UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:	)	
	)	
John W. Roper	)	FAA Order No. 2024-01
	)	Served: February 29, 2024
Dkt. No. D13-23-01	)	

Appearances:
FOR THE RESPONDENT: Jared A. Schneider, Esq., of Tressler LLP

FOR THE AGENCY: Joy Park Lee, Esq.

DECISION AND ORDER

John W. Roper appeals from Administrative Judge ("Judge") Marie Collins's decision (hereinafter "Initial Decision") granting judgment on the pleadings in favor of the Complainant.[1] Judge Collins granted judgment after finding that Roper failed to file a timely answer and failed to demonstrate good cause for an extension of time. Under 14 C.F.R. § 13.45(d), a contested extension of time may be granted only for good cause. Roper's counsel offered only an unreasonable mistake in calculating the deadline, which does not satisfy the good cause standard. I therefore affirm the decision below.

I. Background

The underlying dispute concerns whether Roper materially contributed to the revocation of a repair station certificate. Complainant initiated the administrative process by serving a Notice required by, and citing to, 14 C.F.R. § 13.20.[2] Both the Notice and the cited regulation explain that a hearing is available under the rules for informal proceedings found in 14 C.F.R. Part 13, Subpart D ("Rules of Practice for FAA Hearings").[3] The Notice did not propose a civil penalty, so it did not cite 14

[1] The "Hearing Officer Decision on Motion to Deem Allegations Admitted and for Judgment on the Pleadings," served on September 27, 2023, is contained in attachment A to this Order and Decision.

[2] Notice of Finding of Material Contribution ("Notice") at 2 (citing 49 U.S.C. § 40113 and 14 C.F.R. § 13.20). The Notice also serves as the complaint in this Subpart D proceeding. 14 C.F.R. § 13.35(b) (2024).

[3] 14 C.F.R. § 13.20(c) (2024); Notice, at attached reply form (listing a respondent's options).

C.F.R. § 13.16 or Subpart G ("Rules of Practice in FAA Civil Penalty Actions").[4] Nevertheless, despite being represented by counsel, Roper filed with the FAA Hearing Docket a request for a hearing that incorrectly cited civil penalty regulations relating to Subpart G, i.e., 14 C.F.R. §§ 13.16(h) and 13.211(c).[5]

Given Roper's erroneous citations in the Request for Hearing, this matter originally proceeded as a Subpart G case before an Administrative Law Judge ("ALJ") from the DOT Office of Hearings. The ALJ issued an initial scheduling order[6] followed by another order granting Roper's request for a 45-day extension to file an answer, i.e. a deadline of July 24, 2023, based on the service date of the Complaint.[7] A third order, however, recognized that the matter had been improperly referred for Subpart G proceedings, and the ALJ transferred the matter back to the Office of Adjudication.[8]

Once the case returned to the FAA Office of Adjudication, the Director assigned the matter to Administrative Judge C. Scott Maravilla. Judge Maravilla reviewed the record, and "ratif[ied] the order from the Administrative Law Judge with the Department of Transportation Office of Hearings granting respondent an additional 45 days to file the Answer."[9] The ratified deadline of July 24, 2023, passed without receipt of the Answer. On August 7th, Judge Maravilla directed Roper to explain the situation.[10] Roper's original counsel, Charles Lamb, responded the same day by filing the Answer and a motion to allow for the late filing ("Second Extension Motion"), explaining:

> Counsel originally docketed the Answer due date for filing the Answer on the material contributor allegation on August 12, 2023. Counsel is unsure how this error occurred but is ready to file an Answer forthwith. Counsel respectfully requests leave to file Respondent's Answer out-of-time. The failure to file previously was not done intentionally[.][11]

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[4] *See generally*, Notice.

[5] Request for Hearing. Notably, this request did not use the election form provided by the complainant. Using the form likely would have prevented Roper's mistaken filing.

[6] ALJ's "Notice of Assignment and Order," May 11, 2023.

[7] ALJ's "Order Granting Extension of Time," June 7, 2023; *see* 14 C.F.R. § 13.209(a) (2024) (due date of an answer is based on service date of the complaint).

[8] ALJ's "Order Referring Case Back to the FAA for Reassignment," June 15, 2023.

[9] Hearing Officer (Maravilla) Letter, June 21, 2023.

[10] Hearing Officer (Maravilla) Letter, Aug. 7, 2023.

[11] Motion to File Answer Out of Time and Motion to Continue Filing Litigation Plan, Aug. 7, 2023. Roper's counsel responded using email to send MS Word versions of its motion and answer.

