

SERVED: June 11, 2010

NTSB Order No. EA-5524

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 10th day of June, 2010

_____)	
Petition of)	
)	
DAVID J. FORRETTE)	
)	
for review of the denial by)	Docket SM-5045
the Administrator of the)	
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
)	
_____)	

OPINION AND ORDER

Petitioner, who proceeds pro se, has appealed from the written order that Chief Administrative Law Judge William E. Fowler, Jr., issued in this proceeding on February 25, 2010.¹ In the order, the law judge dismissed petitioner's petition and terminated the case, concluding that the doctrine of

¹ A copy of the law judge's order is attached.

res judicata precluded petitioner's appeal.² The law judge cited two previous cases concerning petitioner: one in 1989, in which the Board determined that petitioner was ineligible for a medical certificate due to his established medical history and clinical diagnosis of psychosis³; and one in which an NTSB administrative law judge held, and petitioner did not appeal, that res judicata precluded petitioner from arguing that he was eligible for a medical certificate.⁴ We affirm the law judge's order.

² "Res judicata," a Latin phrase meaning, "a thing adjudicated," refers to an issue that has been definitively settled by judicial decision. Black's Law Dictionary at 1052 (7th ed. 2000).

³ Petition of Forrette, 6 NTSB 1058 (1989). In the 1989 case, the Board held that petitioner was "disqualified under identical provisions in sections 67.13, 67.15, and 67.17 of the Federal Aviation Regulations (FAR), specifically, sections 67.13, 67.15, and 67.17(d)(1)(i)(b)." Id. Those sections have since been recodified at 14 C.F.R. §§ 67.107(a)(2), 67.207(a)(2), and 67.307(a)(2), applicable to first-, second-, and third-class medical certificates, respectively, and state that the mental standards for a medical certificate are:

(a) No established medical history or clinical diagnosis of ... (2) A psychosis. As used in this section, "psychosis" refers to a mental disorder in which:

(i) The individual has manifested delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition; or

(ii) The individual may reasonably be expected to manifest delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition

⁴ Petition of Forrette, NTSB Docket No. SM-4758 (2007).

The case at issue here involves another denial letter that the Federal Air Surgeon sent to petitioner on January 20, 2010, denying his application for airman medical certification again under 14 C.F.R. §§ 67.107(a)(2), 67.207(a)(2), and 67.307(a)(2), based on petitioner's history and diagnosis of psychosis. In the application at issue, petitioner marked "No" in response to the following question:

Medical History - HAVE YOU EVER IN YOUR LIFE BEEN DIAGNOSED WITH, HAD, OR DO YOU PRESENTLY HAVE ANY OF THE FOLLOWING? ... m. [m]ental disorders of any sort; depression, anxiety, etc.

Petitioner has appealed the law judge's decision, but does not contest the law judge's finding that res judicata disallows petitioner from pursuing an appeal of the Administrator's denial. Instead, petitioner appears to take issue with the diagnosis of psychosis, and states that he is the victim of retaliation after turning in Bill Watts, "a frontman flying for organized crime businessman Al Zigleoni ... and Lebanese politician drug lord Ray LaHood." Appeal Br. (postmarked Mar. 9, 2010) at 7. Petitioner asserts that two doctors at St. Francis Hospital in Peoria, Illinois, found no evidence that petitioner suffered from psychosis after he engaged in tests and interviews with them, and that, conversely, Dr. E. Alan Turow and Dr. Barton Pakull, who testified on behalf of the Administrator at the hearing in the 1989 case, reached their

opinions in the absence of any testing or interviews. Overall, petitioner challenges the Administrator's denial of his certificate, and the law judge's decision affirming the denial, on the merits. The Administrator contests petitioner's appeal, and urges us to affirm the law judge's decision.

The fact that petitioner marked "no" on his medical certificate application in response to question 18m indicates that he seeks to relitigate the previous decision concerning his psychosis. Petitioner's brief, in which he disputes the testimony at the 1987 hearing, also indicates that he believes our 1989 decision concerning his psychosis was erroneous. We have previously applied the doctrine of res judicata to cases in which a petitioner submits multiple petitions for a medical certificate.⁵ In this case, petitioner did not present any valid reason to disregard the decisions in the prior proceedings concerning his ineligibility for a medical certificate. Moreover, the essential elements of res judicata—(1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties or parties in privity

⁵ See, e.g., Petition of Arrigoni, NTSB Order No. EA-4365 at 5 (1995) (citing Petition of Parker, NTSB Order No. EA-4233 (1994), and Petition of Weiss, NTSB Order No. EA-3678 (1992), both of which held that the doctrine of res judicata precluded appeal).

with the original parties—all exist in this case. Therefore, the doctrine of res judicata precludes petitioner's appeal.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied;
2. The order of the law judge dismissing petitioner's petition is affirmed; and
3. The denial of petitioner's application for a medical certificate under §§ 67.107(a)(2), 67.207(a)(2), and 67.307(a)(2) is affirmed.

