

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

In the Matter of:

OTTOE L. BLANKSON

FAA Order No. 98-21

Served: October 9, 1998

Docket No. CP97EA0024

**ORDER DISMISSING**  
**OR ALTERNATIVELY**  
**DENYING THE APPEAL**<sup>1</sup>

On September 11, 1997, Administrative Law Judge Burton S. Kolko issued an order assessing a \$3,000 civil penalty against Respondent Ottoe Blankson. In his order, the law judge explained that he regarded Mr. Blankson's failure to respond to the law judge's previous orders as "both a constructive withdrawal of the request for a hearing and as an admission of the complaint's allegations." Hence, the law judge stated, "[e]ither conclusion renders the holding of a hearing unnecessary." Order Assessing Civil Penalty, dated September 11, 1997.<sup>2</sup> On October 7, 1997, Mr. Blankson filed a notice of appeal and a separate short memorandum that is being construed as an appeal brief.

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<sup>1</sup> The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 63 Fed. Reg. 37,914, 37,929 (July 14, 1998).

<sup>2</sup> A copy of the Order Assessing Civil Penalty is attached to this decision.

As will be explained further, it is held that Mr. Blankson's appeal is late-filed, and alternatively, that the appeal lacks merit. The appeal is dismissed or in the alternative, denied. The order assessing a \$3,000 civil penalty is affirmed.

### 1. Complaint

A complaint was issued against Mr. Blankson dated May 27, 1997, seeking a \$3,000 civil penalty for alleged violations of 14 C.F.R. §§ 91.11 and 121.317(i).<sup>3</sup> The complaint contained a note that the Rules of Practice require that the respondent must file an answer to the complaint within 30 days and that a general denial is deemed a failure to file an answer, citing Section 13.209(e)<sup>4</sup> of the Rules of Practice. Complaint, page 3.

The complaint was mailed to Mr. Blankson at the following address: 2501 Davidson Avenue, Bronx, NY, 14068. An incorrect zip code was used; the correct zip code was 10468.

### 2. Initial Order of the Administrative Law Judge

Subsequently, Judge Kolko issued an initial order in which he explained that Mr. Blankson was required to file an answer to the complaint by July 1, 1997. The law judge explained that each paragraph of the complaint must be admitted or denied in the

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<sup>3</sup> It was alleged in the complaint that Mr. Blankson tampered with, disabled or destroyed the lavatory smoke detector, damaged wiring to a lavatory light, the passenger speaker system, and the lavatory motor, and cut the passenger oxygen mask wiring. It was also alleged that he interfered with a crewmember in the performance of the crewmember's duties aboard the aircraft.

<sup>4</sup> Section 13.209(e) provides as follows:

*Specific denial of allegations required.* A person filing an answer shall admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

answer. Initial Order dated June 25, 1997. This order was sent to the same address used by Complainant for the complaint, including the incorrect zip code.

### 3. Answer

On July 1, 1997, Mr. Blankson filed a brief answer. Mr. Blankson stated that he was not guilty and "this is for all three charges." Answer dated July 1, 1997. Thus, Mr. Blankson filed a general denial, which as noted in the complaint and the law judge's initial order, is contrary to the Rules of Practice. Mr. Blankson did not mention that the law judge's office was using an incorrect zip code, although he did use the correct zip code -- 10468 -- in the return address on the envelope in which he mailed the answer.

### 4. Order Requiring A Proper Answer to the Complaint

The law judge issued an order on July 8, 1997, informing Mr. Blankson that the answer was insufficient because it was a general denial and general denials are prohibited under the Rules of Practice. He reiterated that the only answer that can be accepted is one in which Mr. Blankson admitted or denied each paragraph of the complaint. Order Requiring a Proper Answer to the Complaint, dated July 8, 1997.

According to the service list, the Order Requiring a Proper Answer to the Complaint was served to Mr. Blankson using the Bronx, NY, address but with the wrong zip code (14068).

### 5. Order to Show Cause

On August 20, 1997, Judge Kolko issued an order to show cause. The law judge explained in the order to show cause that Mr. Blankson had not responded to the Order Requiring a Proper Answer to the Complaint. The law judge held that as a result, the hearing scheduled for October 30-31, 1997, was canceled and Mr. Blankson would be

ordered to pay the \$3,000 civil penalty unless he showed good cause why his request for a hearing should not be dismissed.