Judge Maravilla, however, left the FAA in August 2023 without ruling on the Second Extension Motion. The Director designated Administrative Judge Marie Collins as the new hearing officer.

There is no record that Complainant responded directly to the Roper's Second Extension Motion. Instead, Complainant filed a motion to deem the Complaint allegations admitted and for judgment on the pleadings ("Motion for Judgment").[12] Roper, now represented by new counsel, opposed the Motion for Judgment.[13] Judge Collins granted the Motion for Judgment on September 27, 2023, and this administrative appeal ensued.

II. Standard of Review

In any appeal from an initial decision, the FAA decisionmaker considers only whether:

> (1) Each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;
>
> (2) Each conclusion of law is made in accordance with applicable law, precedent, and public policy; and
>
> (3) The hearing officer committed any prejudicial errors."[14]

III. Discussion

On appeal, Roper argues that Judge Collins disregarded arguments and erred in finding that Roper had not demonstrated "good cause" for filing the Answer after the deadline.

A. The Hearing Officer did not ignore arguments.

Roper charges that Judge Collins "did not consider the facts and law cited in support of Respondent's position" and ignored persuasive caselaw addressing miscalculation of filing deadlines.[15] In making this appellate argument, Roper does not *specifically* cite its own pleading before Judge Collins to identify ignored

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Counsel failed to abide by 14 C.F.R. § 13.43(e) (2024), which required filing signed documents in PDF format.

[12] Complainant's Motion to Deem Allegations Admitted and for Judgment on the Pleadings, Aug. 30, 2023.

[13] Respondent's Response to Motion to Deem Facts Admitted, Sept. 11, 2023, corrected on Sept. 12, 2023.

[14] 14 C.F.R. § 13.65(d) (2024).

[15] Appeal Brief at 6.

arguments. Instead, Roper relies on caselaw—including some not previously cited—that includes two ALJ rulings, *Alpine Aviation* and *Rodriquez*,[16] and two Administrator orders, *Safety Equipment & Sign Co., Ltd*, and *Warbelow's Air Adventures, Inc.*[17]

When issuing written decisions, judges or other decisionmakers are obligated "to address 'important aspect[s] of the problem,'" and explain the findings of fact and conclusions of law that support the ruling.[18] They are "not require[d] ... to address every argument raised by a party or explain every possible reason supporting its conclusion," and "failure to explicitly discuss every fleeting reference or minor argument does not alone establish that the [forum] did not consider it."[19]

The "important aspect" of this case is whether or not Roper's counsel had good cause for an extension of the deadline to file the Answer. The "discussion" section of the Initial Decision focused on this issue.[20] Indeed, by any objective measure, the Initial Decision satisfied the fundamental requirements of explaining the facts and law supporting the ruling. Further, Roper's charge of ignoring arguments lacks merit for many reasons:

- Roper has no basis for attacking the Initial Decision on the ground that Judge Collins did not analyze *Rodriquez* or *Warbelow*'s because Roper's brief for Judge Collins did not cite either case.[21]

- Roper's reliance on ALJ rulings, i.e., *Alpine Aviation* and *Rodriquez*,[22] is misplaced. ALJ rulings are not precedential.[23]

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[16] Appeal Brief at 6, 8 (citing *Alpine Aviation*, FAA Dkt. No. CPO5NMOO26, DMS No. FAA-2005-2218, Nov. 2, 2005 (Order of Chief Administrative Law Judge); *Rodriquez*, FAA Dkt. No. CP05SO0049, DMS No. FAA-2005-22885, Mar. 22, 2006 (Show Cause Order of Chief Administrative Law Judge)).

[17] Appeal Brief at 7-9 (citing *Warbelow's Air Adventures, Inc.*, FAA Order No. 99-4, July 1, 1999; *Safety Equipment & Sign Co., Ltd.*, FAA Order No. 92-76, Dec. 17, 1992.)

[18] *Yeda Research v. Mylan Pharmaceuticals Inc.*, 906 F.3d 1031, 1046 (Fed. Cir. 2018) (citations omitted).

[19] *Id.*

[20] Initial Decision at 4 ("The issue in this case is whether the respondent has good cause for filing his answer late to avoid a default judgment.")

[21] *See generally*, Respondent's Response to Complainant's Motion to Deem Allegations Admitted and for Judgement on the Pleadings.

[22] Appeal Brief at 6, 8 (citing *Alpine Aviation*, FAA Dkt. No. CPO5NMOO26, DMS No. FAA-2005-2218, Nov. 2, 2005 (Order of Chief Administrative Law Judge); *Rodriquez*, FAA Dkt. No. CP05SO0049, DMS No. FAA-2005-22885, Mar. 22, 2006 (Show Cause Order of Chief Administrative Law Judge)).

