

SERVED: April 6, 2010

NTSB Order No. EA-5516

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 5th day of April, 2010

_____)	
Petition of)	
)	
PAUL HAYDEN COOPER)	
)	
for review of the denial by)	Docket SM-5005
the Administrator of the)	
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
_____)	

**ORDER DENYING REHEARING, REARGUMENT, RECONSIDERATION,
AND MODIFICATION**

Petitioner seeks rehearing, reargument, reconsideration, and modification of our opinion and order in this case, NTSB Order No. EA-5491, served December 2, 2009. In that decision, we affirmed the law judge's order, in which he dismissed petitioner's petition sua sponte and terminated the case, concluding that a hearing "would serve no useful purpose" because the Board did not have the discretion to reverse the Administrator's denial of petitioner's certification.

In the case below, petitioner sought review of the Administrator's denial of his application for a medical certificate, which the Administrator predicated on petitioner's "history and clinical diagnosis of diabetes mellitus requiring oral hypoglycemic medication for control and bipolar disorder."

Pet. for Review, Exh. 1. The denial letter did not mention 14 C.F.R. §§ 67.107, 67.207, nor 67.307, which specify that the mental standards for certification include no established medical history or clinical diagnosis of bipolar disorder, but instead only cited §§ 67.113(a)(b)(c), 67.213(a)(b)(c), and 67.313(a)(b)(c), which provide, among other things, that an applicant may not receive a medical certificate if he or she has an established medical history or clinical diagnosis of diabetes mellitus that requires insulin or any other hypoglycemic drug for control. The law judge denied petitioner's appeal after determining that petitioner had acknowledged that he has diabetes for which he takes hypoglycemic medication, and that § 67.113(a) does not allow petitioner to obtain a medical certificate. The law judge dismissed the petition sua sponte because petitioner "indisputably has a specifically disqualifying medical condition," but stated that petitioner may apply for a special issuance of a medical certificate, under 14 C.F.R. § 67.401.

Petitioner appealed the law judge's decision, on the basis that the law judge should not have determined that the Administrator's denial of his application based on bipolar disorder was "moot," given petitioner's diagnosis of and treatment for diabetes. In this regard, petitioner asserted that whether he has bipolar disorder is a factual issue that the law judge must resolve after a hearing, and that bipolar disorder is the only condition that might disqualify him. Petitioner argued that he fulfilled the criteria set forth in the FAA Guide for Aviation Medical Examiners concerning diabetes. For this reason, petitioner contended that it would be arbitrary and capricious for the Administrator to refuse him a special issuance because of his diabetes. We rejected this appeal, on the basis that petitioner did not dispute that he takes metformin and glipizide to treat his glucose intolerance problem, nor did he dispute that these are hypoglycemic medications. As a result, we concluded that, under § 67.113, petitioner had a specifically disqualifying condition that renders him ineligible for a first-class medical certificate. We stated, however, that our holding was not relevant to the issue of whether petitioner may be eligible for a *special issuance* of a medical certificate, under § 67.401.

Petitioner now seeks rehearing, reargument, reconsideration, and modification of our decision, under 49 C.F.R. § 821.50. In his petition, petitioner states that he "is not and never has been bipolar," and that a hearing is necessary to determine whether the Administrator's contention that he had

bipolar disorder is correct. Pet. at 2. Petitioner argues that he fulfills the criteria set forth in the April 14, 2006 FAA Guide for Aviation Medical Examiners Decision Considerations related to Diabetes Mellitus - Type II, Medication Controlled; as a result, petitioner contends that the law judge's dismissal of his case was erroneous.

Petitioner does not provide any new evidence to indicate that our rejection of his appeal was incorrect. Instead, he reiterates the arguments that we found unpersuasive in his appeal. Section 821.50(c) of our Rules of Practice requires that such petitions "state briefly and specifically the matters of record alleged to have been erroneously decided, and the ground or grounds relied upon." Furthermore, § 821.50(d) provides that the Board will not consider, and will summarily dismiss, repetitious petitions for reconsideration. Based on this standard, we dismiss petitioner's petition as wholly repetitious of his arguments on appeal.

ACCORDINGLY, IT IS ORDERED THAT:

Petitioner's petition for rehearing, reargument, reconsideration, and modification is denied.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, Member of the Board, concurred in the above order.