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

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

Petition of

DAVID J. FORRETTE

for review of the denial by the
Administrator of the Federal Aviation
Administration of the issuance of
an airman medical certificate.

Docket SM-5045

ORDER DISMISSING PETITION AND TERMINATING PROCEEDING

Served: David J. Forrette
Post Office Box 2143
Ft. Meyers, Florida 33902

(BY CERTIFIED MAIL)

Susan S. Caron, Esq.
Federal Aviation Administration
Office of Chief Counsel
800 Independence Avenue, S.W.
Washington, D.C. 20591

(BY FAX)

On February 19, 2010, this office received from petitioner, who is acting *pro se*, a petition for review by the National Transportation Safety Board (“NTSB”) of a denial of an airman medical certificate, of which the Federal Air Surgeon informed him by letter dated January 20, 2010. That denial letter relates to an application for second-class medical certification that petitioner submitted on December 1, 2009, and states that the reason for the denial is that petitioner is unqualified for airman medical certification under §§ 67.107–, 67.207– and 67.307(a)(2) of the Federal Aviation Regulations (“FAR,” codified at 14 C.F.R.), due to “a diagnosis and clinical history of psychosis,” which is a specifically disqualifying medical condition.¹ That petition must be denied on the basis that it is

¹ The aforesaid regulations contain the same language, but apply to first, second and third-class medical certificates, respectively. As petitioner applied for a second-class medical certificate, the applicable regulatory provision is FAR § 67.207(a)(2), which reads as follows:

“§ 67.207 Mental.

Mental standards for a second-class medical certificate are:

(a) No established medical history or clinical diagnosis of any of the following:

* * * * *

(2) A psychosis. As used in this section, ‘psychosis’ refers to a mental disorder in which:

barred by the legal doctrine of *res judicata*, and this proceeding will be terminated on that basis.

Previously, in *Petition of Forrette*, 6 NTSB 1058 (1989), the Board affirmed an NTSB administrative law judge's initial decision sustaining a July 1987 determination by the Federal Aviation Administration ("FAA") that petitioner was not entitled to medical certification under then-FAR §§ 67.13–, 67.15– and 67.17(d)(1)(i)(b), which were re-codified as §§ 67.107–, 67.207– and 67.307(a)(2) in 1996. In that 1989 decision, the Board determined that, "[u]pon consideration of the brief[s], the exhibits, the testimony and the entire record, . . . the weight of the evidence supports the denial of airman medical certification to petitioner." 6 NTSB at 1059. The Board discussed the relevant evidence, rejected arguments made by petitioner in connection with his appeal of the judge's ruling and concluded that "[t]he evidence establishes that petitioner does have a medical history and clinical diagnosis of a psychosis." *Id.* at 1061. Petitioner did not appeal that Board decision to the United States Court of Appeals, and it, therefore, became final.

Petitioner later sought and was again denied medical certification by the FAA on the basis that he has a history of psychosis in August 2006. On a petition for review of that certificate denial action (NTSB Docket SM-4758), another NTSB administrative law judge held, in an Order issued on February 22, 2007, that, because the issue of whether or not petitioner is qualified for medical certification under the applicable FARs was previously fully adjudicated, the doctrine of *res judicata* applied and dismissal of that petition was required.² For the precisely the same reasons, the petition filed in this proceeding must also be dismissed.

THEREFORE, IT IS ORDERED that petitioner's petition for review of the Federal Aviation Administration's January 10, 2010 denial of airman medical certification is hereby DISMISSED and that his proceeding is TERMINATED.

Entered this 25th day of February, 2010, at Washington, D.C.

William E. Fowler, Jr.
Chief Judge

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- (i) The individual has manifested delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition; or
 - (ii) The individual may reasonably be expected to manifest delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of this condition."

² In so holding, that judge cited (at 2 n.2) the following decisions as illustrative of the Board's application of the doctrine of *res judicata* in medical certificate denial cases: *Petition of Cooper*, 2 NTSB 1503 (1975), affirmed *sub nom. Cooper v. NTSB*, 546 F.2d 870 (10th Cir. 1976); *Petition of Schevchuk*, 4 NTSB 4 (1982); *Petition of Layfield*, 6 NTSB 218 (1988).