[23] 14 C.F.R. § 13.233(j)(3) (2024).

- In its brief before Judge Collins, Roper cited *Safety Equipment & Sign Co., Ltd*, (1992) for the proposition that "whenever possible, cases should be disposed of on the merits after a hearing, rather than summarily because of a procedural defect."[24] Judge Collins addressed this very issue on page 6 of the Initial Decision. She cited a more recent case from 1998 that recognized the stated principle, albeit with the controlling caveat that good cause must be still present to avoid summary decisions.[25] Judge Collins did not ignore this issue.

Accordingly, I find that the Initial Decision sufficiently addressed the issues presented, and this ground of appeal lacks merit.

B. The Initial Decision is supported by the evidence and law.

On appeal, Roper rehashes the arguments presented to Judge Collins in order to challenge the ultimate factual conclusion[26] that Roper failed to show "good cause" for missing the filing deadline.[27] Roper summarizes his argument by stating:

> Respondent had reason to think he was filing a timely answer, and a miscalculation of the deadline, compounded by the various lingering issues and question surrounding the procedural posture and status of the case, provides the requisite 'good cause' for the late filing of the Answer.[28]

While this narrative shows Roper's *post hoc* framing of the record, it does not identify specific, primary factual findings in the Initial Decision that were not supported by evidence. Indeed, considering Roper's argument point-by-point shows that the Initial Decision is supported by a preponderance of the evidence, correctly applied the law, and must be affirmed.

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[24] Respondent's Response to Complainant's Motion to Deem Allegations Admitted and for Judgement on the Pleadings, at 8.

[25] Initial Decision at 6, and 6, n.42 (citing *Larry's Flying Service*, FAA Order No. 1998-4 at 8 (Mar. 12, 1998).

[26] An "ultimate fact" is "essential to the claim or the defense." It is "found by making an inference or deduction from findings of other facts." FACT, Black's Law Dictionary (11th ed. 2019).

[27] *Id.* at 5.

[28] Roper's Appeal Brief at 5.

1. **Roper's counsel had no reasonable basis to believe—and did not contemporaneously believe—that August 7th was the due date for the Answer.**

Roper contends that its original counsel, Charles Lamb, reasonably calculated the filing deadline as August 7, 2023, based on Judge Maravilla's letter of June 21, 2023. Judge Maravilla's letter ratified the ALJ's order of June 7, 2023, which granted an additional 45 days to file the answer. Roper asserts Lamb calculated the 45-day extension based on the date of Judge Maravilla's letter, not the ALJ's letter or the original regulatory deadline of the same day, i.e., June 7, 2023. As a result, 45 days added to June 21, according to Roper, yielded August 7, 2023, as the filing deadline.[29] The Initial Decision rejected the notion that a reasonable person could conclude that the filing deadline was August 7, 2023.[30] As explained below, I agree and view Roper's August 7 deadline theory to be a *post-hoc* explanation that is unreasonable and inconsistent with the record.

As previously explained, when Roper filed his answer on August 7, he also filed the Second Extension Motion.[31] It stated, "Counsel originally docketed the Answer due date for filing the Answer on the material contributor allegation on August 12, 2023."[32] Only later, when confronted with Complainant's Motion for Judgment, did Roper's counsel assert its August 7 deadline theory based on his after-the-fact affidavit.[33] *Post-hoc* justifications of this kind, however, are not favored and should only be considered when consistent with the contemporaneous evidence.[34] To state the obvious, August 7 is not August 12, rendering the after-the-fact justification inconsistent with the contemporary statement and unworthy of belief.

Regardless of the *post-hoc* nature of Roper's defense, the August 7 deadline theory is also unreasonable. As Judge Collins found, Judge Maravilla "ratified" the ALJ's order granting the 45-day extension. There was no basis, intimation, or hint

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[29] August 7 is the same day as Judge Maravilla's second letter, which was served by email.

[30] Initial Decision at 5-6.

[31] *See supra* Part II at 2 and 2, n.11 (citing Motion to File Answer Out of Time and Motion to Continue Filing Litigation Plan, Aug. 7, 2023).

[32] *Id.*

[33] Respondent's Response to Complainant's Motion to Deem Allegations Admitted and for Judgement on the Pleadings, at 3-4 (citing Aff. of Counsel, attached as exhibit A).

