cannot reasonably be reconciled with the mailing date shown on the certificate of service, the document will be deemed filed on the date of the postmark." We also note that respondent did not file an appeal brief within the time period prescribed by our rules, that is, by August 27, 2007.³ This failure also would be sufficient grounds for dismissal. Further, as of the service date of this order, we have not received an appeal brief from respondent.

Without good cause to excuse a failure to file a timely notice of appeal or appeal brief, or a request to file one out of time before it is due, a party's appeal will be dismissed. Administrator v. Hooper, 6 NTSB 559 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's notice of appeal is dismissed.

Gary L. Halbert
General Counsel

(..continued)

Board, and simultaneously serving on the other parties, a notice of appeal, within 10 days after the date on which the oral decision was rendered or the written initial decision or appealable order was served...

(b)

³ Thirty days from July 27 was a Sunday; therefore, the brief was due on the next business day, which was Monday, August 27.