

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

EZEQUIEL G. PEREZ

FAA Order No. 94-43

Served: December 20, 1994

Docket No. CP93SO0374

DECISION AND ORDER

Respondent Ezequiel G. Perez appeals from the written initial decision of Administrative Law Judge Burton S. Kolko issued on March 1, 1994.¹ The law judge dismissed Respondent's request for hearing and assessed a civil penalty of \$1,000 because Respondent failed to file an answer to the complaint.

The complaint against Respondent, issued on September 30, 1993, advised Respondent that he was required to file a written answer within 30 days, by October 30, 1993.² By an order dated January 13, 1994, the law judge gave Respondent additional time to file an answer until February 9, 1994. In that order the law judge explained to Respondent that:

The FAA's Rules of Practice require that the agency's complaint be followed by an explicit answer from the Respondent. In that answer, Respondent must address each numbered paragraph in the complaint and state whether there is insufficient information to admit or deny the allegation. The answer to the complaint ... must be sent to each address listed on the attached Service List.

¹ A copy of the law judge's written initial decision is attached.

² The complaint alleged that on August 1, 1992, Respondent violated 14 C.F.R. §§ 91.11 and 121.317(f) during taxi for take-off of an American Airlines flight from Miami, Florida, to San Jose, Costa Rica. The complaint alleged that upon being moved with his family from emergency row seating to the rear of the aircraft, Respondent became verbally abusive toward one or more of the flight attendants, pushed a flight attendant, threatened passengers, left his seat, and after the flight returned to the gate, refused to deplane at the request of the captain. The complaint sought a \$1,000 civil penalty.

The law judge warned Respondent that if he did not file an answer by February 9, 1994, his request for hearing could be dismissed, and the civil penalty assessed without a hearing.

On March 1, 1994, the law judge issued the order appealed herein, in which he found the allegations in the complaint admitted due to Respondent's failure to file an answer, under 14 C.F.R. § 13.209(f).³ The law judge assessed the \$1,000 civil penalty sought in the complaint.

By letter to the law judge dated March 9, 1994, Respondent stated, through his son, that he had filed an answer but only with agency counsel.⁴ The law judge forwarded Respondent's letter to the Administrator for consideration as a timely appeal because the law judge lost jurisdiction over the case when he issued his order assessing civil penalty.⁵

The FAA Decisionmaker construed Respondent's March 9, 1994, letter to the law judge as a timely appeal and appeal brief, and gave Complainant 35 days to file a reply brief. See In the Matter of Perez, FAA Order No. 94-23 (June 27, 1994).⁶

³ Section 13.209(f), 14 C.F.R. § 13.209(f), provides: " A person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint."

⁴ In the letter of March 9, 1994, to the law judge, Respondent's son stated as follows:

We received the cancelations (sic) from the hearing. We beg you to just take a minute and read our mishap. We send the paper send (sic) by you, but we send them to a different address. We send them to Florida to Vincent J. Bennett [the agency attorney handling this case]. It was a mistake, but please attend to us once more. We always followed everything the FAA asked us to.

⁵ See, e.g., In the Matter of Barnhill, FAA Order No. 92-32 at 4 (May 5, 1992), holding that when a law judge issues an initial decision, his or her jurisdiction over a case ends.

⁶ The FAA Decisionmaker held in FAA Order No. 94-23, that Respondent's letter to the law judge was sufficiently detailed to constitute an appeal brief under Section 13.233(d)(1) of the Rules of Practice, 14 C.F.R. § 13.233(d)(1).

Complainant filed a reply brief. In the argument section of its reply brief, Complainant states that "the FAA never received Respondent's answer."

Complainant has not fully responded to Respondent's statement on appeal that Respondent sent the answer to the agency attorney in Orlando, Florida. In its reply, Complainant did not state that Respondent's answer was not received by the agency attorney in Orlando, Florida, who commenced the action in the FAA Southern Region. Complainant also did not state that no answer was received by agency counsel in the FAA Eastern Region, where the action was transferred for hearing. Agency counsel or the records custodian for agency counsel's office should have made all statements of fact pertaining to the non-receipt of Respondent's answer in an affidavit or declaration attached to Complainant's reply brief.

In light of the fact that Respondent's son has written all of the correspondence from Respondent in the record, it appears that Respondent may not understand English. The correspondence also reveals that Respondent's son does not appear to have a good command of the English language.

Under these circumstances an order affirming the law judge's decision to cancel the hearing and impose a \$1,000 civil penalty would be premature. Accordingly, the case is remanded to the law judge for reopening, with instructions to hold a hearing on the issue of whether Respondent filed an answer in this case, and if not whether, in light of Respondent's language difficulties, any good cause exists for excusing Respondent's failure to file an answer. If the law judge finds that Respondent served an answer or that good cause exists for excusing the failure to file an answer, he shall hold a hearing on the merits of the complaint. If not, the law judge shall re-enter his prior order of dismissal.

The order of the law judge dismissing Respondent's request for hearing is reversed and the case is remanded to the law judge for a hearing in accordance with this decision.



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 19th day of December, 1994.