

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

LIFEFLITE MEDICAL AIR
TRANSPORT, d/b/a
AMERICAN NATIVE
MEDICAL AIR

FAA Order No. 99-9

Served: August 31, 1999

Docket No. CP98WP0062

**ORDER REVERSING THE ORDER ASSESSING CIVIL PENALTY,
DISMISSING THE APPEAL,
AND REMANDING TO THE ADMINISTRATIVE LAW JUDGE**

On February 17, 1998, Administrative Law Judge Burton S. Kolko issued an Order Assessing Civil Penalty against Respondent Lifeflite Medical Air Transport. The law judge's order was premised upon what he believed was the failure of Respondent to file an answer to the complaint. However, Lifeflite had filed an answer on February 16, 1998.¹ The law judge did not receive the answer until after he had issued the Order Assessing Civil Penalty. As a result of the foregoing, the law judge referred this matter to the FAA decisionmaker. Lifeflite has filed a timely notice of appeal.

¹ The answer itself is dated February 15, 1998. However, the postage meter mark on the envelope indicates February 16, 1998. The rule pertaining to the date of filing states as follows:

Date of filing. A document shall be considered to be filed on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

14 C.F.R. § 13.210(b). A certificate of service did not accompany the answer. Hence, under the above-quoted rule, the filing date is February 16, 1998.

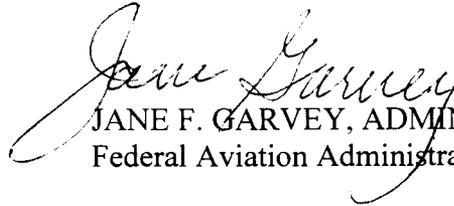
The chronology of this case is as follows. The complaint was issued on December 23, 1998, alleging violations of 14 C.F.R. § 135.21 and 14 C.F.R. Part 121, Appendix I, Section V.A., and seeking a \$7,000 civil penalty. Neither the complaint nor the cover letter contained a notice referring the respondent to the requirement to file an answer within 30 days of the service of the complaint set forth in 14 C.F.R. § 13.209. Under Section 13.209(a), Lifeflite's answer was due to be filed no later than January 27, 1999.² On January 29, 1999, the law judge issued a Notice of Hearing, informing the parties that he had scheduled the hearing for March 19, 1999. The law judge also included the admonition that there would be no hearing unless Lifeflite filed an answer, and then added, "The answer is due now." Lifeflite filed its answer on February 16, 1999, the day before the law judge issued the Order Assessing Civil Penalty.

Ordinarily, the Administrator, serving in her capacity as FAA decisionmaker, will not take action on an appeal until both parties have had an opportunity to file briefs on the issues. In this instance, however, the basis for the law judge's initial decision, while understandable, was clearly erroneous. The law judge's initial decision, therefore, is reversed, and this matter is remanded to the law judge.

Lifeflite should be aware that it is not "out of the woods" yet. The law judge will have to determine whether good cause exists for the late-filing of the answer.

² Lifeflite had an additional 5 days in which to file its answer by virtue of the "mailing rule," 14 C.F.R. § 13.211(e).

Accordingly, the law judge's initial decision is reversed, and the matter is remanded to the law judge for further proceedings as he deems appropriate.


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 23rd day of August, 1999.