

SERVED: October 18, 2013

NTSB Order No. EA-5681

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 17th day of October, 2013

_____)	
Petition of)	
)	
KENNETH A. STEENROD)	Docket SM-5330
)	
for review of the denial by the)	
Administrator of the Federal Aviation)	
Administration of the Issuance of an)	
Airman Medical Certificate)	
_____)	

OPINION AND ORDER

1. Background

Petitioner, who proceeds *pro se*, seeks review of a written order issued by Chief Administrative Law Judge Alfonso J. Montaño on March 5, 2013.¹ By that order, the law judge dismissed petitioner's petition for review and terminated his appeal of the Federal Aviation Administration (FAA) Administrator's denial of his application for an airman medical certificate due to petitioner's medical history of diabetes mellitus. For the reasons that follow, we affirm.

¹ A copy of the order is attached.

A. *Facts*

Petitioner acknowledges the FAA found he has had type II diabetes without insulin dependency “for around 40 years.”² He maintains he has controlled his condition with “diet and oral medication.”³ He also acknowledges he suffered a right temporal cerebrovascular accident (CVA)—which he attributes to a “burst vessel” resulting from hypertension—in 2010.⁴ On the basis of petitioner’s medical history, the Administrator, acting through the manager of the Aerospace Medical Certification Division of the FAA’s Civil Aerospace Medical Institute, denied petitioner’s application for an airman medical certificate on September 19, 2012. The Administrator determined petitioner’s history and clinical diagnosis of diabetes mellitus, treated orally with hypoglycemic medication, disqualified him from eligibility for an airman medical certificate, citing provisions of the Federal Aviation Regulations that specifically preclude issuance of a first-, second-, or third-class medical certificate to a patient with diabetes mellitus controlled with a hypoglycemic drug.⁵ The Administrator further determined petitioner did not qualify for a special-issuance medical certificate because of his prior CVA, together with an optical condition identified as “residual left superior homonymous quadrantanopia/hemianopia.”⁶ Petitioner also acknowledges he has a “blind spot” due to damage to the right temporal lobe of his brain.⁷

² Petition on Appeal at 1, dated March 31, 2013.

³ Initial Petition at 1, dated September 29, 2012.

⁴ Petition on Appeal, supra note 2, at 1.

⁵ FAA Order Denying Application for Airman Medical Certification at 1, dated September 19, 2012); see 14 C.F.R. §§ 67.113(a), 67.213(a), 67.313(a).

⁶ FAA Order, supra note 5, at 1.

⁷ Initial Petition, supra note 3, at 1.

B. Law Judge's Order

The law judge dismissed petitioner's initial petition for review of the FAA's decision, citing undisputed evidence of petitioner's history of diabetes mellitus requiring use of hypoglycemic medication. The law judge further concluded the Board lacked jurisdiction to review the Administrator's denial of a special-issuance certificate, a matter "wholly within FAA's discretion."

C. Issues on Appeal

Petitioner argues denial of his application for a medical certificate was improper because the Federal Aviation Regulations' prohibition on issuance of a medical certificate to a patient with diabetes was intended to apply to diabetes patients who, in petitioner's view, are more prone than petitioner to loss of consciousness as a result of "extreme sugar highs and lows." Petitioner maintains he is not at particular risk of losing consciousness or suffering another CVA or diabetes-related event. He further argues, albeit in a self-contradictory manner, the denial violates the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336) and is unconstitutional because State law, rather than Federal law, should regulate certification of private pilots who are not engaged in interstate commerce.

2. Decision

A. Standard of Review and Applicable Law

We review *de novo* a law judge's order on a petition for review of the denial of an application for an airman medical certificate.⁸ A petitioner bears the burden of proof in a

⁸ Petition of Singh, NTSB Order No. EA-5663 at 8 (2013).

proceeding before a law judge to demonstrate the Administrator's denial of an airman certificate was erroneous.⁹

Sections 67.113(a), 67.213(a), and 67.313(a) of title 14, Code of Federal Regulations, expressly preclude issuance of, respectively, an unrestricted first-, second-, and third-class airman medical certificate to an individual with “[an] established medical history or clinical diagnosis of diabetes mellitus that requires insulin or any other hypoglycemic drug for control.” However, the Administrator may issue a special medical certificate if an applicant “shows to the satisfaction of the Federal Air Surgeon that the duties authorized by the class of medical certificate applied for can be performed without endangering public safety during the period in which the [special-issuance certificate] would be in force.”¹⁰

