

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

BLUE RIDGE AIRLINES

FAA Order No. 2000-5

Served: March 23, 2000

Docket No. CP97NM0024

ORDER DENYING RECONSIDERATION¹

The instant case involves the alleged use of an unqualified pilot in an air carrier operation. On December 22, 1999, the FAA Administrator served FAA Order No. 99-15 on the parties. In FAA Order No. 99-15, the Administrator denied Blue Ridge Airlines' request to remand the case to the law judge to permit new testimony. In addition, FAA Order No. 99-15 affirmed the law judge's assessment of a \$1,600 civil penalty for Blue Ridge Airlines' violations of 14 C.F.R. §§ 135.3; 135.243(b)(1) & (3); 135.293(a) & (b); 135.299; 135.343; and 135.95.²

Douglas E. Haynes, President of Blue Ridge Airlines, has filed a document dated January 28, 2000, that is entitled, "Motion for Stay Reconsideration, Dismissal and Expectance of This Filing" (sic). Construed as a petition to reconsider, the document

¹ The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, *see* 64 Fed. Reg. 1855, 1871 (January 12, 1999).

² For the text of the regulations, *see* In the Matter of Blue Ridge Airlines, FAA Order No. 99-15 at 1 n.2 (December 22, 1999).

Mr. Haynes has filed on behalf of Blue Ridge Airlines is late. The deadline for filing a petition to reconsider was January 26, 2000, but he failed to file it by the deadline.³

Moreover, Mr. Haynes has failed to show good cause for the tardiness of the petition. Although Mr. Haynes argues that the time for computing the due date of the petition to reconsider should begin from the date of his receipt of FAA Order No. 99-15, the applicable regulation (14 C.F.R. § 13.234(a)) expressly and unambiguously states that any petition to reconsider a final order and decision must be filed within 30 days (35 days with the benefit of 14 C.F.R. § 13.211(e)'s mailing rule) of the order's *service*, not its *receipt*.⁴ See In the Matter of Costello, FAA Order No. 93-25 at 3 (July 22, 1993), rejecting Costello's argument that his petition to reconsider was timely if computed from the time of receipt, and emphasizing that "the regulation does *not* state that the petition [to reconsider] shall be filed not later than 30 days *after its receipt*." (Emphasis in original.)

Mr. Haynes failed to claim FAA Order No. 99-15 (which the FAA served on him by certified mail, return receipt requested), and he has failed to provide any good cause for his failure to claim the order. The U.S. Postal Service returned Mr. Haynes' copy of FAA Order No. 99-15 to the FAA with a stamp on the envelope stating, "unclaimed."

³ The Rules of Practice provide that a party must file a petition to reconsider no later than 30 days after service of the Administrator's final decision and order. 14 C.F.R. § 13.234(a). Blue Ridge Airlines had an additional 5 days to file a petition to reconsider because the Administrator's decision was served by mail. 14 C.F.R. § 13.211(e). FAA Order No. 99-15 was served on December 22, 1999. As a result, the deadline for Mr. Haynes to file a petition to reconsider on behalf of Blue Ridge Airlines was January 26, 1999.

⁴ See 14 C.F.R. § 13.234, stating that: "A party shall file a petition to reconsider or modify with the FAA decisionmaker not later than 30 days after *service* of the FAA decisionmaker's final decision and order on appeal" (Emphasis added.)

The FAA then re-served FAA Order No. 99-15 on Mr. Haynes via regular U.S. mail at the same address. Mr. Haynes apparently received the copy sent via regular U.S. mail. Under the circumstances, there is no good cause to excuse the lateness of Mr. Haynes' petition to reconsider.

In any event, even if Mr. Haynes had filed his petition to reconsider on time, it would still be dismissed summarily as repetitious and frivolous under 14 C.F.R. § 13.234(d).⁵ The arguments contained in the petition to reconsider are neither new nor worthy of consideration.

THEREFORE, Blue Ridge Airlines' petition to reconsider is dismissed as late-filed, repetitious, and frivolous.

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Shirley A. Shojie

for VICKI S. LEEMON⁶
Manager, Adjudication Branch

Issued this 23rd day of March, 2000.

⁵ 14 C.F.R. § 13.234(d) provides: "The FAA decisionmaker will not consider repetitious or frivolous petitions. The FAA decisionmaker may summarily dismiss repetitious or frivolous petitions to reconsider or modify."

⁶ 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.