

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

In the Matter of:

RONALD VICTOR STALLING

FAA Order No. 97-7

Served: February 20, 1997

Docket No. CP96WP0083

**ORDER**

This appeal appears to be the result of the repeated failures of the Respondent, Ronald Stalling, to comply with the Rules of Practice and the law judge's orders, and to accept and pick up his mail in a timely fashion. As a result of these failures, the law judge issued an order assessing a \$2,000 civil penalty against Mr. Stalling. Mr. Stalling now has filed a late notice of appeal and a request that "the entire case be postponed until late Dec. 1996 or January [1997]." Because the record is inadequate to determine whether good cause exists to excuse Mr. Stalling's late-filed notice of appeal, the parties are ordered to file briefs on that issue, as well as on the propriety of the law judge's determination that Mr. Stalling had constructively withdrawn his request for hearing. *Mr. Stalling's brief must be filed on or before March 20, 1997, or the notice of appeal will be dismissed and the Order Assessing Civil Penalty will be in effect.*

On March 28, 1996, a complaint was issued alleging that Mr. Stalling had violated 14 C.F.R. § 107.21(a)(1)<sup>1</sup> and 49 U.S.C. App. § 1471(d).<sup>2</sup> It was stated in the

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<sup>1</sup> Section 107.21(a)(1) of the Federal Aviation Regulations provides:

complaint that on March 13, 1992, Mr. Stalling, a ticketed passenger, had presented himself and his accessible property for inspection at a security screening checkpoint at San Jose International Airport. According to the complaint, during the inspection an unloaded "Davis" .32 caliber pistol with six rounds of accessible ammunition was discovered. Complainant sought a \$2,000 civil penalty for these alleged violations.<sup>3</sup>

When Complainant filed the complaint with the Hearing Docket, it also submitted a copy of Mr. Stalling's request for hearing. In the request for hearing, Mr. Stalling wrote:

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Except as provided in paragraph (b) of this section, no person may have an explosive, incendiary, or deadly or dangerous weapon on or about the individual person or accessible property -

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area[.]

<sup>2</sup> In July 1994, certain laws pertaining to transportation were revised and codified without substantive change as part of title 49 of the United States Code. See P.L. 103-272 (July 5, 1994). As part of this process, the provisions that appeared at 49 U.S.C. App. § 1471(d) were revised and now appear at 49 U.S.C. § 46303.

Under 49 U.S.C. § 46303(a):

An individual who, when on, or attempting to board, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation.

<sup>3</sup> Shortly after the issuance of the Complaint, the Administrator issued new sanction policy guidance pertaining to security violations by individuals. Under the new (and current) guidance, the appropriate penalty range for a passenger who intends to board an aircraft and is found at the screening checkpoint as possessing a firearm with accessible ammunition is as follows:

With no aggravating circumstances:	\$500 to \$1,000
With aggravating circumstances:	\$2,000 to \$5,000

Change 21, dated April 2, 1996, to Compliance and Enforcement Program, FAA Order No. 2150.3A, Appendix 4, page 21-1.

Please address further communications to:  
P.O. Box 5083  
Vancouver WA 98668.

Please allow 60 days in advance of a hearing date to schedule a hearing since I am "on the road" a lot.

Request for Hearing (undated) at 1.

Under Section 13.209(a), a respondent shall file a written answer to the complaint not later than 30 days after service of the complaint. 14 C.F.R.

§ 13.209(a).<sup>4</sup> Also, because the complaint was served by mail on March 28, 1996, Mr. Stalling had the benefit of the "mailing rule"<sup>5</sup> giving him an additional 5 days in which to file his answer. Consequently, Mr. Stalling's answer was due on May 2, 1996, 35 days after the service of the complaint.

Mr. Stalling, however, failed to file an answer. After the deadline for filing the answer passed, the law judge issued an order to show cause,<sup>6</sup> requiring Mr. Stalling to file the following no later than August 15, 1996: 1) an answer to the complaint, admitting or denying each paragraph of the complaint, and 2) a statement setting forth good cause as to why an answer had not been filed in a

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<sup>4</sup> Section 13.209(a) of the Rules of Practice in Civil Penalty Proceedings provides as follows:

A respondent shall file a written answer to the complaint ... not later than 30 days after service of the complaint. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten.