The Board previously affirmed the denial of an unrestricted medical certificate on the basis of undisputed evidence of a diagnosis of diabetes mellitus, along with undisputed evidence of oral hypoglycemic medication use to control the condition.¹¹ Although the Board has recognized in dicta that the Administrator has discretion to provide a special-issuance certificate to an airman with “well controlled” diabetes,¹² the Board lacks jurisdiction to review the denial of a special-issuance certificate. While 49 U.S.C. § 44703 authorizes the Board to review the final denial of an airman certificate, the decision whether to grant a special issuance medical

⁹ 49 C.F.R. § 821.25.

¹⁰ 14 C.F.R. § 67.401(a).

¹¹ See, e.g., Petition of Cooper, NTSB Order No. EA-5491 at 7-8 (2009).

¹² See id. at 8-9.

certificate under 14 C.F.R. § 67.401 is within the Administrator’s discretion and, thus, not subject to Board review.¹³

B. *Application*

Petitioner acknowledges he has an approximately 40-year history of diabetes mellitus controlled with “diet and oral medication.”¹⁴ Petitioner does not dispute the Administrator’s and the law judge’s determination the “oral medication” is a “hypoglycemic drug” for purposes of section 67.113(a), 67.213(a), or 67.313(a) of title 14, Code of Federal Regulations, each of which precludes issuance of an unrestricted medical certificate to a person with diabetes mellitus controlled with a hypoglycemic drug.¹⁵ We find nothing unreasonable in the Administrator’s interpretation of the regulations at issue.¹⁶ Nor do we find any error in the law judge’s conclusion that, on the basis of the undisputed evidence, petitioner is ineligible for an unrestricted medical certificate under 14 C.F.R. § 67.113, 67.231, or 67.313 because he has diabetes mellitus and controls his condition with a hypoglycemic drug. Moreover, the law judge properly declined to review the Administrator’s determination that petitioner does not qualify for

¹³ Petition of Bartel, NTSB Order No. EA-5622 (2012), petition for rev. denied, Bartel v. NTSB and FAA, No. 12-1380, slip op. at 1 (D.C. Cir., Aug. 13, 2013); see also Petition of Reder, NTSB Order No. EA-4438 at 4 (1996) (explaining “the granting of a special issuance certificate . . . is completely within the Administrator’s discretion and, thus, not subject to Board review”).

¹⁴ Initial Petition, supra note 3, at 1.

¹⁵ The level of medical certificate petitioner sought—first-, second-, or third-class—is unclear from the record. Petitioner refers in his petition for review to his intended use of the certificate to exercise the privileges of a private pilot license, suggesting he sought a third-class medical certificate. See 14 C.F.R. § 61.23(a)(3)(i). In any event, the regulations governing issuance of first-, second-, and third-class medical certificates are identical in relevant part: each precludes issuance of a medical certificate to a person with diabetes mellitus controlled with hypoglycemic drugs. 14 C.F.R. §§ 67.113(a), 67.213(a), 67.313(a).

¹⁶ See Administrator v. Jones, NTSB Order No. EA-5647 at 19-20 (2013) (quoting Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843-44 (1984)); see also Martin v. Occupational Safety & Health Review Comm’n, 499 U.S. 144, 149 (1991).

a special-issuance certificate, correctly noting review of such a decision would fall outside the NTSB's jurisdiction.¹⁷

Finally, even though petitioner did not raise his arguments regarding federalism, the constitutionality of the Federal regulations governing airman certification, or the applicability of the Americans with Disabilities Act before the law judge, we fail to discern a basis among those arguments for reversal. It is well-settled that Federal statutes and regulations governing aviation safety—including those at issue in this case—preempt State law in furtherance of clear Congressional intent for the Federal Government to exclusively occupy the field of aviation safety.¹⁸ Additionally, the Board does not rule on the constitutionality of FAA regulations.¹⁹

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied; and
2. The law judge's decision is affirmed.

HERSMAN, Acting Chairman, HART, SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.

¹⁷ See Bartel, NTSB Order No. EA-5622; Reder, NTSB Order No. EA-4438 at 4.

