

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

WILLIAM T. STEVENSON

FAA Order No. 2000-29

Served: December 21, 2000

Docket No. CP00NM0005
DMS No. FAA-2000-7217¹

DECISION AND ORDER²

By order dated July 3, 2000³, Administrative Law Judge Burton S. Kolko construed William Stevenson's failure to file an answer and to respond to an order to show cause as both a constructive withdrawal of his request for a hearing and as an admission of the complaint's allegations. The law judge assessed a \$3,300 civil penalty against Mr. Stevenson. Mr. Stevenson has appealed from this order, arguing that he did not receive certain documents related to this matter because the law judge and the agency attorney sent all correspondence to him using the wrong address. Mr. Stevenson's appeal is denied.

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>.

² The Administrator's civil penalty decisions are available on LEXIS, Westlaw, and other computer databases. They also can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, *see* 65 Fed. Reg. 67,445, 67,462 (November 9, 2000.)

³ A copy of the law judge's order is attached.

Background

Complaint. Complainant filed the complaint with the Hearing Docket and sent a copy to Mr. Stevenson by U.S. certified mail, return receipt requested, on April 4, 2000. Complainant addressed the envelope to Mr. Stevenson at his Danville, California, address. Mr. Stevenson signed the return receipt card on April 20, 2000.⁴

A notice explaining the requirement to file an answer appeared at the end of the complaint as follows:

ANSWER

In accordance with Section 13.209 of the Federal Aviation Regulations, you must answer this Complaint not later than 30 days from the time it is served on you. Failure to file an Answer within 30 days without good cause shall be deemed an admission of the truth of each allegation contained in the Complaint [14 C.F.R. § 13.209(f)].

Complaint at 3.

Discovery. On April 26, 2000, Complainant sent a discovery request to Mr. Stevenson, again using the Danville, California, address. Although Mr. Stevenson received this discovery request (*see* Respondent's Appeal), he did not file a reply. (Complainant's Response to Appellate Appeal, dated August 24, 2000, at 1.)

Judge Kolko's Initial Order. The law judge issued an initial order on May 12, 2000, noting that Mr. Stevenson's answer was overdue. The law judge directed Mr. Stevenson to mail the answer or send it by facsimile no later than Memorial Day.

⁴ The agency attorney has provided a photocopy of the return receipt card for the complaint. (Complainant's Response to Appellate Appeal, Attachment A.) "William" is written in Box 5 as the recipient. Presumably, "William" is the respondent, William Stevenson.

The law judge's office mailed this order to Mr. Stevenson's Danville, California address. Mr. Stevenson claims that he did not receive this order.⁵

Complainant's Motion to Dismiss. Complainant filed a motion on June 8, 2000, requesting that the law judge dismiss Mr. Stevenson's request for hearing⁶ because Mr. Stevenson had not filed an answer. The agency attorney sent a copy of the motion to Mr. Stevenson at the Danville, California address. Mr. Stevenson did not receive this motion.⁷

Order to Show Cause. The law judge ordered Mr. Stevenson to explain why: 1) his request for hearing should not be dismissed, 2) the complaint should not be deemed admitted, 3) the hearing should not be cancelled and 4) a \$3,300 civil penalty should not be assessed.⁸ Mr. Stevenson did not reply to the Order to Show Cause. Mr. Stevenson claims on appeal that he did not receive this document. (*See Respondent's Appeal.*)

Order Assessing Civil Penalty. In the order assessing civil penalty, dated July 3, 2000, the law judge wrote that he construed Mr. Stevenson's "silence" as an admission of

⁵ He wrote in his appeal:

The last official document that I received was a Certificate Of Service, hand dated 4-26-2000, that the FAA would be filing the first Set of Interrogatories. I have just received an Order Assessing Civil Penalty, stamped dated 7-7-2000, on 7-28-2000 in the mail.

If the last document that he received was dated April 26, 2000, then he did not receive the initial order dated May 12, 2000.

⁶ Actually, Complainant requested that Mr. Stevenson's "appeal," be dismissed. However, under the circumstances of this case, the agency attorney most likely was seeking the dismissal of Mr. Stevenson's request for hearing.

⁷ The agency attorney claims that he sent a copy of the motion to Mr. Stevenson first by U.S. mail, certified return receipt requested, and later by regular mail, but both times, the envelope was returned. (Complainant's Response to Appellate Appeal dated August 24, 2000, at 1.)

⁸ The Order to Show Cause was served on June 8, 2000, to the Danville, California address. The law judge wrote that Respondent's explanation would be late if not received by June 23, 2000.

the complaint's allegations. He held that "[e]ither conclusion renders the holding of a hearing unnecessary."

