

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: IAL POWER SUPPLY

FAA Order No. 2002-10

Docket No. CP01SO0015
DMS No. FAA-2001-9540¹

Served: April 17, 2002

DECISION AND ORDER²

Counsel for Respondent IAL Power Supply (IAL), a repair station, filed a timely notice of appeal from the order of Administrative Law Judge Burton S. Kolko (attached) assessing IAL a \$49,000 civil penalty for several violations of the Federal Aviation Regulations.³ The ALJ's order advised IAL that after filing a notice of appeal, a party must perfect its appeal by filing an appeal brief not later than 50 days after service of the

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 following Internet address: <http://dms.dot.gov>.

² The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. In addition, there are two reporters of the decisions: Hawkins' Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. Finally, the decisions are available through LEXIS and WestLaw. For additional information, see the website.

³ In this order, the ALJ granted Complainant's motion for decision, which was based on IAL's failure to file an answer to the complaint. The ALJ pointed out that IAL had filed neither an answer to the complaint nor a reply to Complainant's motion for decision. The ALJ stated: "I construe Respondent's silence both as a constructive withdrawal of the request for a hearing and as an admission of the complaint's allegations." (Initial Decision at 1.) He then assessed the \$49,000 civil penalty proposed in the complaint for the alleged violations of 14 C.F.R. §§ 43.13(a) (failing to use methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness or other methods, techniques, and practices acceptable to the Administrator); 43.13(b) (failing to perform maintenance in such a manner and to use materials of such a quality that the engine will be at least equal to its original or properly altered condition); 43.16 (failing to perform maintenance in

order on the parties (plus an additional 5 days when the ALJ's order is sent via the U.S. Postal Service).⁴

The ALJ served his order via the U.S. Postal Service on August 7, 2001. Consequently, IAL's appeal brief was due by October 1, 2001. IAL's counsel did not, however, file the appeal brief until October 9, 2001, and he did not request an extension of time in which to file the appeal brief.

Complainant has moved to strike IAL's appeal brief because it is late. IAL has not responded to Complainant's motion to strike.

The Rules of Practice provide for excusing the untimely filing of an appeal brief upon a showing of good cause. IAL, however, has failed to provide any explanation for the late filing of its appeal brief.⁵ It has failed to show, or even attempt to show, good cause.⁶ IAL's notice of appeal does not provide sufficient detail to be construed as an appeal brief.⁷ For these reasons, IAL's appeal is dismissed, and the ALJ's order assessing

accordance with the manufacturer's maintenance manual); and 145.45(b) (being unfamiliar with all inspection methods, techniques, and equipment).

⁴ ALJ Order at 1 n.1.

14 C.F.R. § 13.233(c) provides: "[A] party shall perfect an appeal, not later than 50 days after . . . service of the written initial decision on the party, by filing an appeal brief with the FAA decisionmaker." 14 C.F.R. § 13.211(e) provides: "Whenever 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."

⁶ See, e.g., In the Matter of WRA, FAA Order No. 1997-6 (February 7, 1997) (dismissing Respondent's appeal where Respondent had failed to show, or even attempt to show, good cause for its failure to perfect its appeal in a timely manner).

⁷ See In the Matter of Giuffrida, FAA Order No. 1992-17 (March 10, 1992) (although Respondent had not filed an appeal brief, his appeal brief was sufficiently detailed to satisfy the requirements for an appeal brief, and his appeal was considered perfected).

a \$49,000 civil penalty remains in effect.⁸

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON⁹
Manager, Adjudication Branch

Issued this 17th day of April, 2002

⁸ It is possible that IAL filed a timely reply to Complainant's motion to strike its appeal brief, and that IAL made a good cause argument in this reply, but that due to the disruption in the U.S. Postal Service deliveries caused by the anthrax attacks, the Appellate Docket never received IAL's reply. If so, IAL may submit a petition for reconsideration of this order to the Administrator, along with proof of service of any such reply it made to Complainant's motion to strike. Any petition for reconsideration must be filed within 30 days under 14 C.F.R. § 13.234(a) (plus 5 additional days under 14 C.F.R. § 13.211(e) because this order is being served via the U.S. Postal Service).

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 order will be considered an order assessing civil penalty. 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2).

⁹ 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.