

NTSB Order No.
EM-136

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 25th day of July, 1986

PAUL A. YOST, Commandant, United States Coast Guard,

v.

GORDON A. RADER, Appellant.

Docket: ME-123

ORDER DISMISSING APPEAL

The Commandant has filed a motion to dismiss the instant appeal because the notice of appeal was not filed "with the Board within 10 days after service of the Commandant's decision upon the party or his designated attorney", as required by section 825.5(a) of the Board's rules of practice for merchant marine appeals (49 CFR Part 825), and because the notice did not include a statement of the grounds for the appeal, as required by section 825,5(c).¹ No answer to the motion to dismiss has been received.

The notice of appeal was filed by counsel for appellant on April 30, 1986, or some 30 days after the March 31 service date of the Vice Commandant's decision. It was accompanied by a request for an extension of time for filing the notice, along with an affidavit of counsel purporting to provide reasons establishing good cause for the request. The affidavit asserts, inter alia, that counsel was away from his office on business from March 25 until April 14, 1986 and that following his return "receipt of the Vice Commandant's decision was not called to [his] attention until April 28, 1986." We agree with the Commandant that even if appellant's counsel were deemed to have been served on April 14, the notice of appeal would still have to be considered untimely under the rule. Moreover, in view of the service of the Vice

¹The appeal is from a decision of the Vice Commandant (Appeal No. 2421) that was issued on March 25, 1986 and served by mail on March 31. The Vice Commandant's decision affirmed a two month suspension of appellant's merchant mariner's license (No. 52510) that an administrative law judge had imposed following an evidentiary hearing on a charge of negligence.

Commandant's decision on appellant's counsel's office prior to April 14, the fact that he may not have been aware of the receipt of the decision until some two weeks later does not provide good cause for the late filing or for the requested extension. Appellant's counsel clearly had constructive notice of the decision once he returned to his office where it had been delivered.

In view of the lack of good cause for the failure to meet the filing deadline or to comply with the requirement that the notice provide a statement of grounds for the appeal, we will grant the motion to dismiss.

ACCORDINGLY, IT IS ORDERED THAT:

1. The motion to dismiss is granted, and
2. The appeal is dismissed.

GOLDMAN, Acting Chairman, BURNETT, LAUBER and NALL, Members of the Board, concurred in the above order.