The Agency Attorney's Additional Efforts to Contact Respondent. After the U.S. Postal Service returned the motion to dismiss to Complainant near the end of July, the agency attorney attempted to contact Mr. Stevenson by telephone. According to the agency attorney, Mr. Stevenson replied to these inquiries on July 25th, stating that he had moved and no longer lived at the Danville, California address. (Complainant's Response to Appellate Appeal, dated August 24, 2000, at 2.)⁹ Copies of "recent correspondence" were then provided to Mr. Stevenson at his new address. *Id.*

Respondent's Appeal. By letter dated August 1, 2000, Mr. Stevenson appealed from the Order Assessing Civil Penalty. He argued that he had not received "time sensitive correspondence" throughout the proceedings because the correspondence had been mailed to the wrong address. He argued, "Due to the misaddressing and the US postal service inability to forward my mail, I have been miss-informed (sic) as to time critical submission in this matter." He argued further that he had denied "all allegations" in earlier correspondence with the agency attorney, that he regarded the \$3,300 civil penalty to be "absurd and grossly unfounded," and that he had been unfairly denied an opportunity for a hearing.

⁹ The record does not contain evidence of Mr. Stevenson's moving date.

Discussion

Under 14 C.F.R. §§ 13.209(a)¹⁰ and 13.211(e)¹¹, Mr. Stevenson was required to file his answer no later than May 9, 2000. Mr. Stevenson received the complaint on April 20, 1999, and the complaint contained a summary of the regulatory requirement to file an answer. Hence, Respondent should have been aware of the requirement to file a timely answer.

Under Section 13.209(f), “a person’s failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint.” 14 C.F.R. § 13.209(f). Mr. Stevenson has attributed his failure to file a timely answer on the fact that the agency attorney and the law judge used the wrong address and as a result, he did not receive any documents after the request for discovery, which was served on April 26, 1999.

Mr. Stevenson’s explanation does not constitute good cause for failing to file an answer. Mr. Stevenson actually received the complaint with its notice of the requirement to file an answer. Hence, even if the agency attorney used an old address when he sent Mr. Stevenson the complaint, Mr. Stevenson had ample notice of the requirement to file an answer.

Moreover, the agency attorney and the law judge used Mr. Stevenson’s address of record. Mr. Stevenson received several documents at this address. There is no evidence

¹⁰ Section 13.209(a) of the Rules of Practice provides that “[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).

¹¹ Section 13.211(e) of the Rules of Practice provides that “[w]hen a party has a right or a duty to act or to make any response within a prescribed period after service by mail ... 5 days shall be added to the prescribed period.” 14 C.F.R. § 13.211(e).

that Mr. Stevenson supplied his new address to either the agency attorney or the law judge until Mr. Stevenson responded on July 25, 2000, to the agency attorney's telephone inquiry. Mr. Stevenson failed to receive the law judge's initial order or the order to show cause because he failed to provide his new address to the agency.

Mr. Stevenson did not receive the law judge's initial order dated May 12, 2000, giving Mr. Stevenson additional time to file an answer. However, the initial order was issued after the time for filing the answer had passed, and Section 13.209 of the Rules of Practice does not grant law judges the authority to extend the deadline for filing an answer without a showing of good cause. In the Matter of Larry's Flying Service, FAA Order No. 98-4 at 2-3 (March 12, 1998); In the Matter of Atlantic World Airways, FAA Order No. 95-28 (December 19, 1995).

Mr. Stevenson argued in his appeal that he had informed the agency attorney in other responses that he denies all the allegations. However, it has been held that responses to pre-complaint documents do not satisfy the requirement for an answer. In the Matter of Barnhill, FAA Order No. 92-32 at 6 (May 5, 1992).

Mr. Stevenson also argues in his appeal that the \$3,300 civil penalty assessed by the law judge is "absurd and grossly unfounded." However, in light of his multiple violations of the regulations¹² -- 1) drinking an alcoholic beverage not served to him by a

¹² Complainant alleged in the complaint that Mr. Stevenson, while a passenger on board Alaska Airlines Flight No. 298 from San Jose, California, to Puerto Vallarta, Mexico, drank an alcoholic beverage that had not been served to him by Alaska Airlines personnel in violation of 14 C.F.R. § 121.575(a). It was alleged further that Mr. Stevenson confronted and threatened a flight attendant, and that it was necessary for the flight attendant to inform the pilot of Mr. Stevenson's behavior on board the flight. The pilot, in turn, requested that the police meet the flight upon landing. In light of these allegations, it was alleged that Mr. Stevenson had threatened and intimidated a crewmember and interfered with flight crewmembers' performance of their duties, in violation of 14 C.F.R. § 121.580. Complainant sought a \$3,300 civil penalty.

flight crewmember,¹³ 2) threatening and intimidating a flight attendant, and 3) interfering with the duties of the pilot¹⁴ – the \$3,300 civil penalty is warranted.¹⁵

In light of the foregoing, the order assessing a \$3,300 civil penalty is affirmed.¹⁶


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 19th day of December, 2000.

¹³ Section 121.575(a) of the Federal Aviation Regulations provides:

No person may drink any alcoholic beverage aboard an aircraft unless the certificate holder operating the aircraft has served that beverage to him.

14 C.F.R. § 121.575(a).

¹⁴ Section 121.580 of the Federal Aviation Regulations provides:

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated under this part.

14 C.F.R. § 121.580.

¹⁵ Under 49 U.S.C. § 46301(a) (as adjusted for inflation by 14 C.F.R. § 13.305(d)), \$1,100 per violation is the maximum civil penalty that the FAA may assess for the types of violations in this case.

¹⁶ Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2).