

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**In the Matter of: JAMES V. HUMPHREY**

FAA Order No.2002-25

Docket No. CP02GL0042  
DMS No. FAA-2002-11683<sup>1</sup>

Served: November 22, 2002

**ORDER DENYING APPEAL**<sup>2</sup>

On June 11, 2002, Administrative Law Judge Burton S. Kolko issued an order entitled: "Order Forwarding Answer to Appellate Docket." The ALJ explained in this order that he had issued an order assessing civil penalty against Humphrey on April 11, 2002, because he had not filed an answer to the complaint. The ALJ explained further that on June 10, 2002, his office received Humphrey's answer, postmarked April 17, 2002. As a result of the fact that the ALJ lost jurisdiction over this matter once he issued the Order Assessing Civil Penalty, he forwarded the answer to the Appellate Docket for any appropriate action.

I.

The agency attorney filed the complaint in this matter on March 6, 2002. Under 14 C.F.R. §§ 13.209(a)<sup>3</sup> and 13.211(e),<sup>4</sup> Humphrey was required to file an answer within 35 days of service of the complaint, or no later than April 10, 2002.<sup>5</sup>

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<sup>1</sup> 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>.

<sup>2</sup> The Administrator's civil penalty decisions, as well as indexes of the decisions, the Rules of Practice in civil penalty actions, and other information, are available on the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. There are two reporters of the decisions: Hawkins' Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. Finally, the decisions are available through LEXIS and Westlaw. Additional information is available on the website.

<sup>3</sup> It is provided in 14 C.F.R. § 13.209(a): "A respondent shall file a written answer to the complaint ... not later than 30 days after service of the complaint."

<sup>4</sup> Under 14 C.F.R. § 13.211(e), a party has an additional 5 days in which to file a response to a document that was served by mail.

<sup>5</sup> The agency attorney included a paragraph summarizing the requirement to file an answer in a letter that he sent with the complaint to Humphrey.

On April 11, 2002, the ALJ issued a document entitled "Notice to Respondent Humphrey of Potential Default," explaining that Humphrey's answer was overdue. He warned that unless he received Humphrey's answer by April 25, 2002, he would assume that Humphrey had admitted the allegations in the complaint and had withdrawn his request for hearing.

Humphrey responded by sending the ALJ a letter dated April 16, 2002 (postmarked April 17, 2002). Humphrey specifically denied paragraphs 1-7 of the complaint in this letter.<sup>6</sup> He also wrote: "Last month I was given 30 days to respond to the complaint. I sent my reply to D. Brent Pope [the agency attorney] within the 30 days."

The ALJ did not receive Humphrey's letter dated April 16, 2002, until June 10, 2002. Once the April 25, 2002 deadline<sup>7</sup> passed and he had not received an answer, the ALJ issued the order assessing civil penalty.

## II.

This case illustrates the problems that may occur when a party fails to follow the Rules of Practice's filing requirements. Humphrey was required under 14 C.F.R. §§ 13.209(b)<sup>8</sup> and 13.210<sup>9</sup> to file his answer with the FAA Hearing Docket located at

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<sup>6</sup> Thus, he satisfied the requirements for an answer set forth in Section 13.209(e) of the Rules of Practice, which provides:

*Specific denial of allegations required.* A person filing an answer shall admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed as an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

14 C.F.R. § 13.209(e).

<sup>7</sup> The ALJ set this deadline in the Notice to Defendant Humphrey of Potential Default.

<sup>8</sup> Section 13.209(b) of the Rules of Practice provides:

*Filing and address.* A person filing an answer shall personally deliver or mail the original and one copy of the answer for filing with the hearing docket clerk, not later than 30 days after service of the complaint, to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk.

14 C.F.R. § 13.209(b).

<sup>9</sup> Section 13.210(a) of the Rules of Practice provides:

800 Independence Avenue, SW, Room 924A, Washington DC 20591.<sup>10</sup> If Humphrey had filed his answer<sup>11</sup> with the Hearing Docket prior to April 10, then the ALJ would have had a copy of that answer, and presumably he would not have issued an order finding Humphrey in default and assessing a civil penalty. Instead, Humphrey claims that he sent an answer to the agency attorney in a timely fashion. The ALJ was unaware of this letter because a copy was not filed with the Hearing Docket. Then, when the ALJ gave Humphrey an additional opportunity to submit an answer (to be received by the ALJ no later than April 25, 2002), Humphrey sent his answer to the ALJ via the U.S. Postal Service, but for some unknown reason, that answer did not reach the ALJ's office until June 10, 2002.<sup>12</sup>

The ALJ's decision to issue the order assessing civil penalty was based upon incomplete information. Nevertheless, it is clear that in both of Humphrey's purported attempts to respond to the complaint, he failed to file his answer with the Hearing Docket. The Rules of Practice specifically require that an answer be filed with the Hearing Docket. Therefore, regardless of whether Humphrey sent a copy of his answer to the agency attorney within the required time period, the fact is that he did not "file an answer" as required by Section 13.209(b).



MARION C. BLAKEY, ADMINISTRATOR  
Federal Aviation Administration

Issued this 18<sup>th</sup> day of November, 2002.

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*Address and method of filing.* A person tendering a document for filing shall personally deliver or mail the signed original and one copy of each document to the Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW, Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk. A person shall serve a copy of each document on each party in accordance with § 13.211 of this subpart.

14 C.F.R. § 13.210(a).

<sup>10</sup> He also was required to serve a copy of the answer to the agency attorney under 14 C.F.R. §§ 13.209(c) and 13.210(a).

<sup>11</sup> Here we assume that the document that Humphrey sent to the agency attorney contained the same specific denials of the paragraphs in the complaint that were in the April 16<sup>th</sup> letter.

<sup>12</sup> Mail delivery in the Department of Transportation headquarters building in Washington, DC, has been slow and somewhat unpredictable since the fall, 2001. The incoming mail has been irradiated since that time.