14 C.F.R. § 13.209(a). Complainant summarized this requirement in a note included in the March 28, 1996, letter transmitting the complaint and the request for hearing to the Hearing Docket.

<sup>5</sup> 14 C.F.R. § 13.211(e).

<sup>6</sup> The Order to Show Cause was issued on July 8, 1996.

timely fashion by May 2, 1996. This Order to Show Cause was addressed to Mr. Stalling at P.O. Box 5083, Vancouver, WA 98668.

On July 23, 1996, the law judge issued an order assessing a \$2,000 civil penalty. Although the law judge had directed in his previous order that Mr. Stalling respond by August 15, 1996, the law judge cut short the response time and issued the Order Assessing Civil Penalty on July 23rd based upon his finding of a constructive withdrawal of Mr. Stalling's request for hearing. The law judge explained that he based his finding of a constructive withdrawal of the request for hearing on the return of the Order to Show Cause as "undeliverable and unforwardable." The Order to Show Cause was sent to Mr. Stalling via U.S. Certified Mail, Return Receipt Requested. The U.S. Postal Service returned the Order to Show Cause, marked "M L N F" to the Office of the Administrative Law Judges.<sup>7</sup> The law judge stated in the Order Assessing Civil Penalty as follows:

*In my order served on July 8, 1996, Respondent was directed to show cause why an order assessing civil penalty should not be issued against him for failure to file by May 2, 1996 and [sic] answer to the agency's complaint. Although Respondent was given until August 15, 1996 to respond to the order to show cause, the Postal Service has returned the mailing of the order to show cause as undeliverable and unforwardable. Apparently, Respondent has closed his postal box and neither has left a forwarding address nor has advised this court of his new address. The latter is taken as a constructive withdrawal of his request for a hearing; and his failure to file an answer to the complaint is deemed to admit the allegations in the complaint, rendering unnecessary the hearing which he once requested.*

Order Assessing Civil Penalty, dated July 23, 1996, at 1 (emphasis added.)

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<sup>7</sup> The copy of the order to show cause which was sent via certified mail, return receipt requested, to Mr. Stalling at P.O. Box 5083, Vancouver, WA 98668, was returned to the law judge's office. The envelope was marked "M L N F," which presumably means "Moved, Left No Forwarding Address."

The Office of Administrative Law Judges sent the Order Assessing Civil Penalty to Mr. Stalling at P.O. Box 5083, Vancouver, WA 98668, the same address that had been used to send him the Order to Show Cause. The envelope containing the Order Assessing Civil Penalty, which was sent via U.S. Certified Mail, Return Receipt Requested, was returned marked "Unclaimed" to the Office of the Administrative Law Judges.<sup>8</sup> Nonetheless, Mr. Stalling must have received a copy of the Order Assessing Civil Penalty by regular U.S. Mail because on August 27, 1996, he sent a notice of appeal to the law judge.<sup>9</sup>

In the August 27 appeal letter, Mr. Stalling noted that he was appealing "this ruling"<sup>10</sup> because he had not had a hearing. Mr. Stalling explained that he received the law judge's "ruling" on or about August 15, 1996. He claimed that he had replied to "all inquiries received."<sup>11</sup> He noted further that he had been engaged in settlement talks with Sam Frazer, the agency counsel assigned to this matter,

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<sup>8</sup> The following information had also been printed on the envelope by the Postal Service:

NOTIFY SENDER OF NEW ADDRESS  
 STALLINGS  
 PO BOX 5615  
 VANCOUVER WA 98668-5615

It was noted further that delivery had been attempted 3 times, on August 1, 6, and 16.

<sup>9</sup> According to the Office of Administrative Law Judges, orders of these types usually are sent via both regular U.S. Mail as well as via U.S. Certified Mail, Return Receipt Requested. Presumably, Mr. Stalling received the Order Assessing Civil Penalty via regular U.S. Mail even though the Order sent via U.S. Certified Mail, Return Receipt Requested, was returned to the law judge's office marked "Unclaimed."

<sup>10</sup> See n. 16, *infra*.

