

U.S. DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION
Washington, D.C.

In the Matter of:)	
)	
JOHN VANPASSCHEN,)	TSA Docket No. 10-TSA-0018
)	
Respondent)	

FINAL DECISION AND ORDER

John VanPasschen (Respondent) appeals the Initial Decision of the Administrative Law Judge (ALJ) issued on January 6, 2012. In the Initial Decision the ALJ found that Respondent committed multiple violations of 49 C.F.R. § 1552.3(c) and assessed a civil penalty in the amount of \$37,500.00. For the reasons stated below, the appeal is denied and the Initial Decision is upheld.

Respondent filed a motion to accept notice of appeal on February 3, 2012.¹ On March 9, 2012, the Transportation Security Administration (TSA) filed a motion to dismiss the appeal because Respondent failed to file his notice of appeal in a timely manner and did not file an appeal brief in accordance with TSA's rules of practice at 49 C.F.R. Part 1503. As TSA points out, the rules of practice require that a notice of appeal be filed not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and must be served on all parties. 49 C.F.R. § 1503.657(a). Further, TSA's rules of practice require that, unless otherwise agreed by the parties, a party must perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the Enforcement Docket Clerk. 49 C.F.R. §

¹ Respondent's motion is directed to TSA Final Decision Maker and/or United States District Court. According to the Transportation Security Administration's rules of practice, an appeal of an Initial Decision of the ALJ is made to the TSA Decision Maker. 49 C.F.R. § 1503.657. A Final Decision and Order of the TSA Decision Maker may be appealed to a court of appeals of the United States pursuant to 49 U.S.C. § 46110. See 49 C.F.R. § 1503.661.

1503.657(c). The rules of practice also provide an extra 5 days to any proscribed period after service by mail. 49 C.F.R. § 1503.409(g). Finally, the rules of practice provide that the TSA Decision Maker may dismiss an appeal, on the TSA Decision Maker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief. 49 C.F.R. § 1503.657(d)(2). Respondent, who is represented by a licensed attorney, does not dispute that the notice was late. Respondent states that the clerk who receives mail was absent and the envelope containing the Initial Decision was placed on a table where mail items are not kept. The envelope was not discovered until January 31, 2012.

On April 19, 2012, Respondent filed another motion to accept appeal. This time Respondent states that the late-ness was not due to conscious indifference, but claims that the evidence did not support a finding that Mr. VanPasschen was the proper party in the case.

While the Decision Maker may find that good cause has been demonstrated to warrant acceptance of a late-filed notice of appeal, such a showing has not been made in either of Respondent's motions. TSA's motion to dismiss the appeal is granted.

In the second motion, Respondent argues that he is not the proper party in the case. Respondent maintains that he is not MVP Aero Academy Inc. and that he cannot be held personally liable for the actions of MVP Aero Academy. He states that he was not served and did not receive a subpoena requesting records. Respondent states that if he had been subpoenaed, he would not have been able to produce any records as any corporate records were left with MVP Aero Academy.

The issue of whether Respondent was the proper party in this action was addressed in the Initial Decision and the ALJ found that Respondent was properly charged. The rules of practice provide that “TSA may initiate a civil penalty action by serving a Notice of Proposed Civil Penalty on the person charged with a violation of a TSA requirement. TSA will serve the Notice of Proposed Civil Penalty on the individual charged with a violation or on the president of the corporation or company charged with a violation...”49 C.F.R. §1503.413. In this case, the violations occurred while Respondent was president of MVP Aero Academy, he and his wife were the sole stockholders, and he was acting as a certified flight instructor. The scope of the requirements for flight training of aliens and other designated individuals includes “flight schools that provide instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of aircraft or aircraft simulators...” 49 C.F.R. § 1552.1(a). TSA's regulations define alien flight school as “any pilot school, flight training center, air carrier flight training facility, or flight instructor certificated under 14 CFR part 61, 121, 135, 141, or 142; or any other person or entity that provides instruction under 49 U.S.C. Subtitle VII, Part A, in the operation of any aircraft or aircraft simulator.” 49 C.F.R. § 1552.1(b).

The Initial Decision states that Respondent was a certified flight instructor providing flight instruction to students pursuant to 49 U.S.C. Subtitle VII, Part A and was president of MVP Aero Academy until January 2, 2008. The evidence demonstrates that Respondent had been a registered alien flight student program provider since October 2004. As president, he maintained care, custody and control of MVP daily operations. MVP used an email account administered by Respondent to receive emails from TSA regarding alien student training requirements and Respondent was the only person at MVP who had access to the TSA alien flight student program database. I find the determination that Respondent was properly charged

for the violations is supported by a preponderance of the evidence and is in accordance with TSA's regulations.

Under TSA's rules of practice, either party may petition the TSA Decision Maker to reconsider or modify a Final Decision and Order. The rules for filing a Petition for Reconsideration are described at 49 C.F.R. § 1503.659. A party must file the petition with the TSA Enforcement Docket Clerk not later than 30 days after service of the TSA Decision Maker's Final Decision and Order and serve a copy of the petition on all parties. A party may seek judicial review of the Final Decision and Order as provided in 49 U.S.C. § 46110.

Dated: 6/20/2012

_____/s/_____

Gale Rossides
Deputy Administrator