

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of: BLONG XIONG
FAA Order No. 2006-7

Docket No. CP05NE0004
DMS No. FAA-2005-21943¹

Served: July 26, 2006

ORDER DISMISSING APPEAL²

Administrative Law Judge Isaac D. Benkin issued an oral initial decision at the conclusion of a hearing held on February 8, 2006, holding that Respondent Blong Xiong (“Xiong”) violated the Hazardous Materials Regulations, as alleged in the complaint. The ALJ assessed a \$1,500 civil penalty, payable in fifteen \$100-monthly installments.

Under 14 C.F.R. § 13.233(a),³ Xiong had 10 days from the date of the ALJ’s oral initial decision in which to file his notice of appeal in the FAA Hearing Docket. Xiong sent his notice of appeal, dated February 17, 2006, to the ALJ, who forwarded the notice of appeal to the Hearing Docket. Xiong’s notice of appeal is accepted as timely filed, despite the fact that he mistakenly sent his notice of appeal directly to the ALJ, rather than to the Hearing Docket.

In addition, under 14 C.F.R. § 13.233(c), Xiong was required to perfect his appeal by filing an appeal brief no later than 50 days after the issuance of the ALJ’s oral initial

¹ Materials filed in the FAA Hearing Docket 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>. See 14 C.F.R. § 13.210(e)(1).

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/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty. The decisions are published by Clark Boardman Callaghan in Federal Aviation Decisions. The decisions also are available through LEXIS and WestLaw.

³ Section 13.233(a) states as follows:

(a) Notice of appeal. A party may appeal the initial decision ... by filing a notice of appeal with the FAA decisionmaker. A party must file the notice of appeal in the FAA Hearing Docket using the appropriate address listed in § 13.210(a). A party shall file the notice of appeal not later than 10 days after entry of the oral initial decision on the record ... and shall serve a copy on each party.

14 C.F.R. § 13.233(a).

decision. Hence, Xiong's appeal brief was due no later than March 30, 2006. Xiong, however, has neither filed an appeal brief nor sought an extension of time.

On June 7, 2006, Complainant filed a motion to dismiss Xiong's appeal. Complainant argues in the motion that Xiong failed to file a timely notice of appeal and appeal brief. The Hearing Docket has not received any response to that motion from Xiong.

Under 14 C.F.R. § 13.233(d)(2),⁴ the Administrator may dismiss an appeal when a party files a notice of appeal but fails to perfect that appeal by filing an appeal brief in a timely fashion. Xiong's appeal brief was due by March 30, 2006, but he has neither filed an appeal brief nor requested an extension of time in which to file an appeal brief. Accordingly, Xiong's appeal is subject to dismissal under 14 C.F.R. § 13.233(d)(2) due to his failure to file an appeal brief.

THEREFORE, IT IS ORDERED THAT: Complainant's motion to dismiss is granted. Xiong's appeal is hereby dismissed.

MARION C. BLAKEY, ADMINISTRATOR
Federal Aviation Administration

[Original signed by Vicki S. Leemon]

VICKI S. LEEMON⁵
Manager, Adjudication Branch

Issued this 26th day of July, 2006.

⁴Section 13.233(d)(2) provides:

The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief with the FAA decisionmaker.
14 C.F.R. § 13.233(d)(2).

⁵ 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.

