

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: October 20, 1993

FAA Order No. 93-32

In the Matter of:)

RAUL NUNEZ)

) Docket No. CP92S00028
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ORDER GRANTING PETITION FOR RECONSIDERATION

Respondent Raul Nunez seeks reconsideration of the Administrator's decision in In the Matter of Raul Nunez, FAA Order No. 93-8 (March 24, 1993). In that decision, the Administrator dismissed Respondent's appeal because Respondent failed to perfect his appeal by filing an appeal brief.^{1/} For the reasons set forth below, Respondent's petition for reconsideration is granted.

^{1/} Section 13.233(d)(2) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 13.233(d)(2) provides:

The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or 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.

On November 17, 1992, Respondent filed a timely notice of appeal from the written initial decision of Administrative Law Judge Robert L. Barton. In his initial decision, the law judge dismissed Respondent's request for hearing and entered a default judgment against Respondent because he failed to file an answer to the complaint and to respond to the law judge's Order To Show Cause.^{2/} Respondent had 50 days from the date of service of the law judge's written initial decision to perfect his appeal by filing an appeal brief.^{3/} Respondent did not file any other document after filing his notice of appeal.

Upon reexamination of the record in this case, it appears that Respondent's notice of appeal may be construed as an appeal brief. The notice of appeal provided notice of Respondent's intent to challenge the law judge's decision dismissing his request for hearing. Respondent stated in the notice of appeal that he did not file an answer to the complaint, nor a response to the Order To Show Cause, because he did not receive the order until one day after the 10 day

^{2/} The order assessed the \$1,000 civil penalty sought in the complaint. The complaint alleged that Respondent smoked a cigarette in the lavatory of an airplane during a designated non-smoking flight.

^{3/} Section 13.233(c) of the FAR, 14 C.F.R. § 13.233(c) provides:

Unless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the FAA decisionmaker.

period for responding to the order had expired.^{4/}
Respondent requested in the notice of appeal that a new hearing be scheduled. Accordingly, Respondent's notice of appeal satisfies the requirements for an appeal brief under Section 13.233(d)(1), 14 C.F.R. §13.233(d)(1).^{5/} See In the Matter of Metz, FAA Order No. 89-4 (November 13, 1989).

Respondent's petition for reconsideration is granted. Respondent's appeal will be heard. Complainant may file a reply brief, within 35 days from the service date of this order.^{6/}



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 19th day of October, 1993.

^{4/} The order is the only document in the record that advised Respondent of the requirement that he file an answer to the complaint. See In the Matter of Metz, FAA Order No. 90-3 (January 29, 1990).

^{5/} 14 C.F.R. § 13.233(d)(1), provides in part: "A party shall set forth, in detail, the party's specific objection to the initial decision or rulings in the appeal brief. A party also shall set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested on appeal."

^{6/} This order does not grant Respondent additional time in which to file further appellate arguments with the FAA decisionmaker.