

SERVED: October 1, 1992

NTSB Order No. EA-3678

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 18th day of October, 1992

Petition of)	
)	
JOSEPH WEISS, JR.)	
)	
for review of the denial by)	Docket SM-3980
the Administrator of the)	
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
)	

OPINION AND ORDER

Petitioner appeals from the order issued June 10, 1992 by Administrative Law Judge ("ALJ") William E. Fowler, Jr.¹ In that order, the law judge granted the Administrator's motion to dismiss petitioner's appeal from the FAA's refusal to issue him an airman medical certificate. We deny the appeal.

The law judge's action was premised on prior proceedings that involved petitioner's medical qualifications. In September 1985 (modified in September 1986), the Federal Air Surgeon denied petitioner any class airman medical certificate on the grounds

¹The order is attached.

that he had a persisting brain disorder and an established medical history or diagnosis of psychosis.² Petitioner sought review of that denial in SM-3507, Petition of Weiss. In March 1987, ALJ Fowler granted a motion to dismiss filed by the Administrator. The law judge noted not only that the Administrator's motion was supported by various medical reports, but that the petitioner had not responded to the motion to dismiss.

In August 1988, petitioner reapplied for a medical certificate and, shortly thereafter, was again denied certification. That denial was appealed to this Board,³ and the Administrator filed a motion for summary judgment. Petitioner did not reply, and did not appear at the September 26, 1989 scheduled hearing.⁴ At that hearing, ALJ William R. Mullins granted the unopposed motion, and included in his decision a finding of fact that petitioner had a history of psychosis. Petitioner did not timely appeal the law judge's decision.⁵

²Regulations provide that, to be eligible for any medical certificate, an individual may not have an established medical history or clinical diagnosis of a psychosis. 14 C.F.R. 67.13, .15, and .17.

³SM-3704, Petition of Weiss.

⁴The law judge noted that, in light of petitioner's failure to reply to the motion, a hearing was not required. He scheduled one, however, to ensure petitioner the opportunity to present his case.

⁵Petitioner sought review more than 1 year after the law judge's decision was issued. By letter dated February 19, 1991, our General Counsel rejected petitioner's letter as untimely.

The instant proceeding was initiated by petitioner, appearing pro se, following the FAA's January 30, 1992 denial of reconsideration of petitioner's application for an airman medical certificate.⁶ The Administrator filed a motion to dismiss on res judicata grounds and, as noted above, it was granted by the law judge.

Petitioner offers no basis, and we can see none, that would allow us, at this stage, to assist petitioner in his quest for an airman medical certificate. ALJ Fowler correctly applied the law in finding that the prior decision by ALJ Mullins was res judicata. Petitioner may not, at this point, attempt to litigate his medical condition. His failure to appear or in some fashion contest the Administrator's presentation in the prior proceedings, his failure to provide good (or any) reasons for this behavior, and ALJ Mullins' specific finding of psychosis, preclude relitigation of the matter.⁷ ALJ Mullins' decision is administratively final. Accordingly, petitioner's suggestions of procedural inadequacies in the prior proceedings in this case are moot.⁸

⁶Apparently the FAA was reconsidering its earlier action on petitioner's 1988 application, and the action was prompted by petitioner's submission of additional medical information. Motion to Dismiss Petition for Review in SM-3980, at fn. 1.

⁷By letter of June 24, 1992, petitioner sought to submit additional medical evidence. In addition to the comments offered by our General Counsel in his response of August 5, 1992, we note that our rules do not provide for consideration of new evidence at this stage of the proceeding. See 49 C.F.R. 821.49-50.

⁸And, we note that petitioner's references to his survival

ACCORDINGLY, IT IS ORDERED THAT:

Petitioner's appeal is denied.

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

(..continued)
of the accident (¶ ¶ 2 and 4 of the Appeal) and the suggestion that he has recovered from those injuries are irrelevant. The basis for the Administrator's action is the established history of psychosis, not the head injury, per se.