UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: ADVENTURE FLIGHT CENTER, INC.

FAA Order No. 2007-1

Docket No. 06SW0001
DMS No. FAA-2006-23725[1]

Served: February 20, 2007

ORDER DISMISSING APPEAL[2]

Once again, the Administrator is faced with a case in which the respondent has failed to follow the Rules of Practice, 14 C.F.R. Part 13, subpart G, and comply with the administrative law judge's (ALJ) orders. Administrative Law Judge Richard C. Goodwin issued a procedural order summarizing 14 C.F.R. § 13.209's requirement to file an answer, but the respondent, Adventure Flight Center, did not file an answer. After Adventure failed to appear at the scheduled hearing, the ALJ issued a default judgment, assessing a $15,000 civil penalty. Subsequently, Adventure sent a letter appealing from the default judgment addressed to the ALJ,[3] instead of filing the appeal in a timely fashion with the FAA Hearing Docket as required under the Rules of Practice. As will be explained, Adventure's appeal is denied because it was filed late.

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[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/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty/*. In addition, Thomson/West publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the website.

[3] A member of the ALJ's staff subsequently forwarded the letter to the Hearing Docket.

Under 14 C.F.R. §§ 13.233[4] and 13.211(e),[5] a party may appeal from a written decision issued by an ALJ by filing a notice of appeal in the FAA Hearing Docket within 15 days after the issuance of the ALJ's decision. In this case, the ALJ's written initial decision entitled "Default Judgment" states that it was served on November 6, 2006. Under 14 C.F.R. §§ 13.233(a) and 13.211(e), Adventure's notice of appeal was due to be filed no later than 15 days later, or by November 21, 2006. Adventure's notice of appeal, however, was dated November 30, 2006.[6] Consequently, Adventure's notice of appeal was late.[7]

The Administrator has held that a late-filed notice of appeal will be excused if good cause is demonstrated for lateness. Adventure has offered no good cause for failing to file its notice of appeal within the time period provided in 14 C.F.R. § 13.233(a).[8]

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[4] Section 13.233(a) states in pertinent part as follows: "A party shall file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision …." 14 C.F.R. § 13.233(a). It is explained in Section 13.233(c) that "[u]nless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party by filing an appeal brief with the FAA decisionmaker."

[5] Section 13.211(e), entitled "Additional time after service by mail" provides as follows:

> Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days shall be added to the prescribed period.

[6] The Rules of Practice provide that the party must file the notice of appeal in the FAA Hearing Docket using the appropriate address listed in 14 C.F.R. § 13.210(a). Adventure sent its appeal letter to the ALJ at the Department of Transportation instead of to the FAA Hearing Docket. A member of the ALJ's staff forwarded the notice of appeal to the FAA Hearing Docket.

[7] As the Administrator has done in the past, the Administrator will accept a notice of appeal that was sent to the ALJ instead of filed properly in the Hearing Docket. *See e.g.*, Administrator v. Xiong, FAA Order No. 2006-7 (July 26, 2006).

[8] The ALJ did not provide any information about the appeal process in his written initial decision. It would be helpful if the administrative law judges explained the requirement, as set forth in

Therefore, it is ordered that Adventure's notice of appeal is dismissed.

MARION C. BLAKEY, ADMINISTRATOR

[original signed by Vicki S. Leemon]

VICKI S. LEEMON[9]
Adjudication Branch, AGC-430

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14 C.F.R. §§ 13.233(a) and (c), 13.210(a) and 13.211(e), to file a notice of appeal and an appeal brief in the FAA Hearing Docket in a timely fashion. The administrative law judges could include this information in a footnote at the conclusion of written initial decisions, and summarize it on the record after issuing an oral initial decision at a hearing. The administrative law judges might also mention that the Rules of Practice, setting forth the requirements for notices of appeal and appeal briefs are available on the Internet at the FAA Civil Penalty Adjudication website (*see* n.2 *supra*), as well as on eCFR at http://ecfr.gpoaccess.gov. Hopefully, the provision of information regarding the appeal process (including the timeframes for the filing of the notice of appeal and appeal brief) by the administrative law judges will increase the likelihood that appellants, especially *pro se* respondents, will file their notices of appeal and appeal briefs properly and in a timely fashion.

Also, there is no evidence in the record from which the Administrator can determine whether the agency attorney provided a copy of the Rules of Practice to the respondent when she served the complaint or the notice of proposed civil penalty. The agency attorneys should provide a copy of the Rules of Practice to the respondents, and should inform respondents in a footnote or addendum to the complaint that the Rules of Practice are available on-line on the FAA Civil Penalty Adjudication website and on eCFR.

[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.