This order was served by both Federal Express and by U.S. Mail, using the Bronx, NY, address, but again with the wrong zip code. Federal Express was unable to deliver the envelope, but the envelope sent by U.S. Mail was not returned.

6. Order Assessing Civil Penalty

On September 11, 1997, Judge Kolko issued an order assessing a \$3,000 civil penalty. The law judge wrote in his order as follows:

Despite previous orders warning Respondent that a civil penalty would be assessed without a hearing if a proper answer to the complaint were not filed, nothing further has been heard from Respondent. The previous orders served by Federal Express<sup>5</sup> have been returned undelivered. Those sent by first class mail have not been returned; Respondent is deemed to have been served with those orders.

Respondent's silence continues, which I construe both as a constructive withdrawal of the request for a hearing and as an admission of the complaint's allegations. Either conclusion renders the holding of a hearing unnecessary.

Order Assessing Civil Penalty dated September 11, 1997. In a footnote, the law judge explained that any appeal must be in accordance with Section 13.233 of the Rules of Practice. The law judge wrote that Section 13.233 requires as follows:

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.

Order Assessing Civil Penalty, fn. 1, dated September 11, 1997.

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<sup>5</sup> There is no indication in the Federal Aviation Administration Hearing Docket file (which is separate from the law judge's file maintained in the Department of Transportation Office of Hearings) that any order other than the Order to Show Cause was sent via Federal Express.

The Order Assessing Civil Penalty was served by U.S. Mail, certified return receipt requested. Again, the law judge's office used the Bronx, NY, address but with the wrong zip code. However, unbeknown to the law judge's office, Mr. Blankson had moved to Decatur, Georgia.

#### 7. Appeal

On October 7, 1997, Mr. Blankson filed a two-page handwritten document with the Hearing Docket. It was stated on the first page that Mr. Blankson wanted to appeal from the law judge's order. The second page, entitled, "Memorandum," contains Mr. Blankson's brief explanation of the basis of his appeal, as well as an explanation of why the notice of appeal is late. He wrote as follows:

In the case of the time of this reply for an appeal as seen by the enclosed enveloped (sic), first the address was wrong (zip code 10468, not 14068), then the next address (we have relocated to the state of Georgia) is 365 Pinetree Circle, Decatur, Georgia so it took a while to recieve (sic) this letter.

Memorandum dated October 7, 1997.

He attached a copy of the envelope in which the Order Assessing Civil Penalty was sent to him, via U.S. certified mail on September 11, 1997. The zip code, 14068, was crossed out by a single line and someone had handwritten the zip code 10468 on the envelope. The Georgia address was handwritten in a circle on the side of the envelope.

Finally, handwritten on the side of the envelope is this notation:

NR – LN  
3237  
10-1-97  
SLB

Attachment to the Notice of Appeal and Memorandum dated on October 7, 1997.

Did Mr. Blankson file his notice of appeal in a timely fashion?

Under Sections 13.233(a) and 13.211(e), Mr. Blankson had 15 days in which to file a notice of appeal from the law judge's written order assessing civil penalty. Hence, his notice of appeal was due to be filed on September 26, 1997. He did not file his notice of appeal until October 7, 1997, 11 days late.

It has been held that a late-filed notice of appeal will only be excused upon a showing of good cause for the late-filing. *E.g.*, In the Matter of Virginia S. Taylor, FAA Order No. 98-1 at 4 (February 18, 1998); In the Matter of Metz, FAA Order No. 90-3 (January 29, 1990).

The only reason given by Mr. Blankson for having failed to file a timely notice of appeal is that it took a long time for the order assessing civil penalty to reach him because the wrong address was on the envelope. From the markings on the envelope attached to Mr. Blankson's notice of appeal and memorandum, it appears that he did not receive the Order Assessing Civil Penalty until on or after October 1, 1997, at which time, the deadline for filing the notice of appeal had already passed.<sup>6</sup>

It was noted in one case that the law judge's use of the wrong address to serve a final order would constitute good cause for the late-filing of a request for permission to file a late notice of appeal and appeal brief. In the Matter of Continental Airlines, FAA Order No. 98-28 at 4 (September 26, 1997). In that case the law judge's final order was mailed to the Office of the Assistant Chief Counsel for the Western-Pacific Region, the former agency attorney assigned to the case, rather than to the current agency attorney in

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<sup>6</sup> The date on which Mr. Blankson received the Order Assessing Civil Penalty is not in the hearing record of this case. Mr. Blankson did not provide any evidence of the date of receipt. The certified return receipt ("green card") for the order is not available.

the Office of the Assistant Chief Counsel for the Southwest Region. The Administrator held, however, that a one-year delay was not justified, noting that the order should have been forwarded to the office currently handling the case.