¹⁸ See, e.g., Montalvo v. Spirit Airlines, 508 F.3d 464, 471 (9th Cir. 2007) (“[T]he regulations enacted by the Federal Aviation Administration, read in conjunction with the [Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 737] itself, sufficiently demonstrate an intent to occupy exclusively the entire field of aviation safety and carry out Congress’ intent to preempt all state law in this field”).

¹⁹ Garvey v. McCullough, NTSB Order No. EA-4592 at 2-3 (1997); Hinson v. Ciampa, NTSB Order No. EA-4210 at 4 (1994).

SERVED: March 5, 2013

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

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KENNETH A. STEENROD)	
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the Administrator of the)	
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
_____)	

ORDER DISMISSING PETITION AND TERMINATING PROCEEDING

SERVICE: Mr. Kenneth Steenrod
721 South 16th
Parsons, KS 67357

(certified mail)

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

Petitioner has filed with the National Transportation Safety Board a petition for review of a final denial of his application for airman medical certification by the Manager of the Aerospace Medical Certification Division of the Federal Aviation Administration ("FAA"). Petitioner's denial was based on a history and clinical diagnosis of diabetes mellitus requiring hypoglycemic medication for control.

Petitioner states that this denial was done without any regard to his current physical condition and that his having diabetes has not interfered with any activity in his life. He further states that his diabetes is well controlled through diet and oral medication. As it is undisputed that Petitioner has the aforesaid conditions, specifically disqualifying under FAR Sections 67.113(a); 67.213(a); and 67.313(a), he fails to meet the criteria and is disqualified from unrestricted airman medical certification under the regulations.¹

¹See Petition of Dale, 4 NTSB 338 (1982), reconsideration denied 4 NTSB 340 (1982) (the existence of a specifically disqualifying condition leaves "no real issue before the Board" and, thus, renders unnecessary a hearing on review of a denial of medical certification by the FAA).

The Federal Air Surgeon has also informed the Petitioner that he had been considered, but found not medically qualified, due to a history of right temporal cerebrovascular accident (CVA) and residual left superior homonymous quadrantanopia/hemianopia for special issuance certification under FAR 67.401. Although Petitioner indicates that he has 20/20 vision and none of his activities are restricted by this condition, the grant or denial of special issue certification is wholly within FAA's discretion, and the Board has no jurisdiction to review such a determination by the FAA.²

BASED ON THE FOREGOING, IT IS ORDERED That the Petition for Review is **DISMISSED** and this proceeding is hereby **TERMINATED**.

Entered this 5th day of March 2013, at Washington, D.C.



ALFONSO J. MONTANO
Chief Administrative Law Judge

²See Petition of Doe, 5 NTSB 41, 43(1985); Petition of Sleeter, 5 NTSB 686, 688-89 (1985).

APPEAL (DISPOSITIONAL ORDER)

Any party to this proceeding may appeal this order by filing a written notice of appeal within 10 days after the date on which it was served (the service date appears on the first page of this order). An original and 3 copies of the notice of appeal must be filed with the:

National Transportation Safety Board
Office of Administrative Law Judges
Room 4704
490 L'Enfant Plaza East, S.W.
Washington D.C. 20594
Telephone: (202) 314-6150 or (800) 854-8758

That party must also perfect the appeal by filing a brief in support of the appeal within 30 days after the date of service of this order. An original and one copy of the brief must be filed directly with the:

National Transportation Safety Board
Office of General Counsel
Room 6401
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20594
Telephone: (202) 314-6080
FAX: (202) 314-6090

The Board may dismiss appeals on its own motion, or the motion of another party, when a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

A brief in reply to the appeal brief may be filed by any other party within 30 days after that party was served with the appeal brief. An original and one copy of the reply brief must be filed directly with the Office of General Counsel in Room 6401.

NOTE: Copies of the notice of appeal and briefs must also be served on all other parties to this proceeding.

An original and one copy of all papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel in Room 6401. Copies of such documents must also be served on the other parties.

The Board directs your attention to Rules 7, 43, 47, 48 and 49 of its Rules of Practice in Air Safety Proceedings (codified at 49 C.F.R. §§ 821.7, 821.43, 821.47, 821.48 and 821.49) for further information regarding appeals.

ABSENT A SHOWING OF GOOD CAUSE, THE BOARD WILL NOT ACCEPT LATE APPEALS OR APPEAL BRIEFS.