

NTSB Order No.  
EM-101

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 6th day of October, 1983.

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

v.

JOHN F. BLACKWELL, III, Appellant

Docket No. ME-99

ORDER GRANTING MOTION TO DISMISS

The Coast Guard has moved to dismiss this appeal from a decision of the Commandant sustaining an order of an administrative law judge revoking, on a finding of guilty of misconduct following an evidentiary hearing, appellant's merchant mariner's license. The motion is based on the appellant's failure to file a notice of appeal within 10 days after service of the Commandant's decision in accordance with section 825.5(a) of the Board's procedural rules, 49 CFR 825.5 (a).<sup>1</sup> The motion recites that the notice of appeal was filed on June 24, 1983, more than two months after service of the Commandant's decision on April 15, 1983.

Appellant, represented by counsel, has not filed an answer to the Coast Guard's motion. However, attached to the notice of appeal filed with the Board is an affidavit of counsel in support of a request made in the notice for, in effect, permission to file the notice late. The affidavit asserts that the delay in filing the notice was not caused by the appellant but resulted from the circumstances that: "[d]uring the time the decision of the ...Commandant was received, four out of the eight attorneys in the firm resigned causing in excess of 300 files to be reassigned to

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<sup>1</sup> Section 825.5(a) provides, in pertinent part, as follows:

"A party may appeal from the Commandant's decision sustaining an order of revocation...by filing a notice of appeal with the Board within 10 days after service of the Commandant's decision upon the party or his designated attorney. Upon good cause shown, the time for filing may be extended."

the remaining four attorneys."

On review of the foregoing we have determined to grant the Coast Guard's motion to dismiss. While we are reluctant to decide the matter on the basis of a procedural flaw, we do not believe that untimeliness of the magnitude at issue here should be excused absent a showing of good cause. Although a sudden, substantial workload increase such as counsel has referenced in his affidavit would certainly provide ample justification for requesting an extension of the time for filing the notice, it does not, in our judgement, establish good cause for ignoring the deadline entirely for roughly two months.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Coast Guard's motion to dismiss the appeal is granted, and
2. The notice of appeal is dismissed.

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