[34] *See e.g., Protest of Aquila Fitness Consulting Systems, Ltd.*, FAA Order No. ODRA-19-847, Feb. 13, 2019 (incorporating Findings and Recommendations (Pub. Ver.) slip op. at 12) ("As a general matter, when faced with *post hoc* justifications, the ODRA accords greater weight to contemporaneous evaluation and source selection material than arguments and documentation prepared in response to protest contentions."); *see also Protest of Zolon Tech, Inc.*, FAA Order No. ODRA-19-857, Oct. 1, 2019 (incorporating by reference Findings and Recommendations (Pub. Ver.), slip. op. at 10, n.7).

suggesting that he restarted the clock to convert a 45-day extension into a 59-day extension.

2. **No "lingering issues" affected the procedural posture.**

Roper relies on two mischaracterizations of the record to assert that "lingering issues and question surrounding the procedural posture and status of the case, provides the requisite 'good cause' for the late filing of the Answer." These mischaracterizations are found in Lamb's affidavit and are echoed in the filings from Roper's current counsel.

First, Lamb describes the initial docketing of this matter under subpart G as an "error on the part of the government."[35] Lamb fails to acknowledge, however, that the Request for Hearing he filed is the proximate cause for the error inasmuch as it cited the regulations pertaining to Subpart G, not Subpart D.[36] Characterizing the situation as a Government error is not appropriate when, at the earliest stage of a hearing, Roper received the docket designation commensurate with the regulations his attorney cited.

Second, Lamb also mischaracterizes the orders transferring this matter to the Subpart D docket. Regarding this effort, Lamb states, "The case was immediately closed."[37] But nobody closed the case. The ALJ simply transferred the matter back to the Office of Adjudication, stating:

> Pursuant to the 14 C.F.R. §§ 13.31 and 13.37, this matter is referred back to the FAA Hearing Docket Clerk, so that under Subpart D of the FAA's ROPs, the FAA's Office of Adjudication may select and assign a Hearing Officer of its choice to preside over all further Subpart D proceedings herein.[38]

Subsequently, the Office of Adjudication assigned an appropriate docket number that reflected the change from a Subpart G case to a Subpart D case:

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[35] Appeal Brief, ex. E, (Lamb Aff.) at 1, ¶ 3. Roper submitted this affidavit earlier in response to the Motion for Judgment. *See* Respondent's Response to Complainant's Motion to Deem Allegations Admitted and for Judgment on the Pleadings, ex. A.

[36] *See* Hearing Request at 1.

[37] Appeal Brief, ex. E, (Lamb Aff.) at 1, ¶ 3.

[38] Order Referring Case Back to the FAA for Reassignment, June 15, 2023, at 3.

I. New Docket Number

> The docket number for this matter is now D13-23-01. The previously assigned docket number (G13-23-022) is hereby administratively closed as an active docket number and should not be used henceforth.[39]

Stating a docket number should not be used "henceforth" makes no sense if the case had been closed. Indeed, far from closing the case, the hearing order continued by appointing Judge Maravilla as the hearing officer and directing him to "review the status of the case and promptly issue further procedural guidance to the parties."[40] Accordingly, Judge Maravilla ratified the ALJ's order granting the 45-day extension to file the Answer, as previously discussed.[41] Nothing in these communications indicated that the case itself was closed, and significantly, Judge Maravilla did not treat the Subpart D proceeding as new matter that required Complainant to refile its Complaint.[42] Thus, with no room for confusion, this case should have seamlessly transitioned to the new hearing officer without a change in the deadline for filing the Answer. Simply put, "lingering issues" were not present regardless of Roper's *post-hoc* theories to the contrary.

The Initial Decision reached the same conclusion, albeit with less discussion. Judge Collins properly concluded:

> Respondent's contention that he was confused by the assignment of a new docket number and judge is wholly misguided. There was no misdirection from either the Office of Hearings or the Office of Adjudication as to the deadline for filing the answer. ... To the extent there was any confusion, it was self-inflicted by the respondent who erroneously referenced the regulations pertaining to civil penalty proceedings in his request for a hearing.[43]

I find no error of fact or law in this conclusion and find this ground of appeal meritless.

3. **Roper did not show good cause to extend the deadline.**

Having found no basis for confusion or an adequate excuse for missing the filing deadline, I accept the finding in the Initial Decision that Roper "failed to

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[39] Hearing Order, June 20, 2023, at 1.

[40] *Id.* at 3.

[41] Hearing Officer (Maravilla) Letter, June 21, 2023.

