

**UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION**

IN THE MATTER OF:

Ethan Collins, Respondent

25-TSOB-0100

Motion Opposing Waiver of Timeliness for the Transportation Security Administration

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This matter is a request by Respondent, Ethan Collins, that the Transportation Security Oversight Board (TSOB) grant him a waiver to the 60-day filing deadline outlined in Title 6, Code of Federal Regulations (C.F.R.), § 126.13(a). Respondent has appealed to the TSOB for review of an Administrative Law Judge's (ALJ) May 30, 2024, Final Decision and Order ("Order" "Final Order") wherein the ALJ affirmed the Transportation Security Administration's (TSA, or Agency) determination that Respondent poses a security threat and, therefore, is ineligible to hold Federal Aviation Administration (FAA) certificates. TSA submits the following motion, pursuant to 6 C.F.R. § 126.13(e). Based on the evidence on the record, TSA respectfully requests that the TSOB deny Respondent's appeal and motion to waive the timeliness.

I. PROCEDURAL HISTORY

1. On March 23, 2021, TSA Acting Executive Assistant Administrator for Operations Support Thomas L. Bush issued concurrent letters, an Initial Determination of Security Threat (DST), to Respondent notifying him that TSA had determined that he poses, or is suspected of posing, a security threat, and to Federal Aviation Administration (FAA) requesting revocation of all FAA certificates held by Respondent in accordance with this determination. The DST informed Respondent that he had 60 days from the date of service of the DST to either seek additional information regarding the basis for TSA's determination and reply to materials provided by TSA ("Option 1") or proceed to a review of TSA's determination by an ALJ ("Option 2"). *See Attachment 1.*

2. On July 23, 2022 – sixteen months after TSA issued the DST and fourteen months after Respondent's 60-day response period expired – Respondent requested review of TSA's determination of security threat by an Administrative Law Judge (ALJ). Respondent's request for review included a request for an extension of time to respond for good cause, a request for

releasable materials, and a request for an in-person hearing regarding whether or not Respondent poses a security threat. *See* Attachment 2.

3. On August 4, 2022, Respondent's case was assigned to Honorable Brian J. Curley.

4. On October 4, 2022, Judge Curley held a Pre-Hearing Conference (PHC) wherein Respondent appeared *pro se*. At that time, TSA agreed to waive objections to the timeliness of Respondent's request for review on account of good cause and the ALJ set forth a discovery schedule and schedule for an in-person hearing. *See* Attachment 3.

5. During the October 4, 2022, PHC, Judge Curley outlined numerous filing deadlines to the parties, including an in-person hearing date of May 2, 2023.

6. On April 30, 2023, Mr. Gregory K. Chambers esq. filed a Notice of Appearance in Respondent's case and asked that all future correspondence be provided to him. Mr. Chambers represented Respondent at the May 2, 2023, in-person hearing and in briefs filed following the in-person hearing. *See* Attachment 4.

6. On December 14, 2023, Respondent's counsel filed its post hearing brief to the ALJ and TSA through electronic service, as indicated on his certificate of service.

7. On May 30, 2024, Honorable Judge Curley issued his Decision and Order in Respondent's case, affirming TSA's revocation of Respondent's FAA certificates, which included a certificate of service, certifying Respondent's counsel had been served with the decision and order electronically at g.k.chambers@gmail.com. Following the hearing and filing of briefs, Respondent filed no notice to the ALJ Docketing Center or TSA indicating he was no longer represented by Mr. Chambers and to provide service to another email or physical address. *See* Attachment 5.

8. On November 24, 2025, eighteen months after the ALJ's Final Decision and Order was issued, and sixteen months after Respondent's 60-day appeal timeline had expired, TSA was notified of Respondent's Notice of Appeal to the TSOB.

II. ARGUMENT

A. The TSOB Must Reject Respondent's Request for an Appeal Because Respondent Has Failed to Establish Good Cause for His Untimely Filing.

Title 6 C.F.R. § 126.13(d) states that a TSOB Review Panel "must reject and summarily dismiss a notice of appeal that is filed more than 60 calendar days after the date of issuance of the ALJ's written decision" unless there is a showing of good cause. This regulation is compulsory, not permissive. To establish good cause for an untimely filing, a party must show that he exercised due diligence or ordinary prudence under the particular circumstances of the case. *Luther v. Dep't of Def.*, DC-315H-00-0090-I-1, 2001 WL 880721 (M.S.P.B. Aug. 1, 2001) (citing *Alonzo v. Dep't of Air Force*, 4 M.S.P.R. 180 (1980)).

