SERVED: July 10, 2008

NTSB Order No. EA-5393

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

Issued under delegated authority (49 C.F.R. § 800.24)
on the 10th day of July, 2008

ROBERT A. STURGELL, Acting Administrator, Federal Aviation Administration, Complainant, v. RICHARD G. HOLT and CHRISTOPHER M. PIERSON, Respondents.	Dockets SE-18125 and SE-18024

ORDER DISMISSING APPEAL

On April 25, 2008, respondents, through counsel, filed a notice of appeal from the law judge's April 15, 2008 oral initial decision. The law judge's decision affirmed the Administrator's orders of suspension for Respondent Holt for violations of § 91.123(a) (deviation from air traffic control clearance) and § 91.13(a) (careless or reckless operation), and for Respondent Pierson for violation of § 91.13(a), including waivers of sanction based on the proper filings of Aviation Safety Reporting Program reports.[1]

[1] The Administrator moved to dismiss the appeal as untimely, stating, "Respondents' Notice of Appeal is dated April 25, 2008. The Certificate of Service reflects an obviously incorrect date of March 25, 2008"; noting that § 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"; and then seemingly arguing that respondents have made no showing of

Although respondents filed a timely appeal, they did not file an appeal brief by the deadline established by § 821.48(a), which requires that an appeal be perfected by the filing of a brief in support of the appeal within 50 days after the date on which the oral initial decision was rendered. In order for it to be considered timely, respondents' appeal brief should have been filed on or before June 4, 2008. As of the date of this order, we have not received an appeal brief from respondents.[2]

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

ACCORDINGLY, IT IS ORDERED THAT:

Respondents' appeal is dismissed.

Gary L. Halbert
General Counsel

(..continued)
good cause for the untimely appeal. This argument is simply off the mark. As the Administrator points out, the date on the certificate of service is "obviously incorrect." Pursuing dismissal based on that ground borders on frivolous. We find that the date on the certificate of service is, indeed, *obviously incorrect* and, further, find that the notice of appeal is timely.

[2] We also note that, had respondents chosen to reply to the Administrator's May 2, 2008 motion to dismiss, in order to be considered timely, the reply should have been filed within 15 days of service of that motion, or no later than May 19, 2008. As of the date of this order, respondents have not replied to the motion to dismiss. Although we deny the Administrator's motion to dismiss for failure to file a timely notice of appeal (as opposed to our *sua sponte* dismissal for failure to file a timely appeal brief), we point out the failure to respond to the motion as another indication of respondents' lack of diligence regarding their appeal.