[42] *Id.*

[43] Initial Decision at 6 (citations omitted).

demonstrate good cause."[44] Similarly, I agree that the rules of practice and precedents "require the that the allegations in the complaint be deemed admitted."[45]

C. The hearing officer correctly granted judgement on the pleadings.

14 C.F.R. § 145.51(f) authorizes the FAA to issue an order finding that certain individuals "materially contributed to the circumstances causing the revocation" of a repair station certificate.[46] Two classes of individuals are subject to such an order: (1) people who held management positions in a repair station with a revoked certificate, and (2) people who had "control over or substantial ownership interests" in a repair station with a revoked certificate.[47] Such orders promote safety in the National Airspace System by ensuring that these individuals do not hold similar positions or interests in other repair stations that hold or seek certificates.

With all averments deemed admitted, judgement on the pleadings was appropriate. In related proceedings, an ALJ at the National Transportation Safety Board ("NTSB") affirmed the revocation of a repair station certificate issued under Part 145 to Restored Aircraft Sales and Services, LLC ("RASS").[48] The Complaint in the present matter (i.e., the Notice of Finding of Material Contribution served on Roper) avers that during the time period relating to the revocation, Roper served as RASS's President.[49] Since approximately late in 2017 through the fall of 2022, he held a substantial ownership interest in RASS and exercised control over the operations of RASS.[50] He was the Accountable Manager, a management position required for a Part 145 repair station, and he served as Chief Inspector, Maintenance Manager, Quality Control Manager, Inspector, Technical Publications Manager, Supervisor, and Technician.[51] Thus, Roper was an owner and management official of a repair station with a revoked certificate, and therefore subject to § 145.51(f).

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[44] *Id.*

[45] *Id.* (citing *Harkins*, FAA Order No. 1994-22 at 4 (June 22, 1994). *See also* 14 C.F.R. § 13.35(c) (2024).

[46] 14 C.F.R. § 145.51(f) (2024).

[47] 14 C.F.R. § 145.51(f) (2024) (cross referencing (e)(2) and (3)).

[48] Complaint ¶¶ 24 (citing *Acting Administrator v. Restored Aircraft Sales and Services, LLC*, NTSB Docket No. SE-31146) and 25.

[49] Complaint ¶¶ 2 and 3.

[50] *Id.* at ¶ 4.

[51] *Id.* at ¶¶ 5 and 6.

Roper also materially contributed to the revocation. The Complaint lists in detail the duties and responsibilities of his positions,[52] and the many regulatory violations that led to the certificate revocation. These support the findings that Roper materially contributed to violations pertaining to:

- Improper approvals for return to service of multiple repairs and/or overhauls;
- Intentionally false entries in maintenance documents;
- Failure to make required recordings during maintenance operations;
- Failure to conduct required non-destructive testing during its maintenance operations; and
- Failure to have adequate equipment to conduct required testing during its maintenance.[53]

In short, I find the record and law fully support the conclusion that Roper materially contributed to the revocation of RASS's repair station certificate.

IV. Conclusion

I affirm the decision below. Respondent John W. Roper materially contributed to the circumstances causing the revocation of RASS's repair station certificate issued under Part 145.

Michael G. Whitaker

ADMINISTRATOR
Federal Aviation Administration

*This is a final order of the Administrator. Respondent may file a petition for review within 60 days of service of this Decision and Order in the U.S. Court of Appeals for the District of Columbia Circuit or the U.S. Court of Appeals for the circuit in which the respondent resides or has its principal place of business. 49 U.S.C. § 46110; 14 C.F.R. § 13.65(g) (2024).

[52] *Id.* at ¶¶ 8 to 22.

[53] *Id.* at ¶ 26; see detailed averments ¶¶ 27 to 38.

UNITED STATES DEPARTMENT OF TRANSPORTATION
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WASHINGTON, DC

In the Matter of:	)	
	)	
John W. Roper	)	Served: September 27, 2023
	)	
Docket No. D13-23-01	)	

HEARING OFFICER DECISION ON MOTION TO DEEM ALLEGATIONS ADMITTED AND FOR JUDGMENT ON THE PLEADINGS

This decision concerns a Notice of Finding of Material Contribution ("Notice") issued on February 9, 2023, by the Federal Aviation Administration ("FAA") Aviation Litigation Division ("Complainant"). In the Notice, the FAA proposes to include Respondent John W. Roper ("Respondent") in an FAA database of individuals that have been found to have materially contributed to the circumstances causing the revocation of a certificate issued under 14 C.F.R. part 145.[1] After Respondent failed to file an answer to the complaint's allegations by the established deadline, Complainant filed a Motion to Deem Allegations Admitted and for Judgment on the Pleadings ("Motion") pursuant to 14 C.F.R. § 13.49(c).

