

SERVED: August 27, 1997

NTSB Order No. EA-4584

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 21st day of August, 1997

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JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14752
v.	)	
	)	
JOSEPH J. FRIEND,	)	
	)	
Respondent.	)	

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**ORDER DISMISSING APPEAL**

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because the appeal 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 CFR Part 821).<sup>1</sup> We will grant the motion, to which respondent filed an answer in opposition.

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<sup>1</sup>Section 821.48(a) provides as follows:

' 821.48(a) **Briefs and oral argument.**

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief.

The record establishes that respondent filed a timely notice of appeal from the oral initial decision and order the law judge rendered on May 7, 1997, but he did not file an appeal brief within 50 days after that date; that is, by June 26.<sup>2</sup> Instead, counsel for respondent, mistakenly believing he had a total of 60 days to file the brief rather than 50 days (having apparently misconstrued our rules as providing 50 days to file the brief in addition to the 10 days allowed for filing a notice of appeal), filed respondent's brief on July 2, some six days late.<sup>3</sup>

In the absence of good cause to excuse a failure to file an appeal brief on time, the party's appeal must be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988). Given the Board's longstanding view that an unfounded error in determining a filing deadline does not constitute legal justification for a procedural default, see, e.g., Administrator v. Near, 5 NTSB 994 (1986), we cannot find that good cause exists for accepting the respondent's brief out of time.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.<sup>4</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

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<sup>2</sup>The law judge upheld an order of the Administrator suspending all of respondent's airman certificates, including his Commercial Pilot certificate (No. 143304134), for a period of 120 days, for his alleged violations of sections 91.119(a) and (b), and 91.13(a) of the Federal Aviation Regulations, 14 CFR Part 91.

<sup>3</sup>We appreciate counsel's forthrightness in acknowledging that while various circumstances might have made it difficult for him to file the brief sooner than he did, his failure to meet the deadline was the result of miscomputing the due date.

<sup>4</sup>The dismissal of respondent's appeal moots his motion for an extension of time until July 2 to file the appeal brief.