

Resolution of this appeal requires a review of the procedural history of this case. In response to the Notice of Proposed Civil Penalty (NPCP),^{4/} dated April 9, 1992, Respondent requested an informal conference with Complainant. Complainant, however, received Respondent's informal conference request after it had issued, and Respondent had responded to, the Final Notice of Proposed Civil Penalty, (FNPCP).^{5/} Respondent responded to the FNPCP by filing a request for hearing dated June 1, 1992.

Based upon a telephone conversation in late June between Complainant and Respondent, Complainant withdrew the FNPCP, and Respondent withdrew his request for hearing.^{6/} Complainant agreed to schedule an informal conference with Respondent.^{7/} Two months later, a different agency attorney filed a complaint dated September 15, 1992, as well as

^{4/} Complainant alleged that Respondent was the pilot in command of a Piper Model PA-28-180 aircraft when it crashed into a residence in Ramona, California. Complainant alleged further that Respondent operated the aircraft carelessly or recklessly, and without sufficient fuel.

^{5/} Complainant has not contended, and it cannot be determined from the record, whether Respondent's request for an informal conference was late-filed.

^{6/} Respondent withdrew his request for hearing by letter dated June 29, 1992, addressed to the FAA Hearing Docket. Respondent attaches a copy of this letter to his appeal brief. The Hearing Docket Clerk never received Respondent's withdrawal of his hearing request, and apparently neither Complainant nor the law judge did.

^{7/} Complainant never provided Respondent with an informal conference. However, by the first prehearing conference with the law judge on December 2, 1992, Respondent appeared to no longer want an informal conference. In answer to the law judge's question whether Respondent still wanted an informal conference, Respondent answered: "[t]hat would be fine. I will say right now the only settlement I will accept is full dismissal." (TR 27).

Respondent's request for hearing dated June 1, 1992, with the Hearing Docket Clerk.

A hearing was held on April 1, 1993. At the commencement of the hearing, the law judge noted sua sponte that the complaint was filed more than 20 days after the request for hearing, but withheld ruling on this issue until after the hearing. Subsequently, the law judge issued his decision, dismissing the complaint as late-filed without reaching the merits of the case.

The filing of the complaint with the request for hearing without objection by Respondent, indicated that the parties concurred in renewing the litigation that had been suspended by withdrawal of the FNPCP and the request for hearing. The withdrawn FNPCP and request for hearing were necessarily reactivated and refiled when the complaint was filed. Without a FNPCP and request for hearing in effect, the complaint would have been null because a complaint is triggered by a request for hearing which, in this case, was a response to the FNPCP.^{8/} Thus, the complaint in this case was not late-filed but was filed concurrently with the reactivated request for hearing.^{9/}

^{8/} Section 13.16(e)(2), 14 C.F.R. § 13.16(e)(2), provides in relevant part: "[n]ot later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation shall ... [r]equest a hearing in which case a complaint shall be filed with the hearing docket clerk."

^{9/} The law judge erred when he found that the failure to file a complaint within the 20-day filing period of Section 13.208(a), 14 C.F.R. § 13.208(a), was a jurisdictional bar to the civil penalty action. A late-filed complaint should be

(Footnote 9 continues on the next page.)

Accordingly, the decision of the law judge is reversed, and the case is remanded to the law judge for an initial decision on the merits.



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

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(Footnote 9 continued from previous page.)

excused based upon a demonstration of good cause. Government agencies do not lose jurisdiction for failure to comply with statutory time limits unless the statute expressly requires an agency to act within a particular time limit and specifies a consequence for failing to comply with the provision. McCarthy v. Busey, 954 F.2d 1147, 1151 (6th Cir. 1992); U.S. v. Scott, 788 F. Supp. 1555, 1558 (D. Kan. 1992). See also Brock v. Pierce County, 476 U.S. 253, 257 (1986). Sections 901(a) and 905 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. §§ 1471(c) and 1475 (1992), contain no time limit for the filing of a complaint, let alone specify any consequences should the complaint be filed late. Moreover, the Rules of Practice, in particular Section 13.208(a), do not specify any consequence for a late-filed complaint.

The 20-day filing requirement for civil penalty complaints is a procedural rule adopted by the agency for the orderly processing of civil penalty cases. A similar procedural regulation of the National Transportation Safety Board requiring the Administrator to file the complaint within five days of the appeal was found not to be jurisdictional. Administrator v. Kolek, 5 NTSB 1437 (September 22, 1986), aff'd Kolek v. Engen, 869 F.2d 1281, 1286 (9th Cir., 1989); Administrator v. Brod, NTSB Order No. EA-3048 (January 23, 1990).

In the Matter of Medel, FAA Order No. 93-13, (March 25, 1993), cited by the law judge in support of his finding, did not address the issue of a jurisdictional bar. In Medel, the Administrator found the complaint late-filed because Complainant was sufficiently responsible for the misdirection of the request for hearing. The issue of whether a late-filed complaint could be excused based upon a showing of good cause was not addressed in Medel because there was no good cause in that matter to excuse the late-filed complaint.