

NTSB Order No.
EM-114

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 31st day of August, 1984

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

v.

JAMES N. ELLIOT, Appellant.

Docket No. ME-105

ORDER GRANTING MOTION
TO DISMISS

The Coast Guard has moved, by motion filed May 17, 1984, to dismiss this appeal for appellant's failure to file a timely notice of appeal under Rule 5 of our Rules of Procedure for Merchant Marine Appeals from Decisions of the Commandant, U. S. Coast Guard (46 CFR 825.5).¹ No answer to the motion has been received.

The Commandant issued in his decision (Appeal No. 2331) in this matter on November 25, 1983, and it was served on appellant's counsel on December 1, 1983.² Although due within 10 days of service of the Commandant's decision, the notice of appeal was not filed until April 2, 1984, or over four months late under our

¹Rule 5(a) provides as follows:
"§825.5 Notice of appeal.

(a) A party may appeal from the Commandant's decision sustaining an order of revocation, suspension, or denial of a license, certificate, document or register in proceedings describe in §825.1, 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."

²The Commandant's decision affirms an order of an administrative law judge revoking appellant's seaman's document for misconduct. The charge was based on his alleged assault and battery with a knife on a fellow crewmember while serving at sea as an Able Bodied Seaman aboard the SS BUTTON GWINNETT on March 5, 1982 in the vicinity of Jeddah, Saudi Arabia.

rule.³ It did not specify a reason for being filed out of time, but did acknowledge that it was late.

In Commandant v. Sabowski, NTSB Order EM-102 (1983), we stated that "good cause must be shown to justify excusing noncompliance with the rules of practice concerning the initiation of an appeal" (id. at 2). As it appears that good cause has not been shown for the late filing of the notice of appeal in this proceeding, the Coast Guard's motion to dismiss will be granted.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Coast Guard's motion to dismiss is granted, and
2. The notice of appeal in Docket ME-105 is dismissed.

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

³The notice of appeal was postmarked April 3, 1984.