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UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

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AGC-10

Served: March 11, 1992

FAA Order No. 92-18

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In the Matter of: )

RICHARD A. BARGEN )

) Docket No. CP90WP0183  
)  
)

ORDER DISMISSING APPEAL

In FAA Order No. 91-32, the Administrator granted Respondent Richard A. Bargaen ("Respondent") an additional 30 days from the date of service of that order to perfect his appeal by filing an appeal brief. Complainant has filed a motion to dismiss Respondent's appeal for failure to perfect because Respondent has not filed an appeal brief. Complainant's motion to dismiss is granted.

The history of this case is as follows. On June 4, 1991, Respondent's appeal was dismissed because he had failed to file an appeal brief. In the Matter of Bargaen, FAA Order No. 91-20 (June 4, 1991). Subsequently, the Administrator issued FAA Order No. 91-32, granting Respondent's request for reconsideration of FAA Order No. 91-20,<sup>1/</sup> and giving

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<sup>1/</sup> In FAA Order No. 91-32, the Administrator held that good cause existed to excuse Respondent's failure to file his request for additional time to file his appeal brief. Respondent had sent his request for an extension of time to the United States Department of Labor, Office of Hearings, in San Francisco, California.

Respondent an additional 30 days from the date of service (of FAA Order No. 91-32) to file his appeal brief.

FAA Order No. 91-32 was sent to Respondent via certified mail on August 2, 1991, but it was returned as unclaimed. It was sent to Respondent again via certified mail on September 3, 1991, and it was again returned as unclaimed. Finally, on October 9, 1991, the order was sent to Respondent via regular mail, and has not been returned.

Each time that the envelope containing FAA Order No. 91-32 was mailed to Respondent, it had the same address on it that had been used to send FAA Order No. 91-20 to Respondent. This is the same address that Respondent had used when he requested reconsideration of FAA Order No. 91-20. Respondent has neither filed an appeal brief nor a reply to Complainant's motion to dismiss. Respondent has not indicated that that address should no longer be used.

Section 13.211(g) of the Rules of Practice provides:

Valid service. A document that was properly addressed, was sent in accordance with this subpart, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this subpart. The service shall be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused.

14 C.F.R. § 13.211(g) (1991). Thus, under 14 C.F.R.

§ 13.211(g), valid service of FAA Order No. 91-32 was made when it was sent by certified mail on August 2, 1991, as well as when it was sent again by certified mail on September 3, 1991.

Respondent has been given ample opportunity to perfect his appeal, but apparently has chosen not to prosecute his case any further. Consequently, I will grant Complainant's motion to dismiss Respondent's appeal of the law judge's oral initial decision issued on February 8, 1991. With the dismissal of Respondent's appeal, the law judge's initial decision affirming the \$1000 civil penalty sought by Complainant will become an order assessing civil penalty. 14 C.F.R. § 13.232(d) (1991).<sup>2/</sup>

Therefore, pursuant to 14 C.F.R. § 13.233(d)(2),<sup>3/</sup> Respondent's appeal of the law judge's oral initial decision is dismissed for failure to perfect. A \$1000 civil penalty is assessed.



BARRY LAMBERT HARRIS  
Acting Administrator  
Federal Aviation Administration

Issued this 9<sup>th</sup> day of March, 1992.

<sup>2/</sup> Section 13.232(d) provides that "[u]nless appealed pursuant to § 13.233 of this subpart, the initial decision issued by the administrative law judge shall be considered an order assessing civil penalty if the administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted.

<sup>3/</sup> Section 13.233(d)(2) provides "[t]he FAA decisionmaker may dismiss an appeal ... upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief with the FAA decisionmaker." 14 C.F.R. § 13.233(d)(2) (1991).