SERVED: January 2, 2014

NTSB Order No. EA-5695

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 31st day of December, 2013

MICHAEL P. HUERTA, Administrator, Federal Aviation Administration, Complainant, v. DANIEL GELLERT, Respondent.	)	Docket SE-19363

OPINION AND ORDER

1. *Background*

Respondent, who proceeds *pro se*, appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on March 27, 2013.[1] By that order, the law judge affirmed the Federal Aviation Administration (FAA) Administrator's emergency order suspending respondent's airman medical certificate, on the basis of evidence respondent refused an FAA

[1] A copy of the decision is attached.

directive to undergo a mental health evaluation and the demand was reasonable.[2] We affirm the law judge's decision.

A. *Facts*

In 2012, respondent, who held a third-class airman medical certificate, wrote a letter to then-Acting FAA Administrator Michael P. Huerta, alleging an FAA employee made inappropriate comments to unnamed individuals regarding respondent's deceased daughter and asked the then-Acting Administrator to address the employee's behavior. Respondent described the statements as "material false and detrimental statements published to airports, airlines and other innocent parties, concerning the brutal unsolved murder of my beloved 21-year-old daughter." He alleged the FAA employee's behavior amounted to a violation of criminal statutes and stated the "outrageous statements . . . raises [sic] more sinister implications."[3]

In response to the letter, an FAA psychiatrist, Dr. Charles Chesanow, reviewed respondent's airman medical file and found respondent, while a pilot with Eastern Air Lines, was evaluated during the 1970s in connection with his employment for possible mental health issues by multiple psychiatrists and psychologists, one of whom diagnosed a clinical disorder related to paranoia.[4]

In August 1974, Dr. John Watt, a psychiatrist who evaluated respondent at the request of Eastern Air Lines' medical officer, diagnosed respondent with "[p]aranoid personality, paranoid condition, or true paranoia," although Dr. Watt also noted, "[b]ecause of [respondent's] efforts to

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[2] 14 C.F.R. § 67.413 authorizes the Administrator to require an airman to provide additional medical information or history as necessary to determine whether the airman meets the medical standards required to hold a medical certificate.

[3] Exh. A-2, Tab 4.

[4] The reports from these evaluations are contained in the hearing record.

conceal and to hide the fact of his paranoid distortions, it is difficult to obtain much more in the way of a hard evidence [sic]."[5] Later in August 1974, psychologist Dr. Murray Heiken examined respondent and, although he did not make a clinical diagnosis, recommended against respondent's continued flight assignments with Eastern in view of respondent's "highly anxious and threatened" presentation.[6]

Subsequent evaluations by four psychiatrists and psychologists, which appear to have been conducted at Eastern's request, produced varying conclusions but did not result in definitive diagnoses of clinical disorders.[7] Three years later, however, Dr. Martin Giffen, who initially evaluated respondent in 1974, reviewed several examples of "correspondence" by respondent with unnamed people suggesting the existence of some pathology on respondent's part. Dr. Giffen did not diagnose a mental condition but recommended Eastern "ground [respondent] until further psychiatric appraisal."[8]

Having reviewed respondent's medical records, Dr. Chesanow recommended respondent undergo a psychiatric evaluation, in view of "instances [in the records] of suspected paranoid ideation dating back to the early 1970s" and the "highly improbable" allegations of his 2012 letter to the then-Acting Administrator.[9] Accordingly, on April 13, 2012, the FAA's regional flight surgeon for the Northwest Mountain Regional Medical Office formally directed

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[5] Exh. A-2, Tab 5.

[6] Exh. A-2, Tab 6.

[7] Exh. A-2, Tabs 7-9.

[8] Exh. A-2, Tab 9. According to a letter from Dr. Giffen to Eastern's medical officer, an Eastern attorney brought the "correspondence" to Dr. Giffen's attention. Id.

