NTSB Order No.
EM-107

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 19th day of April, 1984

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

v.

EDMUND J. SABOWSKI, Appellant.

Docket No. ME-98

ORDER DENYING RECONSIDERATION

By NTSB Order EM-102 (served November 7, 1983) the Board, on the Coast Guard's motion, dismissed the appeal filed in this proceeding because the notice of appeal was late (by some 19 days) and did not state the grounds for the appeal as required by our procedural rules. Appellant has filed a motion requesting that the Board reconsider its decision on the motion to dismiss.[1] For the reasons that follow we decline to do so.

Appellant asserts that the courts no longer apply "rigid rules requiring dismissals of cases for failing to meet time schedules, regardless of reasons," that decisions on the merits are favored over procedural dispositions, and that no prejudice to the Coast Guard resulted from the appellant's tardy and incomplete notice. Appellant argues that the Board should not "dismiss appeals on technicalities that prejudice no one"(Motion at 2).

The Board does not, "regardless of reasons," dismiss all appeals that do not comply with its procedural regulations. On the contrary, the decision appellant asks us to reconsider reveals our willingness to accept late or deficient appeals where good cause exists for excusing their noncompliance with such regulations. In this instance we concluded that good cause was not established by "[c]ounsel's apparent belief that the time limit for filing the notice of appeal should be longer than 10 days and that the Commandant should provide information on the availability of or procedures for further administrative review" (Order EM-102 at 2).

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[1]The Coast Guard has filed a reply opposing the reconsideration request.

Appellant's motion does not demonstrate error in our conclusion, and we remain of the view that absent good cause procedural flaws in the initiation of an appeal to the Board should not be excused.

ACCORDINGLY, IT IS ORDERED THAT:

The motion for reconsideration is denied.

BURETT, Acting Chairman, GOLDMAN, BURSLEY and GROSE, Members of the Board, concurred in the above order.