

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

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In the Matter of:)	
)	
Daniel Swainston)	Served: December 20, 2024
)	
Docket No. D13-24-01)	
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**HEARING OFFICER DECISION ON MOTION TO DEEM ALLEGATIONS
ADMITTED AND FOR JUDGMENT ON THE PLEADINGS**

This decision concerns a Notice of Proposed Permanent Disqualification (“Notice”) issued on March 15, 2024, by the Federal Aviation Administration (“FAA”) Aviation Litigation Division (“Complainant”)¹. In the Notice, the Complainant proposed to permanently disqualify Respondent Daniel Swainston (“Respondent”) from performing safety-sensitive aircraft maintenance and preventative maintenance duties because he failed two verified drug tests in violation of 14 CFR § 120.111(e)(1).²

On September 5, 2024, after various filings by both parties, the FAA filed an Amended Motion to Deem Allegations Admitted and For Judgment on the Pleadings in accordance with 14 C.F.R. § 13.49 (c) and (g) on the grounds that Respondent failed to file an answer to the Complaint.³ The Respondent did not file a response as permitted under 14 C.F.R. § 13.49 (h).

For the reasons discussed below, the FAA’s Motion is granted.

¹ The Notice of Proposed Permanent Disqualification, originally issued against Respondent Daniel Swainston on March 15, 2024, also serves as the Complaint in this matter. For purposes of this decision, the Notice will hereafter be referred to as the “Complaint.”

² 14 C.F.R. § 120.111(e)(1) states: “[a]n employee who has verified positive drug test results on two drug tests required by this subpart of this chapter, and conducted after September 19, 1994, is permanently precluded from performing for an employer the safety-sensitive duties the employee performed prior to the second drug test.”

³ Complainant’s Amended Motion to Deem Allegations Admitted and For Judgment on the Pleadings (“Amended Motion”) (Sept. 5, 2024).

I. Procedural History

The FAA's Complaint alleges that Respondent tested positive for both a random drug test and a return-to-duty drug test, conducted on October 18, 2022, and February 13, 2023, respectively.⁴ The drug test results led to Respondent's permanent disqualification.⁵

On March 15, 2024, the Complainant sent Respondent the Notice of Proposed Permanent Disqualification.⁶ Enclosed was a Reply Form, which allowed Respondent to participate in an informal conference regarding the disqualification. Respondent elected to participate in a conference.⁷

The parties were unable to resolve the matter at the informal conference. Subsequently, the Complainant informed Respondent of its intent *not* to withdraw the Notice against him. On May 20, 2024, per 14 C.F.R. § 13.20(c)(2), Respondent's spouse requested a formal hearing on his behalf.⁸

In the May 21, 2024, receipt letter, the FAA Hearing Docket confirmed receipt of Respondent's hearing request.⁹ Subsequently, in the Hearing Order and initial correspondence, a new docket number was assigned, the matter was classified as a subpart D civil penalty action, Respondent's attention was directed to the appropriate sections of the Code of Federal Regulations, and the importance of meeting deadlines and requirements was emphasized.¹⁰

The FAA then filed its Complaint on May 23, 2024.¹¹ Physical delivery was attempted by United States mail, but no authorized recipient was available.¹² The mail carrier left information that the Complaint was available for pick-up at a local United States Postal Service Facility.¹³ The Complaint was also served via email¹⁴ on May 23, 2024.¹⁵

⁴ Complaint at 1; *See* 14 C.F.R. § 120.105(e) (2024).

⁵ 14 C.F.R. § 120.111(e)(1) (2024).

⁶ Ex. C-1 at 1.

⁷ Ex. C-3 at 2.

⁸ Ex. C-6.

⁹ Receipt Letter at 1 (May 21, 2024).

¹⁰ Hearing Order (May 28, 2024); Letter 2 – Initial Correspondence (June 6, 2024).

¹¹ Complaint at 3.

¹² Ex. C-8 at 2.

¹³ *Id.*

¹⁴ Voluntary Agreement to Use Email or Fax for Service in 14 C.F.R. Part 13, Subpart D Proceedings, (July 22, 2024).

¹⁵ Complaint at 3.

Respondents have 30 days from the date of service of the complaint to file an answer.¹⁶ On June 28, 2024¹⁷, the FAA Hearing Docket received a letter from Respondent's spouse.¹⁸ The letter detailed the cause of Respondent's drug test results but did not deny any allegations in the Complaint.¹⁹ That letter was not served on the FAA.

On August 6, 2024, the FAA filed its Motion to Deem Allegations Admitted and For Judgment on the Pleadings ("Motion").²⁰ Two days later, Respondent served his June 28, 2024, submission on the FAA via email.²¹ Unaware that Respondent had served the FAA, the Hearing Officer directed the Respondent to serve his June 28, 2024 submission.²² After believing the Respondent failed to do so, the Hearing Officer served the FAA with the June 28, 2024, submission and provided the FAA with ten days to amend its Motion.²³

On September 5, 2024, the FAA filed its Amended Motion to Deem Allegations Admitted and For Judgment on the Pleadings, which is the subject of this Decision.

