

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

MICHAEL MCDERMOTT

FAA Order No. 99-8

Served: August 31, 1999

FAA Docket No. CP98WP0055

DMS No. FAA-1999-5516¹

ORDER DENYING APPEAL²

By written order served on March 2, 1999, Administrative Law Judge Burton S. Kolko assessed a \$3,300 civil penalty against Respondent Michael McDermott. The law judge explained in his order that McDermott had failed to file an answer to the complaint. The law judge explained further that he construed McDermott's silence both as a constructive withdrawal of the request for a hearing and as an admission of the allegations contained in the complaint.

McDermott filed a timely notice of appeal on March 16, 1999.³ In the notice, McDermott wrote as follows: "I have moved 3 times in the last year and had inadequate time to respond to all previous notices. Please note that I can be reached at:

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the use of the following Internet address: <http://dms.dot.gov>. For additional information, see 64 Fed. Reg. 43236, 43250-51 (August 9, 1999.)

² 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 64 Fed. Reg. 43236, 43250 (August 9, 1999.)

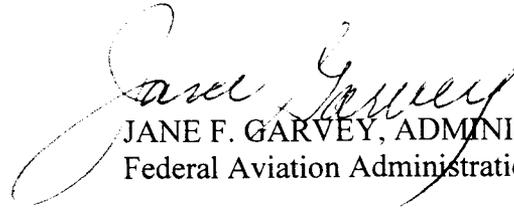
Michael McDermott
5 Birch Tree Lane
Livingston, N.J. 07039"

Under 14 C.F.R. §§ 13.233(c) and 13.211(e), McDermott was required to perfect his appeal by filing an appeal brief within 55 days of the issuance of the law judge's written decision. The appeal brief was due, therefore, on April 26, 1999. However, McDermott has not filed an appeal brief. Although his notice of appeal was quite short, it had sufficient detail so that it will be construed an appeal brief.

Ordinarily, when a respondent's notice of appeal is construed as an appeal brief as well, Complainant will be granted additional time in which to file a reply brief. But in this instance, no such opportunity need be provided because McDermott has not provided sufficient justification for his failure to file a timely answer. When McDermott wrote to the Hearing Docket Clerk in November, 1998, he provided the 5 Birch Tree Lane, address. Henceforth, all other documents in the case – including the complaint dated November 10, 1998, the Order of Administrative Law Judge Ronnie Yoder dated January 7, 1999, and the Notice of Hearing dated February 2, 1999 -- were served to McDermott at that address. Each of these documents contained information pertaining to the requirement to file an answer. The fact that McDermott may have moved several times during the pre-complaint stages of this matter is irrelevant to the question of whether he had good cause for failing to file an answer.

³ The notice of appeal, dated March 10, 1999, was sent in an envelope postmarked March 16, 1999. In such circumstances, under 14 C.F.R. § 13.211(b), the postmark date determines the date of filing. Regardless, the notice was filed in a timely fashion because it was due to be filed no later than March 17, 1999, under 14 C.F.R. §§ 13.233(a) and 13.211(e).

Hence, the law judge's order assessing a \$3,300 civil penalty for violations of 14 C.F.R. §§ 91.11, 121.317(g) and 121.317(h) is affirmed.⁴


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 23rd day of August, 1999.

⁴ 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) (1999).