

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**In the Matter of:**

**JAMES K. SQUIRE**

FAA Order No. 98-5

Served: March 19, 1998

Docket No. CP97WP0007

ORDER

Respondent James Squire filed a notice of appeal from the oral initial decision rendered by Chief Administrative Law Judge Roy Maurer at the conclusion of a hearing<sup>1</sup> held on August 20, 1997. Mr. Squire did not perfect the appeal by filing an appeal brief. The question here is whether good cause exists to grant Mr. Squire additional time in which to file an appeal brief. Mr. Squire is granted additional time, until April 29, 1998, to file an appeal brief that explains in detail the basis for his appeal.

At the conclusion of the hearing held in this case, Judge Maurer held that Mr. Squire violated 14 C.F.R. § 121.317(g), (h), and (k) and 49 U.S.C. § 41706<sup>2</sup> while

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<sup>1</sup> Mr. Squire has not been represented by counsel during these proceedings.

<sup>2</sup> The law judge held that Mr. Squire violated the following regulations:

Section 121.317(g): "No person may smoke while a 'No Smoking' sign is lighted or if 'No Smoking' placards are posted, except that the pilot in command may authorize smoking on the flight deck except during airplane movement on the surface, takeoff, or landing."

Section 121.317(h): "No person may smoke in any airplane lavatory."

he was a passenger on board a flight from Seattle, Washington, to Las Vegas, Nevada, on March 12, 1996. The law judge held that "No Smoking" placards had been posted and that Mr. Squire had smoked in the lavatory on board this flight while the "No Smoking" signs were lighted. (Tr. 66.) The law judge held further that during the passenger briefing prior to takeoff, the passengers had been advised of the regulations prohibiting smoking in the lavatories. (Tr. 66.)<sup>3</sup> While Complainant had sought a \$2,000 civil penalty, the law judge assessed a \$719 civil penalty based upon Mr. Squire's limited income. The law judge then informed Mr. Squire that he had the option to file a notice of appeal within 10 days of the decision and informed Mr. Squire of the address to which to send the notice of

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Section 121.317(k): "Each passenger shall comply with instructions given him or her by a crewmember regarding compliance with paragraphs (f), (g), (h) and (l) of this section."

14 C.F.R. § 121.317(g), (h), and (k). The law judge also found that Mr. Squire violated 49 U.S.C. § 41706(a)(3)(A), which provides as follows:

(a) General -- An individual may not smoke in the passenger cabin or lavatory of an aircraft on a scheduled airline flight segment in air transportation or intrastate air transportation that is --

(3)(A) scheduled for not more than 6 hours' duration ....

<sup>3</sup> The law judge noted further that Mr. Squire had testified that he has a hearing loss. The law judge stated: "It is unknown to me whether this Respondent in fact heard this advice, but in any event it [preflight announcement regarding the prohibition against smoking in the lavatory] was made." (Tr. 66-67.)

appeal.<sup>4</sup> The law judge did not mention the requirement to perfect the appeal by filing an appeal brief. *See* 14 C.F.R. § 13.233(c).<sup>5</sup>

Mr. Squire filed a "request for an appeal hearing" to be held in Seattle, Washington. However, the Rules of Practice do not provide a right to an additional hearing. After the law judge issues an initial decision, either party may file a notice of appeal, and perfect that appeal by filing an appeal brief. 14 C.F.R. § 13.233. The Administrator, acting in her capacity as the FAA Decisionmaker, decides whether the law judge committed any prejudicial errors and whether the law judge's decision should be affirmed, modified, or reversed. 14 C.F.R. § 13.233(j).

Mr. Squire's request is being construed as a notice of appeal.<sup>6</sup> However, Mr. Squire failed to perfect his appeal by filing an appeal brief. Mr. Squire stated no grounds for the appeal in his notice of appeal and therefore, it cannot be construed as an appeal brief.<sup>7</sup>

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<sup>4</sup> Under 14 C.F.R. § 13.233(a):

A party may appeal the initial decision, ... 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, SW., 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 ....

<sup>5</sup> Section 13.233(c) of the Rules of Practice in Civil Penalty Actions provides as follows:

(c) Perfecting an appeal. 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 ... by filing an appeal brief with the FAA decisionmaker.

14 C.F.R. § 13.233(c).

<sup>6</sup> The notice of appeal was due to be filed on August 27, 1997, 10 days after the issuance of the oral initial decision. The notice of appeal apparently mistakenly was dated August 7, 1997, which would mean that it was mailed before the hearing. The envelope in which this document was sent was postmarked August 27, 1997.

<sup>7</sup> The requirements for an appeal brief are set forth in 14 C.F.R. § 13.233(d)(1) which provides as follows:

Rather than dismiss the appeal for failure to perfect, additional time is granted to Mr. Squire to file an appeal brief that sets forth in detail the grounds for the appeal.<sup>8</sup> This extension of time is based upon the law judge's failure to mention that a party filing a notice of appeal was required to perfect that appeal by filing an appeal brief. Although the requirement to file an appeal brief is set forth in the Rules of Practice, a law judge's mention of only the notice of appeal requirement may mislead individuals unfamiliar with the FAA civil penalty program into believing that filing a notice of appeal alone will suffice.

Mr. Squire must file his appeal brief no later than April 29, 1998, with the FAA Hearing Docket, at 800 Independence Avenue, SW., Room 924A, Washington, D.C. 20591.<sup>9</sup> **Failure to file an appeal brief by April 29, 1998, shall result in**

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A party shall set forth, in detail, the party's specific objections 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 in the appeal. If the party relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

<sup>8</sup> See n.7

<sup>9</sup> A copy of the Rules of Practice in Civil Penalty Actions is attached to this decision. Mr. Squire should pay particular attention to Sections 13.233, 13.210 and 13.211.

**dismissal of the appeal, in which case the \$719 civil penalty would remain in effect.**

JANE F. GARVEY, ADMINISTRATOR  
Federal Aviation Administration



VICKI S. LEEMON<sup>10</sup>  
Manager, Adjudication Branch

Issued this 19<sup>th</sup> day of March, 1998.

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<sup>10</sup> Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (see 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.