[9] In his memorandum, Dr. Chesanow also described respondent as the captain of Eastern flight 401, which crashed near Miami in 1972. Both parties agree this characterization was erroneous as respondent was not, in fact, involved in the operation of flight 401.

respondent "have an evaluation by [a] board-certified forensic psychiatrist."[10] When respondent failed to comply with the directive, the regional flight surgeon on June 5, 2012, informed respondent the FAA would initiate enforcement action against him if he did not voluntarily surrender his medical certificate.[11]

On August 31, 2012, the Administrator issued an emergency order suspending respondent's medical certificate, pending respondent's demonstration of his qualification to hold the certificate.[12] The case proceeded to a hearing before the law judge on March 27, 2013.[13] The Administrator called one witness, Dr. William McDonald, a psychiatrist whom the law judge accepted as an expert in the field of FAA aeronautical certification.[14]

Dr. McDonald testified respondent's letter to the then-Acting Administrator "provides some evidence to suggest the possibility of a current disorder, either a personality disorder or another kind of psychiatric disorder that may go along with that would be disqualifying for medical certification."[15] He opined the letter "raises a question" that "has to be answered

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[10] Exh. A-2, Tab 2.

[11] Exh. A-2, Tab 1.

[12] Incidentally, when the FAA examined respondent's mental health history in the 1990s, the agency reached a different conclusion. The record contains a memorandum by a senior FAA enforcement attorney, dated January 9, 1990, prepared in reference to continuing questions about respondent's medical fitness. The attorney concluded in the memorandum that respondent "has had psychiatric and psychological evaluations regarding an old problem and has been found to meet all medical qualifications, evidenced by the issuance to him of airman medical certificates." Exh. A-2 (memorandum of Senior Enforcement Attorney, Office of Assistant Chief Counsel, to the file regarding Case No. 86500900005, January 9, 1990).

[13] Respondent waived the applicability of the expedited procedures normally applicable to emergency cases.

[14] Tr. 22.

[15] Id. at 28.

[through] a current psychiatric evaluation" because it "suggests . . . that [respondent] has an expectation or has a concern that there is a malevolent intention somehow behind these actions by the FAA, that somehow the FAA has an interest in him to harm him in some way."[16]

Dr. McDonald also testified he reviewed the records of respondent's multiple mental-health evaluations in the 1970s and found the letter consistent with those evaluations. Acknowledging "some discrepancy among some of those evaluations," he stated the reports at least reflected "a consistent theme" related to the possibility respondent suffers from a paranoid personality disorder of some type, based on respondent's manifestations of "suspiciousness, . . . anxiety, [and] concerns about being unfairly treated."[17] Dr. McDonald explained the lack of consensus among clinicians who evaluated respondent in the 1970s stating, "if a personality disorder is there, it can be better at times and worse at times."[18] In his opinion, the long interval between the 1974 examinations and the present did not eliminate the basis for requiring a reexamination, in light of "the possibility that a personality disorder has been there all along and . . . [may have] either waxed or waned in severity or simply was carefully managed or carefully withheld in some ways."[19]

Respondent did not dispute he failed to comply with the FAA's demand for reexamination and argued the Administrator's claims in this case were precluded under the doctrine of *res judicata* because they had been fully decided in an arbitration to resolve a collective-bargaining grievance for back pay that respondent levied against Eastern Air Lines

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[16] Id. at 28, 32.

[17] Id. at 29, 31.

[18] Id. at 32.

[19] Id. at 34.

under the Railway Labor Act in 1980.[20]

B. *Law Judge's Order*

At the conclusion of the hearing, the law judge issued an oral initial decision affirming the Administrator's order of suspension. Emphasizing he would consider only whether the basis for requiring a reexamination was reasonable as of the date of respondent's letter to the then-Acting Administrator, the law judge concluded, in the lack of "contrary medical opinion other than that as expressed [in respondent's medical file]," the Administrator established a reasonable basis for requiring respondent undergo a reexamination.[21] This appeal follows.

C. *Issues on Appeal*

On appeal, respondent raises a number of issues. First, respondent argues the law judge erred in finding a reasonable basis existed for the FAA's demand for a reexamination. Respondent further argues the Administrator's claim was precluded under *res judicata*. Respondent argues the FAA improperly possessed medical records stemming from his employment with Eastern Air Lines. Finally, he argues the Administrator failed to timely provide the FAA's enforcement investigation report (EIR).

