

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

In the Matter of: JOEY T. MCDONALD

FAA Order No. 2008-1

Docket No. CP06AL0001
FDMS No. FAA-2006-26018¹

Served: January 16, 2008

ORDER DISMISSING APPEAL²

On April 17, 2007, Administrative Law Judge Richard C. Goodwin issued an Order Entering Default Judgment against Respondent Joey T. McDonald. In this order, the ALJ (1) dismissed with prejudice McDonald's request for a hearing; (2) deemed all the allegations in the complaint as admitted; and (3) assessed a \$1,000 civil penalty.³ On May 1, 2007, McDonald filed a notice of appeal, entitled "Notice of Sentence Appeal," of the ALJ's order.

Under 14 C.F.R. §§ 13.233(c) and 13.211(e), McDonald was required to perfect his notice of appeal by filing an appeal brief, stating his arguments and the basis of his appeal,⁴ no later than 55 days after service of the ALJ's written decision.⁵ Thus,

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at <http://www.regulations.gov>. For additional information, see <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, Thompson/West publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

³ McDonald failed to file an Answer to the Complaint. He also failed to respond to both Complainant's Motion to Deem Allegations Admitted and for a Decision and to the ALJ's Order to Show Cause. Consequently, the ALJ issued the default judgment.

⁴ The required contents of an appeal brief are set forth in Section 13.233(d)(1), 14 C.F.R. 13.233(d)(1), as follows:

A party shall set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also shall set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If

McDonald was required to perfect his appeal by filing an appeal brief no later than June 11, 2007. McDonald, however, neither filed an appeal brief nor requested an extension of time in which to perfect his appeal. Accordingly, McDonald's appeal is subject to dismissal under 14 C.F.R. § 13.233(d)(2).⁶

THEREFORE, IT IS ORDERED THAT: McDonald's appeal is dismissed.

ROBERT A. STURGELL
ACTING ADMINISTRATOR
Federal Aviation Administration

[original signed by Vicki S. Leemon]

VICKI S. LEEMON⁷
Manager, Adjudication Branch

the party relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

⁵ Under 14 C.F.R. § 13.233(c), "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." The party has an additional 5 days in which to file an appeal brief from a written initial decision, under the "mailing rule" in 14 C.F.R. § 13.211(e). As a result, a party has a total of 55 days in which to file an appeal brief after the service of a written initial decision by an ALJ.

⁶ It is provided in 14 C.F.R. § 13.233(d)(2):

The FAA decision maker [the Administrator] 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.

⁷ 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.