In the case at bar, likewise, Mr. Blankson's negligence outweighs the use of the wrong zip code by the law judge's office. Mr. Blankson should have notified the law judge's office of his change of address. His failure in this regard reflects an unacceptable degree of diligence in the prosecution of his appeal.

Was it error for the law judge to dismiss Mr. Blankson's request for hearing?

In the alternative, it is held that Mr. Blankson's appeal lacks merit. Mr. Blankson argued that his failure to file an appropriate answer should be excused because he did not know that he was required to respond specifically to each allegation in the complaint.

Section 13.209(e) of the Rules of Practice provides as follows:

(e) *Specific denial of allegations required.* A person filing an answer shall admit, deny, or state that the person is without specific knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

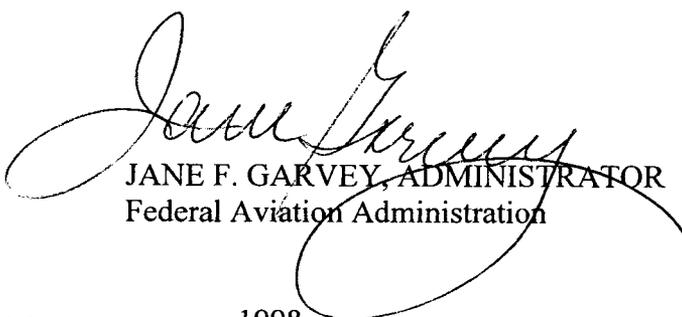
14 C.F.R. § 13.209(e). Mr. Blankson did not specifically respond to each numbered paragraph of the complaint. The law judge issued three orders in which he explained the requirements of Section 13.209(e),<sup>7</sup> and it was noted in the complaint that under Section 13.209(e), a general denial is deemed a failure to file an answer. After Mr. Blankson filed his answer, the law judge issued an order informing him that the answer was insufficient under the Rules of Practice and explaining the deficiencies and how to

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<sup>7</sup> Initial Order dated June 25, 1997; Order Requiring a Proper Answer dated July 8, 1997; and Order to Show Cause dated August 20, 1997.

correct those deficiencies. Order Requiring a Proper Answer to the Complaint, dated July 8, 1997. When Mr. Blankson did not reply to the latter order, the law judge issued an Order to Show Cause, in which he quoted the pertinent language from his Order Requiring a Proper Answer to the Complaint. In light of the complaint and the law judge's orders, Mr. Blankson should have known the requirements for an answer and he should have filed an appropriate answer or sought additional time in which to file an appropriate answer.<sup>8</sup>

*THEREFORE*, the notice of appeal is dismissed. In the alternative, Mr. Blankson's appeal is denied. The law judge's order assessing a \$3,000 civil penalty against Mr. Blankson is affirmed.<sup>9</sup>

  
JANE F. GARVEY, ADMINISTRATOR  
Federal Aviation Administration

Issued this 8th day of October, 1998.

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<sup>8</sup> Mr. Blankson did not assert in his answer that he did not receive the law judge's orders. The law judge mentioned in his Order Assessing Civil Penalty that he had previously ordered Mr. Blankson to file an appropriate answer and that "Respondent was deemed to have been served with those orders." Order Assessing Civil Penalty dated September 11, 1997.

As already discussed, the law judge's office used the wrong zip code when these orders were mailed to Mr. Blankson. However, it is evident that Mr. Blankson received mail despite the wrong zip code.

Finally, even if Mr. Blankson did not receive any of the law judge's orders other than the Order Assessing Civil Penalty, he was given specific notice of Section 13.209(e)'s requirements in the complaint.

<sup>9</sup> Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2).