To determine whether an appellant has shown good cause, the Board considers the length of the delay, the reasonableness of his excuse and his showing of due diligence, whether he is proceeding pro se, and whether he has presented evidence of the existence of circumstances beyond his control that affected his ability to comply with the time limits or of unavoidable casualty or misfortune which similarly shows a causal relationship to his inability to timely file his petition. *Bocock v. Dep't of Navy*, DC-1221-97-0578-W-1, 2000 WL 263197 (M.S.P.B. Mar. 1, 2000)(citing *Comer v. Department of Veterans Affairs*, 78 M.S.P.R. 633, 636, ¶ 5 (1998), aff'd, 178 F.3d 1313 (Fed.Cir.1999); *Moorman v. Department of the Army*, 68 M.S.P.R. 60, 62–63 (1995), aff'd, 79 F.3d 1167 (Fed.Cir.1996). *Bocock v. Dep't of Navy*, DC-1221-97-0578-W-1, 2000 WL 263197 (M.S.P.B. Mar. 1, 2000)).

1. Respondent's Year-and-a-Half Delay Was Excessive and Respondent Failed to Show that He Exercised Due Diligence or Ordinary Prudence Necessary to Establish Good Cause

To determine whether an appellant has shown good cause, the Board will consider the length of the delay, the reasonableness of his excuse and his showing of due diligence. *Bocock*, at 244. Here, not only has Respondent failed to provide any reasonable explanation to excuse or justify his year-and-a-half delay in filing his appeal, but he has also failed to show that he exercised any sort of due diligence in trying to timely file his appeal. Respondent alleges that he was never served with the ALJ's Final Decision and Order ("Order") and, therefore, was unaware of when his 60-day appeal window expired. Not only is his claim unsupported by evidence in the record, but as already stated, he has failed to show that he made a concerted effort, i.e., that he used due diligence, to obtain a copy of the ALJ's Order to discern when his appeal deadline was.

Respondent's counsel filed his post-hearing brief on December 14, 2023, which TSA responded to on January 16, 2024. Following these final filings with the ALJ, Respondent was aware that he was awaiting a Final Order from the ALJ but made no efforts to obtain a copy of said order from either the ALJ or TSA. Respondent's blanket claim that he was not provided a copy of the Final Decision and Order is not sufficient to establish good cause. As stated by the *Alonzo* Court, he must show that he exercised due diligence and ordinary prudence while trying to obtain a copy of the Final Order. Other than his blanket claims he did not receive the ALJ's Order, Respondent submitted no evidence to show that he attempted but failed to obtain a copy of the ALJ's Order. Simply stating he was not provided with a copy of the Order is not sufficient. He is required to do more.

2. Respondent's Claim that He Did Not Receive a Copy of the ALJ's Final Order and Decision Does Not Establish Due Diligence or Ordinary Prudence and Therefore Respondent's Request for a Waiver Should Be Denied.

Like Respondent in *Green v. Office of Personnel Management*, Ms. Green, claimed that the reason she did not timely file her appeal was because she did not receive a copy of the ALJ's Final Decision and Order. *Green v. Office of Personnel Management*, CH831L8510657, 1988 WL 10001, at 133 (M.S.P.B. Feb. 2, 1988). In *Green*, the Court looked to the Certificate of Service as evidence that Ms. Green was provided with a copy of the ALJ's Final Decision and Order. *Id.* Furthermore, the Court in *Green* stated that even if it were to accept Ms. Green's unsubstantiated claim that she did not receive the initial decision mailed to her in 1985, this would not excuse the inordinate amount of that she allowed to elapse before inquiring about the status of her appeal. The Court held that her failure to make such inquiries was not the act of a reasonably prudent person under the circumstances. *Id.*

Here, the record shows that the ALJ provided his Order via electronic service to Respondent's attorney, Mr. Chambers, on May 30, 2024, as had been the procedure throughout the ALJ process. *See* Exhibit 5. Electronic service was the accepted form of filing for all parties as supported by TSA's July 17, 2023, Post-Hearing Brief, which was both filed and accepted electronically by both Respondent's Counsel, and the ALJ. Likewise, Respondent's counsel electronically filed his December 14, 2023, Post-Hearing Brief to both the ALJ and TSA, further indicating that electronic service was the accepted form of service. Finally, Mr. Chambers accepted TSA's brief in response to his December 14, 2023, Post-Hearing Brief, and at no time following these submissions did Respondent or his counsel notify the ALJ or TSA that Mr. Chambers was no longer representing Respondent, and that service of future correspondence should be sent elsewhere. Accordingly, the record shows that Respondent did receive the ALJ's Order on May 30, 2024.

However, for the sake of *arguendo*, even if Respondent's counsel failed to provide him with a copy of the ALJ's Order, which Respondent has failed to prove, that does not excuse the inordinate amount of time that he allowed to elapse before inquiring about the status of his ALJ review. *Green*, at 133. Like Respondent in *Green*, Respondent's failure to make sure inquiries was not the act of a reasonably prudent person under the circumstances and therefore a failure to establish good cause.