II. Standard of Review

Section 13.49(c) in the subpart D procedural rules allows a party to file a motion for decision on the pleadings "in the manner provided by Rules 12 and 56 of the Federal Rules of Civil Procedure."²⁴ Federal Rule of Civil Procedure 56 states: "The court shall grant summary judgment if the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."²⁵

III. Discussion

The issue in this case is whether the FAA is entitled to a decision as a matter of law, as the Respondent failed to file a timely and sufficient answer to the Complaint.

A. Respondent Failed to Timely File and Serve an Answer.

¹⁶ 14 C.F.R. § 13.35(c) (2024). Respondent's Answer was due no later than June 24, 2024.

¹⁷ Screenshot 2024-06.28.2024. Although the letter is dated June 27, 2024, the screenshot shows the FAA Hearing Docket did not receive the letter until 1:48 a.m. on June 28, 2024.

¹⁸ Ex. C-10.

¹⁹ *Id.*

²⁰ Motion at 6.

²¹ Ex. C-11.

²² Letter 4 – Order to Serve Final (Aug. 15, 2024).

²³ Letter 5 – Failure to Respond (Aug. 26, 2024).

²⁴ 14 C.F.R. § 13.49(c) (2024).

²⁵ Fed. R. Civ. P. 56(a).

The Office of Adjudication communicated the procedural requirements to the *pro se* Respondent in its initial Hearing Order.²⁶ Respondent was informed of the importance of meeting the requirements contained in the pertinent regulations and was provided with specific awareness that he must “... file a formal document called an ‘answer’ or a written motion for other relief within 30 days of the date of service [of] the complaint.”²⁷ On June 6, 2024, the Hearing Officer, in her initial correspondence, again informed Respondent of his obligation to file an answer in accordance with 14 C.F.R. § 13.35(c).²⁸

Despite being aware of the procedural requirements, the Respondent responded to the Complaint on June 28, 2024.²⁹ That submission (“the Answer”), signed and submitted by Respondent’s wife, was filed with the FAA Hearing Docket but not served on the Complainant. The Complainant was not served until August 8, 2024, far past the required filing date.³⁰

The Respondent has not provided any explanation nor shown good cause for his failure to file and serve the Complainant in a timely manner. “Procedural rules must be enforced in a non-arbitrary manner to ensure the integrity of the civil penalty process, even where this results in severe consequences.”³¹

The Respondent failed to file or serve his answer in a timely manner, per 14 C.F.R. § 13.35(c). Thus, the allegations contained in the Complaint are deemed admitted.

B. The Respondent Does Not Deny the Allegations in the Complaint.

Assuming *arguendo*, the Respondent’s answer was filed and served in a timely manner, the Respondent’s June 28, 2024, submission does not deny any of the allegations in the Complaint. An answer requires the specific denial of the allegations, as “[a]ll allegations in the complaint not specifically denied in the answer are deemed admitted.”³²

The pertinent allegations in the complaint are as follows:

- Respondent submitted to a random drug test on October 18, 2022.
- The October 18, 2022, drug test was verified positive.
- Respondent submitted to a return-to-duty drug test on February 13, 2023.
- The February 13, 2023, drug test was verified positive.³³

²⁶ Hearing Order at 2 (May 21, 2024).

²⁷ *Id.*

²⁸ Letter 2 - Initial Correspondence (June 6, 2024).

²⁹ *See* Letter 4 – Order to Serve Final (Aug. 15, 2024).

³⁰ Ex. C-11.

³¹ *Raven Brown*, FAA Order No. 2023-04 at 4 (Apr. 10, 2023).

³² 14 C.F.R. § 13.35(c) (2024).

³³ Complaint at 1.

Respondent does not specifically deny any of the Complaint's allegations.³⁴ Instead, Respondent's spouse identifies the substances she believes produced the positive drug test results.³⁵ The Answer does not provide sufficient information to create a question of fact and contains admissions as to the cause of the positive drug test results.³⁶ Respondent's spouse simply explains that she and Respondent were ignorant as to the fact that ingesting such substances could result in testing positive for THC.³⁷

As Respondent not only tacitly admits but fails to specifically deny the facts alleged in the Complaint, the allegations are deemed admitted.³⁸

IV. Conclusion

The undisputed facts show that Respondent failed to file a timely and sufficient answer to the Complaint. The Complainant's Amended Motion to Deem Allegations Admitted and For Judgment on the Pleadings is granted. This decision shall be considered final unless either party files a notice of appeal to the FAA Administrator within 20 days after the issuance date.³⁹

DIANA R. RABINOWITZ
Hearing Officer and Administrative Judge
December 20, 2024

³⁴ Ex. 10.

³⁵ *Id.* at 1-2.

³⁶ *Id.*

³⁷ *Id.*

³⁸ 14 C.F.R. 13.35(c) (2024).

³⁹ 14 C.F.R. § 13.65(a) (2024).

SERVICE LIST

The foregoing Hearing Officer Decision on Motion to Deem Allegations Admitted and For Judgment On The Pleadings was served by email on December 20, 2024, to the following parties or organizations:

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