

SERVED: May 14, 2008

NTSB Order No. EA-5387

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 13th day of May, 2008

<hr/>)	
ROBERT A. STURGELL,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	Docket SE-17706
	v.)	
)	
DAVID KEITH MARTZ,)	
)	
	Respondent.)	
)	
<hr/>)	

ORDER DENYING RECONSIDERATION

We have considered respondent's petition for reconsideration of NTSB Order No. EA-5352 (served January 17, 2008) and the Administrator's response.¹ We have determined that

¹ The Administrator's reply is included in a document titled, "Acting Administrator's Motion to Accept Response Out of Time; Opposition to Motion for Stay; and Reply to Motion for Reconsideration or Modification." As the document's title indicates, it was served after the 15 days allowed for a party to reply to a petition for reconsideration or modification. The Administrator should have served this reply by February 20,

respondent's petition, which simply repeats arguments previously considered and rejected, neither establishes error in our original decision nor otherwise presents a valid basis for reconsidering our previous order.² Therefore, respondent's

(..continued)

2008, but instead served it on February 22, 2008. Respondent has not filed a reply to the motion to accept the response out of time. We have considered the Administrator's motion to accept the response out of time, and have determined to grant it. We note that while we will reject an untimely notice of appeal, an appeal brief, and a petition for reconsideration for lack of timeliness unless the party filing the pleading establishes good cause for untimely filing, this standard does not apply to responsive pleadings. In accordance with our precedent, we will reject responsive pleadings only if the opposing party can demonstrate that prejudice would result from our acceptance of the late-filed reply. See Administrator v. Hooper, NTSB Order No. EA-2781 (1988); see also, e.g., Administrator v. Smith, NTSB Order No. EA-4088 (1994); Application of Grant, NTSB Order No. EA-3919 (1993); Administrator v. Kelso, 5 NTSB 400 (1985). We request that, in the future, counsel file one document for each purpose. In this case, for example, the Administrator would file three documents (Motion to Accept Response Out of Time, Opposition to Motion for Stay, and Reply to Motion for Reconsideration or Modification), rather than one.

² Rule 50(c) requires any petition for reconsideration to state the matters alleged to have been erroneously decided. 49 C.F.R. § 821.50(c). In addition, Rule 50(d) provides that, "[r]epetitious petitions will not be entertained by the Board, and will be summarily dismissed." Id. § 821.50(d). Based on this rule, we have dismissed subsequent and persistent petitions for reconsideration, such as cases in which a party filed one or more petitions after the dismissal or denial of a first petition for reconsideration. In addition, we have also considered this rule to apply to arguments in a petition for reconsideration that are repetitious of the arguments that the party previously asserted in their appeal of an initial decision; as such, we have dismissed such petitions as repetitious under Rule 50(d). See, e.g., Administrator v. Kratt, NTSB Order No. EA-4958 (2002); Administrator v. Haynes, NTSB Order No. EA-4722 (1998); Administrator v. Hoag, 7 NTSB 53 (1990); Administrator v. Harris, 6 NTSB 659 (1989).

assertions in his petition are not appropriate for review under 49 C.F.R. § 821.50.³

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition for reconsideration is denied.

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

³ Respondent submitted an "Amended Petition for Reconsideration or Modification of Board Order No. EA-5352," seeking a reduction in the suspension period from 230 days to 90 days. A party must file a petition within 30 days of the service of the Board's decision on appeal, and section 821.50 does not provide for the submission of more than one petition or an "amended petition." Respondent's amended petition is therefore subject to dismissal. Respondent's petition also includes a withdrawal of a previous request for stay. Such a request for stay was unnecessary, as the filing of a petition under section 821.50 operates to stay the effective date of the Board's order, unless the Board directs otherwise. Id. § 821.50(f).