For the reasons discussed below, the undersigned Hearing Officer grants the complainant's Motion. Respondent's late-filed answer must be rejected as untimely. Respondent's noncompliance with the filing deadline is not justified by good cause. Thus, in accordance with 14 C.F.R. § 13.35(c), the complaint's allegations are deemed admitted. As such, there is no genuine issue of material fact to be resolved, the complainant met its burden of proof, and is entitled to judgment as a matter of law.[2] Respondent's deemed admissions establish the violation of 14 C.F.R. § 145.51(e)(2) and (3), and the Notice of Finding Material Contribution is warranted.

[1] Notice at 11. The operation of an aviation repair station requires a certificate from the FAA. 14 C.F.R. § 145.5(a) (2023). The FAA may "deny a repair station a certificate in instances where one or more key individuals had materially contributed to the circumstances causing a previous repair station certificate revocation." *Id.* "[I]n general, the purpose of [14 C.F.R. § 145.5(a)] is to help ensure that persons who have committed serious (and often intentional) violations of the regulations are not able to continue doing so under a newly issued repair station certificate." 79 Fed Reg 46971, 46976 (August 12, 2014).

[2] *Raven Brown*, FAA Order No. 2023-04 at 3 (April 10, 2023).

I. Procedural History

Complainant's Notice, issued on February 9, 2023, asserts that the respondent materially contributed to circumstances that caused the revocation of Restored Aircraft Sales and Services, LLC's repair station certificate.[3] The Notice cites as authorities for the action 49 U.S.C. § 40113 and 14 C.F.R. § 13.20.[4]

On April 6, 2023, following an informal conference, the complainant advised the respondent that it would not withdraw the Notice.[5] The letter further advised Respondent that he could request a hearing in accordance with 14 C.F.R. part 13, subpart D.[6]

On April 19, 2023, the respondent requested a hearing regarding the Notice.[7] The hearing request incorrectly references 14 C.F.R. § 13.16(h) of subpart C and § 13.211(c) of subpart G, instead of 14 C.F.R. § 13.20 of subpart C and § 13.35 of subpart D.[8]

In a letter dated April 19, 2023, the FAA hearing docket confirmed receipt of Respondent's hearing request.[9] Based on the request's references to 14 C.F.R. § 13.16(h) and § 13.211(c), the FAA Hearing Docket docketed the matter as a civil penalty action under Title 14 of the Code of Federal Regulations, Part 13, subpart

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[3] Notice at 1. The Notice incorporates factual findings from a National Transportation Safety Board ("NTSB") decision affirming an August 4, 2022, Emergency Order of Revocation. Notice at 9-10, citing *Acting Administrator v. Restored Aircraft Sales and Services, LLC*, NTSB Docket No. SE-31146 (Sept. 16, 2022).

[4] 49 U.S.C § 40113 authorizes the FAA Administrator to issue orders necessary to ensure aviation safety. 14 C.F.R. § 13.20, "Orders of compliance, cease and desist orders, orders of denial, and other orders," pertains to actions such as findings of material contribution, which are subject to the hearing procedures set forth in subpart D, "Rules of Practice for FAA Hearings." 14 C.F.R. § 13.20(c)(4) (2023). Subpart D hearings are conducted by hearing officers assigned by the Director of the FAA Office of Adjudication. 14 C.F.R. § 13.31 and § 13.37 (2023).

[5] Motion, Exhibit 1.

[6] *Id.* Specifically, 14 C.F.R. § 13.20(c)(2) provides that after the informal conference, "if the agency attorney notifies the person that some or all of the proposed agency action will not be withdrawn, the person may within 10 days after receiving the ... notification, request a hearing ... in accordance with the non-emergency procedures of subpart D." 14 C.F.R. 13.20(c)(2) (2023).

[7] Request for Hearing at 1.

[8] 14 C.F.R. § 13.16(h) and § 13.211(c) do not apply to this action because they concern civil penalty actions against "a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman" or all persons for hazardous materials violations. 14 C.F.R. § 13.16 (2023). Requests for hearings in those matters are governed by Subpart G, Rules of Practice in FAA Civil Penalty Actions. 14 C.F.R. § 13.16(h) (2023).

[9] FAA Hearing Docket Letter, dated April 19, 2023.

G, and referred the matter to the Department of Transportation's Office of Hearings ("Office of Hearings") for adjudication.[10]

In accordance with the subpart G procedural rules, the complainant filed its complaint on May 8, 2023.[11] Under the subpart G rules, 14 C.F.R. § 13.209(a), Respondent had 30 days to file his answer. Exactly 30 days later, on June 7, 2023, Respondent filed a motion with the Office of Hearings requesting a 45-day extension of time to file an answer.[12] The Office of Hearings granted the motion.[13]

Shortly thereafter, the Office of Hearings identified the docketing error and referred the matter back to the FAA Office of Adjudication.[14] The FAA Office of Adjudication assigned the case the new docket number of D13-23-01 and administratively closed the previously assigned docket number, advising it would no longer be used.[15] Administrative Judge Maravilla was assigned to serve as the hearing officer under 14 C.F.R. § 13.37.

