

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

In the Matter of: TALAT TAHAIRA

FAA Order No. 2010-13

Docket No. CP09NM0006
FDMS No. FAA-2009-0273¹

Served: July 8, 2010

**ORDER GRANTING FAA'S MOTION TO DISMISS APPEAL
AND DENYING RESPONDENT'S MOTION
TO ALLOW ADDITIONAL TIME TO HIRE NEW ATTORNEY
AND PREPARE RESPONDENT'S APPEAL**²

Complainant FAA filed a motion to dismiss, arguing that Respondent Talat Tahaira failed to perfect her appeal from the written initial decision issued by Administrative Law Judge ("ALJ") Richard C. Goodwin. Subsequently, Tahaira's son, Mat Chaudhry, acting as her representative, submitted a motion seeking additional time in which to hire a new attorney and to prepare the appeal brief. For the reasons stated in this order, Tahaira's motion for an extension of time in which to hire a new attorney and file the appeal brief is denied, and Complainant's motion to dismiss is granted.

On March 17, 2010, the ALJ issued a written initial decision assessing a \$6,000 civil penalty against Tahaira for violations of 49 U.S.C. § 46318 and 14 C.F.R.

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>.

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.

§§ 121.580 and 121.585(c) for misconduct while a passenger on board a JetBlue Airlines flight. The ALJ held that Tahaira failed to prove her affirmative defense that she could not afford to pay the civil penalty. The ALJ's office served a copy of the initial decision on the agency attorney and on the attorney who represented Tahaira at the hearing, Lawrence Hildes, Esq.

On March 30, 2010, Tahaira submitted a notice of appeal that was prepared by Virender Bhogal to the ALJ. Bhogal wrote that Tahaira is unable to pay the assessed civil penalty, and would perfect her appeal by filing documentation regarding her financial circumstances and the source of funds for her international travel, within 50 days of March 17, 2010. (Notice of Appeal at 2.)

On May 19, 2010, the agency attorney filed a motion to dismiss Tahaira's appeal, arguing that to the extent that Tahaira had in fact filed a notice of appeal, she did not perfect that appeal by filing an appeal brief.

Subsequently, Hildes explained in a letter dated June 3, 2010, sent to the ALJ and the agency attorney, that Tahaira's son did not hire him to handle his mother's appeal, and that he advised the family months ago to find a new attorney.

On June 5, 2010, Chaudhry sent a motion entitled "Motion to Allow Additional Time to Hire New Attorney and Prepare Respondent's Appeal," to the ALJ. In this motion, Chaudhry requested an extension of time until August 5, 2010, in which to file the appeal brief. Chaudhry wrote that Hildes is no longer representing Tahaira and that "due to complexities of legal requirements and collection of documentary evidence, it

would be necessary to select, hire and brief the new attorney to prepare and file an appeal on behalf of the respondent.”³

On June 11, 2010, the FAA filed its response to Tahaira’s request, arguing that Tahaira has not shown good cause for an extension of time.

Preliminarily, a party is required under 14 C.F.R. §§ 13.233(a)⁴ and 13.211(e)⁵ to file a notice of appeal within 15 days from the issuance of a written initial decision with the FAA Hearing Docket. The notice of appeal, prepared by Bhogal, was sent in a timely fashion – 13 days after the service of the written initial decision by mail – to the ALJ and to the agency attorney. While it was sent to ALJ, rather than to the Hearing Docket, it shall be regarded as timely filed. (See Blong Xiong, FAA Order No. 2006-7, holding that a notice of appeal would be regarded as timely filed, although it was mistakenly sent to the ALJ rather than to the Hearing Docket.)

Further, under 14 C.F.R. §§ 13.233(c) and 13.211(e), Tahaira was required to perfect her appeal by filing an appeal brief, stating her arguments and the basis of her appeal, no later than 55 days after service of the ALJ’s written decision.⁶ Thus, in this

³ The ALJ forwarded the motion to the Appellate Docket for consideration, noting that once he issued the initial decision, he lost jurisdiction over the matter, (citing Florence Barnhill, FAA Order No. 1992-32 (May 5, 1992)), and consequently, he was not able to rule upon the motion. Order Forwarding Appeal to Appellate Docket, dated June 8, 2010.

⁴ Section 13.233(a) provides in part:

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 no later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the party and shall serve a copy of the notice of appeal on each party.

⁵ Section 13.211(e), the “mailing rule,” provides an additional 5 days, when, as in this case, a party has a right to act within a prescribed period of time after service by mail.

⁶ 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

case, Tahaira was required under the Rules of Practice to perfect her appeal by filing an appeal brief no later than May 11, 2010.

When, as in this case, the parties do not agree to an extension of time for perfecting an appeal, the Administrator may grant an extension if the appellant demonstrates good cause for the extension. 14 C.F.R. § 13.233(c)(2). Tahaira's son wrote in the motion that his mother is a 70-year old woman with several health issues, that she is living currently in Pakistan with family, and that it is not possible to predict when she might return to the United States. None of these reasons constitute good cause for either an extension of time to file an appeal brief, or for that matter, to excuse the lateness of the motion for extension itself. It is evident from her former attorney's letter, as well as from Tahaira's notice of appeal, that she was aware of the requirement to file an appeal brief in a timely fashion. Also, it should be noted, Chaudhry did not argue that he did not have the authority to hire an attorney while his mother is out of the country, but instead, requested an extension of time until August 5, 2010, during which a new attorney could be hired and could prepare the appeal brief.

Under these circumstances, Tahaira's appeal is subject to dismissal for failure to perfect by filing a timely appeal brief under 14 C.F.R. § 13.233(d)(2).⁷ (See Bevil Hart,

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). (See n. 5, *supra*.) 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.

⁷ Section 13.233(d)(2) provides:

The FAA decisionmaker [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.

FAA Order No. 1990-39 (November 7, 1990), in which the Administrator dismissed the appeal for failure to perfect when the respondent failed to show good cause for not filing the motion for extension of time, or for perfecting the appeal, on time.⁸)

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

J. RANDOLPH BABBITT, ADMINISTRATOR
Federal Aviation Administration

[Original signed by Vicki S. Leemon]

VICKI S. LEEMON⁹
Manager, Adjudication Branch

⁸ Similarly, the Administrator has held that if a party fails to show good cause for failing to file either a timely notice of appeal or a timely request for an extension of time in which to file a notice of appeal, the appeal will be dismissed. *E.g.*, William B. Simmons, FAA Order No. 1993-27 (August 9, 1993).

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.