Both the ALJ and TSA have carried out their responsibilities in accordance with all regulations and redress procedures, to prejudice them now based on unfounded and unsupported allegations would be contrary to 6 C.F.R. § 126.13(d), which mandates that untimely appeals such as this be dismissed without an adequate showing of good cause. Again, Respondent's blanket claims, without more, are insufficient to establish good cause or to justify a year-and-a-half delay in filing his appeal.

3. Respondent's Excuse for His Delay in Filing His Appeal—that He was Finishing His College Degree—is Not Reasonable and is Not the Sort of Circumstance that Would Affect His Ability to Comply with the Time Limits, and was Not Beyond Respondent's Control

In addition to evaluating the length of the delay and a showing of due diligence, Respondent must also provide a reasonable excuse for his delay, supported by circumstances that were outside of his control that affected his ability to comply with the regulatory time limits, or he endured an unavoidable casualty or misfortune which similarly shows a causal relationship to his inability to timely file his petition. *Id.*

Respondent claims that because he was "heavily engaged in completing [his] college coursework during this period", which he calls a "significant life event", he was unable to timely file his appeal with the TSOB. However, Respondent has failed to show facts that prove his

courses were so burdensome and unpredictable that he was completely prevented from filing his appeal in a timely manner – for eighteen months.

Respondent has submitted no evidence to show how his specific circumstances in college amounts to good cause for a year-and-a-half delay in filing his appeal. College courses, like jobs, are a part of everyday life, that afford students a set schedule of classes which further allows students the ability to adequately plan and accommodate other areas of their lives. Respondent has failed to establish how a routine and systematic schedule of classes created such exigent circumstances in his life that he was unable to obtain the ALJ's Order and file his appeal for a year-and-a-half. Such due diligence and ordinary prudence are expected of Respondent. It is neither unjust nor prejudicial to expect Respondent to make reasonable adjustments and/or accommodations to his schedule to ensure he obtained the ALJ's Final Order and timely filed his appeal with the TSOB.

4. This is Respondent's Second Significant Delay Complying with Regulatory Timelines, Indicating a Pattern of Negligence and a Lack of Due Diligence that Continues to Prejudice TSA.

Respondent was issued an Initial Determination of Security Threat on March 23, 2021. Included in the Determination were the Interim Redress Procedures for FAA Certificate Holders – U.S. Citizens that clearly outlined his 60-day window to either request releasable materials or request review by an ALJ. Despite the clearly outlined timelines, Respondent failed to respond to TSA's Determination for sixteen months, filing a request for review by an ALJ on July 23, 2022. This was sixteen months after TSA issued the DST and fourteen months after Respondent's 60-day response period had expired. TSA allowed Respondent's review to proceed without objection, but Respondent's most recent untimely request brings his delays to a total of 30-months, requiring both TSA and the ALJ Docketing Center to retrieve Respondent's file that was previously placed in storage and become reacquainted with a case that TSA has long moved on

from. To require TSA to return to a case that is far outside its filing deadline takes resources from TSA that it has already dedicated to other pending matters, without a significant showing of good cause by Respondent, is both prejudicial and unfair to TSA and the ALJ Docketing center.

5. Because Respondent Failed to File for an Extension or to Provide an Explanation for His Failure to File for an Extension, He Has Failed to Establish that He Exercised Due Diligence and Ordinary Prudence.

The Courts have held that a failure to file an extension for review or to provide an explanation for not filing for an extension constitutes a failure to exercise due diligence and ordinary prudence under the circumstances. *See Criddell v. U.S. Postal Serv.*, CH03539110610, 1993 WL 513494, at 33 (M.S.P.B. Dec. 7, 1993); *Mendoza v. Office of Pers. Mgmt.*, SE08319110013, 1992 WL 45616, at 236 (M.S.P.B. Mar. 6, 1992). Therefore, because Respondent both failed to file for an extension for review and to provide a reasonable explanation as to why he did not seek a timely extension, he has similarly failed to establish that he exercised due diligence and ordinary prudence.

III. CONCLUSION

For the reasons outlined above, TSA respectfully requests that the TSOB reject and summarily dismiss Respondent's Notice of Appeal and Request for a Waiver of Timeliness for failure to establish good cause in accordance with 6 C.F.R. § 126.13(d).

Respectfully Submitted,

Date: December 8, 2025

A handwritten signature in black ink, reading "Judith A. Gomez". The signature is written in a cursive, flowing style.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of December 2025, a true and correct copy of this Motion Opposing Waiver of Timeliness for the Transportation Security Administration was sent as indicated to each of the following via the methods noted below:

TSOB Docket Clerk
Office of the General Counsel
Department of Homeland Security
Washington, DC, 20528-0485
Email: TSOB_Docket@hq.dhs.gov
Sent via Email

ALJ Hearing Docketing Clerk
Hearing Docket Clerk
United States Coast Guard
ALJ Docketing Center
40 South Gay Street, Room 412
Baltimore, Maryland 21202-4022
Email: aljdocketcenter@uscg.mil
Phone: (410) 962-5100
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