On June 21, 2023, Administrative Judge Maravilla ratified the order from the Office of Hearings granting the respondent an extension of time to file his answer.[16] After receiving no answer as of August 7, 2023, Administrative Judge Maravilla sent Respondent a letter stating:

> [P]ursuant to 14 C.F.R. § 13.37, I ratified the order from the Administrative Law Judge with the Department of Transportation Office of Hearings granting an additional 45 days to file the Answer, which was due by July 24, 2023. To date, the Office of Adjudication has not received the Answer.[17]

Later that same day, the respondent filed his answer and a motion to file it out of time, explaining:

> Counsel originally docketed the Answer due date for filing the Answer on the material contributor allegation on August 12, 2023. Counsel is

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[10] FAA Hearing Docket letter, April 19, 2023; Office of Hearings Notice of Assignment and Order, May 11, 2023.

[11] The complainant's certification of service on the complaint indicates that it was served on the respondent by electronic mail on May 8, 2023. Complaint, May 8, 2023, at 2. The record shows no evidence that it was not received by the respondent on that date.

[12] Office of Hearings Order Granting Extension of Time, June 7, 2023

[13] *Id.*

[14] Office of Adjudication Hearing Order, June 20, 2023.

[15] *Id.*

[16] Hearing Officer Letter, June 21, 2023.

[17] Hearing Officer Letter, August 7, 2023.

> unsure how this error occurred but is ready to file an Answer forthwith. Counsel respectfully requests leave to file Respondent's Answer out-of-time. The failure to file previously was not done intentionally.[18]

On August 30, 2023, the complainant filed a Motion to Deem Allegations Admitted and for Judgment on the Pleadings. The respondent filed a response to the Motion on September 12, 2023.[19]

II. Standard of Review

Section 13.49(c) in the subpart D procedural rules allows a party to file a motion for a decision on the pleadings "in the manner provided by Rules 12 and 56, respectively, of the Federal Rules of Civil Procedure."[20] In pertinent part, Federal Rule of Civil Procedure 12 allows a party to move for judgment on the pleadings after the pleadings are closed.[21] Federal Rule of Civil Procedure 56 provides: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[22]

III. Discussion

The issue in this case is whether the respondent has good cause for filing his answer late to avoid a default judgment.

14 C.F.R. § 13.35(c) requires the respondent to file the answer to the complaint within 30 days of service of a copy of the complaint.[23] The provision also states: "All allegations in the complaint not specifically denied in the answer are deemed admitted."[24]

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[18] Respondent's Motion to File Answer Out of Time, ¶ 2, August 7, 2023.

[19] Administrative Judge Maravilla ended his service with the FAA and the undersigned administrative judge was assigned as the hearing officer in these proceedings. FAA Office of Adjudication Letter, August 29, 2023.

[20] 14 C.F.R. § 13.49(c) (2023).

[21] Fed. R. Civ. P. 12.

[22] Fed. R. Civ. P. 56(a).

[23] 14 C.F.R. § 13.35(c) (2023).

[24] *Id.*

Answering the complaint is a key aspect of the "legal process used to determine and deter safety violations."[25] A showing of good cause is mandatory to excuse a late-filed answer and avoid default.[26] Respondent has the burden of showing good cause.[27] Without good cause, the decisionmaker has no authority to extend the deadline.[28]

To show good cause, Respondent contends he "understandably relied on the 45-day extension provided on June 21, 2023, which presumably allowed the Answer to be filed as late as August 7, 2023."[29] In this regard, Respondent attests that:

> On June 21, 2023, a letter sent via email was received from Judge Maravilla. The letter confirmed that Respondent's extension request was granted for 45 days. The order did not state when the 45 days began. Since it was a new case with a newly assigned Judge, Affiant assumed the date started on the date of the Order, June 21, 23.[30]

In the letter, however, Administrative Judge Maravilla plainly states: "I am *ratifying* the order from the Administrative Law Judge with the Department of Transportation Office of Hearings."[31] Synonyms for the verb "to ratify" are to approve, confirm, or endorse.[32] One online dictionary defines it as approving or enacting a legally binding obligation that "would not otherwise be binding in the absence of such approval."[33] Another online dictionary defines it to mean "to approve and sanction formally."[34] In other words, ratification of the order simply confirmed the 45-day extension granted on June 7. 2023, as legally binding.

