

NTSB Order No.
EM-162

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 15th day of October, 1991

J.W. KIME, Commandant, United States Coast Guard,

v.

WILLIE LEE GRACE, JR., Respondent.

Docket ME-144

ORDER DENYING REQUEST FOR EXTENSION OF
TIME TO FILE NOTICE OF APPEAL

The appellant on September 11, 1990 requested an extension of time to file a notice of appeal with the Board from a decision of the Commandant (Appeal No. 2504) ¹ which was served on his counsel by certified mail on August 31, 1990. ² The notice of appeal should have been filed no later than September 10. See 49 CFR § 825.5(a)³ The Coast Guard, in reply, contends that the request should be denied because appellant has not shown good cause for his

¹The Commandant's decision affirmed an order revoking appellant's merchant mariner's document on a charge of misconduct involving his alleged possession of a controlled substance (to wit, marijuana) while serving under the authority of his document on the vessel M/T KENAI on January 7, 1989.

²A notice of appeal was sent along with the extension request.

³Section 825.5(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 described 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."

failure to seek additional time to file the notice before the 10-day period for taking an appeal expired. We agree.

Counsel for appellant concedes that he was aware of the Commandant's decision no later than September 6, but asserts that he "was unable to attend to" the matter sooner than September 11 because of the press of other legal work; namely, a criminal trial. In our view, counsel's apparent decision to limit his attention to some other legal matter neither justifies his neglect of this one nor establishes that he was precluded from filing the notice of appeal on time or, at the least, making a timely request for an extension of the deadline.⁴ In the absence of good cause to excuse the tardy notice, appellant's appeal will not be entertained.

ACCORDINGLY, IT IS ORDERED THAT:

1. Appellant's request for an extension of time to file a notice of appeal is denied, and
2. Appellant's late-filed notice of appeal is dismissed.

KOLSTAD, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

⁴Timely requests via telephone for extensions of time are routinely granted by the Board's Office of General Counsel.