<sup>11</sup> Mr. Stalling may have responded to all inquiries preceding the issuance of the complaint. However, as the Administrator has held several times, responses to pre-complaint documents do not satisfy the requirement for an answer. In the Matter of Grant, FAA Order No. 94-5 at 5 (March 10, 1994); In the Matter of Barnhill, FAA Order No. 92-32 at 6 (May 5, 1992). Regardless of what other documents Mr. Stalling may have sent to Mr. Frazer or to other FAA representatives, he did not file an answer to the complaint.

and he had believed that Mr. Frazer and he were close to an agreement.<sup>12</sup>

Mr. Stalling noted further that until that day, he had not realized that "communication to Mr. Frazer was not a direct communication to your court [Administrative Law Judge Kolko] since you and him are under the same department (DOT)."

The law judge forwarded Mr. Stalling's notice of appeal to the Appellate Docket.<sup>13</sup> Subsequently, the law judge forwarded to the Appellate Docket a letter written by Mr. Stalling requesting that the case be postponed until late December or January. Mr. Stalling explained that he would be out of the country during this time period. This letter was sent to the law judge in an envelope with the following handwritten return address: P.O. Box 5083, Vancouver, WA 98668. This is the same address that the law judge had used to send Mr. Stalling the Order to Show Cause and the Order Assessing Civil Penalty.

The first issue before the Administrator is to decide whether to accept the notice of appeal. The law judge issued the Order Assessing Civil Penalty on July 23,

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<sup>12</sup> As the Administrator has written previously, it would be helpful if agency counsel explained to respondents, during settlement negotiations, that the submission of a settlement proposal does not extend the time under the Rules of Practice for filing answers or other time-sensitive documents. In the Matter of Sutton, FAA Order No. 94-29, at 4, n.8 (September 30, 1994), *appeal dismissed* FAA Order No. 95-6 (April 26, 1995). In FAA Order No. 94-29, the Administrator ruled that "[i]f communications between Respondent and the agency attorney ... led Respondent reasonably, but incorrectly, to believe that submitting a settlement proposal was a valid substitute for filing an answer, then in the interest of fairness, good cause may be found and Respondent should be permitted to file a late answer." *Id.*, at 4.

<sup>13</sup> In the appeal letter, Mr. Stalling provided a temporary address, to which he requested all correspondence be sent from September 1 through September 30: 1946 Naples Drive, San Jose, California 95122. The law judge sent a copy of the above-mentioned Order Forwarding Appeal to Appellate Docket to Mr. Stalling at that address via U.S. Certified Mail, Return Receipt Requested. The envelope in which the order was sent was returned, marked "Unclaimed," to the Office of Administrative Law Judges.

1996. Under Section 13.233(a) and 13.211(e), a party wishing to appeal from an initial decision of a law judge shall file a notice of appeal within 15 days of the service of the law judge's written initial decision by mail.<sup>14</sup> The law judge served the Order Assessing Civil Penalty on July 23, 1996. The notice of appeal should have been filed no later than August 7, 1996.<sup>15</sup> Mr. Stalling, however, asserted in his notice of appeal, that he did not receive the law judge's order assessing the \$2,000 civil penalty<sup>16</sup> until on or about August 15, 1996, and his notice of appeal was dated

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<sup>14</sup> Section 13.233(a) provides:

(a) *Notice of appeal.* A party may appeal the initial decision, and any decision not previously appealed pursuant to § 13.219, by filing a notice of appeal with the FAA decisionmaker. A party shall file the notice of appeal with the Federal Aviation Administration, 800 Independence Avenue, S.W., Room 924A, Washington, DC 20591, Attention: Appellate Docket Clerk. *A party shall file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and shall serve a copy of the notice of appeal on each party.*

14 C.F.R. § 13.233(a)(emphasis added.) Because, in this case, the law judge served his written Order Assessing Civil Penalty by mail, Mr. Stalling had an additional 5 days in which to file his answer by action of the "mailing rule," which is set forth in 14 C.F.R. § 13.211(e).