A reasonable person would not interpret Administrative Judge Maravilla's ratification of the Office of Hearings 45-day extension as converting it into a 59-day

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[25] *Raven Brown*, FAA Order No. 2023-04 at 2 (Apr. 10, 2023); *Global Peace Initiative*, FAA Order No. 2008-8 at 6 (Aug. 21, 2008); *Larry's Flying Service*, FAA Order No. 1998-4 at 8 (Mar. 12, 1998).

[26] *Global Peace Initiative, Inc.*, *supra*, at 5, 9 (citing *Larry's Flying Service*, *supra*, at 7).

[27] *Id.*

[28] *Atlantic World Airways*, FAA Order 95-28 at 3 (Dec. 19, 1995) (no authority to extend the deadline for filing an answer without a showing of good cause).

[29] Respondent's Amended Response to Motion at 3.

[30] Respondent's Amended Response to Motion, Exhibit A, at ¶ 4.

[31] Hearing Officer Letter, June 21, 2023 (emphasis added).

[32] https://www.thesaurus.com/browse/ratify.

[33] https://www.law.cornell.edu/wex/ratify#:~:text=To%20ratify%20means%20to%20approve,adoption%20of%20a%20new%20constitution.

[34] https://www.merriam-webster.com/dictionary/ratify#:~:text=transitive%20verb,approve%20and%20sanction%20formally%20%3A%20confirm.

extension, i.e., from June 7 to August 7. Respondent's reliance on Administrative Judge Maravilla's June 21, 2023, letter to assume that the answer was due 45 days from the date of that letter was unreasonable and unfounded.[35]

Respondents, especially those represented by counsel, are expected to know and meet procedural deadlines.[36] Respondent's contention that he was confused by the assignment of a new docket number and judge is wholly misguided.[37] There was no misdirection from either the Office of Hearings or the Office of Adjudication as to the deadline for filing the answer. Moreover, the 30-day timeframes are the same regardless of whether they are under subpart D or G, with both rules requiring a written answer to the complaint to be filed within 30 days after service of the complaint.[38] To the extent there was any confusion, it was self-inflicted by the respondent who erroneously referenced the regulations pertaining to civil penalty proceedings in his request for a hearing.[39]

Respondent also argues that Complainant has not alleged any prejudice would result from the acceptance of the timely answer.[40] The rules of practice, however, do not require a showing of prejudice for default judgment. Rather, to avoid a default judgment, the respondent bears the burden of showing good cause.[41]

While not favored in law, a default judgment will result when a respondent fails to answer timely without good cause.[42] "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."[43] Here, because Respondent failed to demonstrate good cause, the rules of practice and the Administrator's precedents require that the allegations in the complaint be deemed admitted.[44]

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[35] Respondent's Amended Response to Motion at 4; *Joseph D. Barbera,* FAA Order No. 2015-4 at 10 (Sept. 9, 2015) ("unfounded mistakes do not constitute good cause").

[36] *Raven Brown, supra,* at 2 (even pro se respondents are expected to know and meet procedural deadlines").

[37] *Larry's Flying Service, supra,* at 3 ("wholly misguided" confusion argument does not constitute good cause).

[38] 14 C.F.R. § 13.35(c) and § 13.209 (2023).

[39] *Mark Steven Diamond,* FAA Order No. 95-10 at 1 (May 10, 1995) ("parties may not avoid procedural default merely by claiming unfamiliarity with the rules of practice").

[40] Respondent's Amended Response to Motion at 8.

[41] *Larry's Flying Service, Inc., supra,* at 7.

[42] *Id.*

[43] *Id.* at 8 (citing *Harkins,* FAA Order No. 1994-22 at 4 (June 22, 1994)).

[44] *Id.* at 2.

Given Respondent's deemed admissions, there is no genuine issue of material fact.[45] The complainant has met its burden of proof of proving that Respondent violated 14 C.F.R. § 145.51(e)(2) and (3) by materially contributing to the circumstances that resulted in the revocation of a repair station's certificate.[46]

IV. Conclusion

The complainant's Motion is granted, and I find judgment in favor of the complainant based on the pleadings. Pursuant to 14 CFR § 13.65, this decision shall be considered final unless either party files a notice of appeal to the FAA Administrator within 20 days after the date it is issued.

MARIE A COLLINS

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Date: 2023.09.27 09:09:25 -04'00'

MARIE A. COLLINS
Hearing Officer and Administrative Judge
September 27, 2023

[45] *Raven Brown, supra*, at 3.

[46] *Id.*