



An untimely notice of appeal or brief will be excused only for good cause. See In the Matter of Graham, FAA Order No. 91-10 at 4 (April 11, 1991); In the Matter of Hart, FAA Order No. 90-39 at 6 (November 7, 1990); FAA v. Metz, FAA Order No. 90-3 at 5-6 (January 29, 1990). Complainant asks that its late-filed brief be accepted for good cause, citing two cases in which the NTSB found good cause to excuse late-filed appeal briefs where the untimeliness was due to clerical error in the performance of a properly delegated task by an employee of a respondent's attorney. Administrator v. Akin, NTSB Order No. EA-2376 (1986) (counsel's secretary did not mail respondent's brief on the date it was due, as instructed); Administrator v. Boardman, NTSB Order No. EA-2818 (1988) (counsel's secretary mistakenly addressed respondent's brief to counsel for the FAA, rather than to the NTSB, as intended).

The clerical error that resulted in the late-filed brief in this case constitutes good cause to excuse the untimeliness. This should not be construed as a holding that clerical error always constitutes good cause for a procedural default. The facts of each case must be evaluated to determine if good cause exists in that case.

THEREFORE, IT IS ORDERED THAT Complainant's Motion is granted. Respondent's reply brief is due 35 days after service of this decision.

JAMES B. BUSEY, ADMINISTRATOR  
Federal Aviation Administration



by: JAMES S. DILLMAN\*  
Assistant Chief Counsel

Issued this 20<sup>th</sup> day of June, 1991.

\* Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated January 29, 1990, pursuant to 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202. See 55 Fed. Reg. 15094 (April 20, 1990).