<sup>15</sup> It should be noted that the law judge's Order Assessing Civil Penalty dated July 23, 1996, set forth the requirement for a timely notice of appeal. In footnote 1, the law judge wrote as follows:

Any appeal from this order to the Administrator must be in accordance with section 13.233 of the Rules of Practice [Title 14 Code of Federal Regulations, Part 13, Section 233] which requires two steps: 1) that a notice of appeal be filed no later than 10 days (plus 5 more days if sent by the United States Postal Service) from the date of this order, and 2) that the appeal be perfected with a written brief or memorandum not later than 50 days (plus 5 more days if sent by the United States Postal Service) from the date of this order. Each writing is to be sent to the Appellate Docket Clerk, Room 924-A, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, and also to the FAA's attorney listed on the attached Service List. Service upon the presiding judge is optional. **If there is no timely appeal taken with [sic] 10 days (plus 5 for mailing) this order becomes final.**

Order Assessing Civil Penalty, dated July 23, 1996, n.1 (emphasis in the original.)

<sup>16</sup> Presumably, Mr. Stalling was referring to the Order Assessing Civil Penalty dated July 23, 1996, rather than the Order to Show Cause dated July 8, 1996.

August 27. If possible, Mr. Stalling needs to explain the reason for the delay in his receipt of the Order Assessing Civil Penalty, as well as why he did not immediately request an extension of time and why he did not file the notice of appeal until August 27.

A late-filed notice of appeal will be dismissed unless good cause for the late-filing is proven. In the Matter of Meronek, FAA Order No. 95-2 (February 14, 1995). The question arises, therefore, whether Mr. Stalling had good cause for failing to file his notice of appeal in a timely fashion. Both parties will be given an opportunity to address this issue.

The issue on appeal, *should the notice of appeal be accepted for good cause shown*, is whether the law judge was in error when, in the Order Assessing Civil Penalty, he held that Mr. Stalling had constructively withdrawn his request for hearing. In this regard 14 C.F.R. § 13.211(g) 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.*

The Order to Show Cause was properly addressed to Mr. Stalling at P.O. Box 5083, Vancouver, WA 98668, sent to Mr. Stalling via U.S. Certified Mail, Return Receipt Requested, and yet it was returned in an envelope marked "M L N F." Mr. Stalling had provided that address in his request for hearing, and there is no evidence that he had provided any other address before the Order to Show Cause was issued.

The law judge construed the return of the envelope containing the Order to Show Cause sent via U.S. Certified Mail, Return Receipt Requested, as a

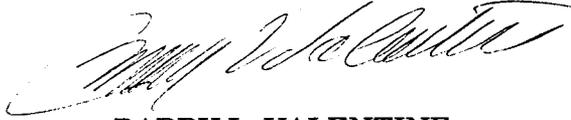
withdrawal of the request for hearing. If the Order to Show Cause was also sent by regular U.S. Mail, it may have been received by Mr. Stalling. Had the law judge not cut short the time period for replying to the Order to Show Cause, then Mr. Stalling might have responded. Moreover, it is clear from Mr. Stalling's subsequent notice of appeal that he never intended to withdraw his request for hearing. Both parties will be given an opportunity to brief the issue whether the law judge was in error when he construed the return of the Order to Show Cause which was sent by U.S. Certified Mail, Return Receipt Requested, as a withdrawal of the request for hearing.

It is ordered that the parties brief both of the following issues:

1. Is there good cause for Mr. Stalling's failure to file a timely notice of appeal?
2. Was the law judge in error when he construed the return of the certified mail containing the Order to Show Cause as a withdrawal of the request for hearing?

It is ordered that Mr. Stalling file his brief on these issues no later than March 20, 1997. The brief should be sent to the Federal Aviation Administration, 800 Independence Avenue, SW, Room 924, Washington, DC 20591, Att: Appellate Docket Clerk. **Failure to file a brief on or before March 20, 1997 will result in a dismissal of Mr. Stalling's notice of appeal, and a civil penalty will be assessed.** Mr. Stalling also should serve a copy of the brief on agency

counsel. Complainant is granted 30 days from the date of service of Mr. Stalling's  
brief to file its brief.



**BARRY L. VALENTINE**  
Acting Administrator  
Federal Aviation Administration

Issued this 19<sup>th</sup> day of February, 1997.