

NTSB Order No.
EM-100

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 7th day of October, 1983.

JAMES S. GRACEY, Commandant, United States Coast Guard,

v.

HORACE DUGGINS, JR., Appellant

Docket No. ME-94

ORDER DENYING MOTION TO DISMISS

The Coast Guard has moved to dismiss the appeal in this proceeding ¹ for appellant's failure to submit a timely brief in support of his appeal as required by the Board's rules of practice. ² Appellant's brief was due for filing by April 13, 1983.³ No brief was filed by that date, however, and no request for an extension of time for filing the brief had been submitted.

Appellant, pro se, has filed an affidavit in opposition to the Coast Guard motion. It asserts that the appellant "will need the assistance of counsel to prepare his case for appeal, as he has no knowledge of the appellate [sic] procedure in his case"; that he "has no knowledge in how to prepare a brief" and, due to his "limited resources" he is in the process of seeking voluntary counsel to assist him in the preparation of his appeal."

On consideration of the foregoing the Board has determined to

¹The appeal herein seeks Board review of Commandant Decision No. 2290. That decision affirms an order entered by an administrative law judge, at the conclusion of an evidentiary hearing at which appellant was represented by counsel, imposing a 12-month suspension of appellant's merchant mariner's document for misconduct.

² 49 CFR 825.20(a) provides, in part, that: "Within 20 days after the filing of a notice of appeal, the appellant must file...a brief in support of the appeal.

³ The notice of appeal was filed by mail on March 24.

deny the motion to dismiss. We are inclined to believe that appellant's failure to file a timely appeal brief to perfect his appeal stemmed from a lack of knowledge of the requirement, which we have determined to excuse given the unique circumstances presented here, and not from a lack of diligence in pursuing the matter. In this connection we note that appellant's notice of appeal appears to have been timely and that when the Coast Guard filed its motion to dismiss on June 15, appellant served a notarized opposition to the motion within two weeks (i.e. on June 30). In fact, appellant's expedition in filing the opposition suggests that it was the motion that alerted him to the necessity to file something more than the notice of appeal. This tends to support appellant's assertion that, in effect, he did not know how to prosecute the appeal once the notice was filed.

The Board has recently adopted a procedure whereby a copy of the Board's rules of practice is sent to the seaman or his representative as soon as a notice of appeal is received.⁴ The letter acknowledging the appeal and enclosing the rules emphasizes that "the timely filing of an appeal brief is a vital step in protecting your appeal rights before the Board." Because the appellant's notice of appeal was filed shortly before the new procedure was implemented, he was not furnished a copy of the Board's rules or the advice underscoring the importance of an appeal brief. While we cannot say with certainty that the appellant would have complied with the rule requiring a brief had he been aware of it, we have decided to exercise our discretion to waive this procedural defect since all appellants are now being routinely provided the information this appellant appears not to have had.⁵

We will not, however, grant appellant's request for a 90 day extension of time for filing an appeal brief. In the event that appellant is not successful in securing counsel who will represent him without charge, he should file, within 30 days after the service date appearing on this order, as his appeal brief a clear

⁴ The Commandant's decisions do not provide a seaman with information either on the availability of administrative review of his decisions by the Board or on the procedures for obtaining such review. The Coast Guard's regulations, however, do note that an appeal to the Board may be taken by notice of appeal filed within 10 days after the Commandant's decision (See 46 CFR 5.30-30(a)).

⁵ Neither the new procedure nor the decision on this motion to dismiss reflects any view that the Board is required to provide appellants with copies of the rules of practice. Rather, they reflect our view as to the desirability of doing so.

and simple statement of his reasons for disagreeing with the Commandant's decision.⁶ Any brief filed by counsel on behalf of appellant shall be due within the same timeframe.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Coast Guard's motion to dismiss is denied; and
2. Appellant is accorded 30 days after the service date of this order to file a brief in support of his appeal.

GOLDMAN, Vice Chairman, McADAMS, BURSLEY and ENGEN, Members of the Board, concurred in the above order. BURNETT, Chairman disapproved.

⁶A copy of the brief should be served on the Coast Guard by the appellant.