2. *Decision*

A. *Reasonableness of FAA Demand for Reexamination*

We review *de novo* a law judge's determination with respect to the reasonableness of a demand by the Administrator that an airman undergo a physical reexamination.[22]

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[20] Id. at 48. The Railway Labor Act, which governs collective bargaining among employees of air and rail carriers, is codified at 45 U.S.C. §§ 151-88.

[21] Initial decision at 77.

[22] See Administrator v. Pustelnik, 3 N.T.S.B. 946, 947 (1978) (reviewing determination of reasonableness, explaining, "We base our opinion on our review of the testimony, the exhibits, and the entire record . . . .").

By regulation, the Administrator may require an airman to provide additional information concerning the airman's qualification to possess a medical certificate "[w]henever the Administrator finds that additional medical information or history is necessary."[23] The FAA may suspend or revoke an airman's medical certificate if the airman fails to comply with a reexamination demand; any suspension remains in effect until the airman provides the required information.[24]

Where, as here, a respondent challenges suspension of a medical certificate pending reexamination, the only issue before the law judge and before the Board, on appeal, is whether the Administrator's reexamination directive was reasonable.[25] A demand by the Administrator that an airman undergo further examination will generally be reasonable if, among other things, the airman's medical record discloses a history of "psychiatric treatment or hospitalization"[26] or diagnosis of a mental disorder.[27] In Administrator v. Smith, for example, the FAA required an airman undergo examination to determine his fitness for a medical certificate on the basis of evidence the airman had, "in the past, been diagnosed as having a nervous or mental disorder which could be disqualifying under the applicable regulations" and had been hospitalized for that disorder.[28] The Board held clinical diagnoses 26 years prior were not too remote in time to

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[23] 14 C.F.R. § 67.413(a).

[24] Id. § 67.413(b)-(c).

[25] See Administrator v. Woznick, NTSB Order No. EA-3726 at 7 (1992) (explaining, with respect to review of order predicated on reexamination directive, "that the appropriate inquiry is whether the Administrator has a reasonable basis for seeking such information").

[26] Administrator v. Whittle, 4 N.T.S.B. 1734, 1736 (1984).

[27] See, e.g., Administrator v. Smith, 5 N.T.S.B. 1772, 1773 (1987).

[28] Id.

conclude the Administrator reasonably sought additional medical information concerning an airman.[29]

In this case, we find substantial record evidence supporting the Administrator's determination that reexamination was warranted. Respondent's letter to the then-Acting Administrator, in which he alleged an FAA employee personally targeted him in "outrageous statements that . . . raise[] more sinister implications" in connection with the murder of his daughter, makes, at minimum, provocative and improbable claims consistent with prior medical findings of paranoid ideation. Respondent, unlike the respondent in Smith, was not hospitalized for a mental health disorder, but the record nonetheless discloses Dr. Watt diagnosed respondent with "[p]aranoid personality, paranoid condition, or true paranoia" in 1974. Other health care providers, while not finding any pathology, remarked on respondent's level of anxiety and tension around the same time. Another psychiatrist who evaluated respondent's conduct three years later recommended in favor of psychiatric evaluation.

Dr. McDonald's undisputed testimony at the hearing established mental disorders of the type identified by Dr. Watt may manifest differently over time and may, in fact, worsen. Dr. McDonald further testified the ideas expressed in the letter—which "suggests . . . that [respondent] . . . has a concern . . . that somehow the FAA has an interest in him to harm him in some way"[30]—were consistent with the findings of the various psychiatric and psychological evaluations of respondent over the years, and in particular with Dr. Watt's diagnosis.

Although we do not reach a conclusion with respect to respondent's actual mental health

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[29] Id.

[30] Id. at 28, 32.

or qualification for holding a medical certificate,[31] the evidence, considered in its entirety, is sufficient to conclude the Administrator had a reasonable basis for requiring respondent undergo a reexamination to assess his mental health. We therefore affirm the law judge's decision.

B. *Claim Preclusion and Collateral Issues*

To the extent respondent challenges the law judge's other legal conclusions, such as that with respect to applicability of the doctrine of *res judicata*, we review such legal conclusions *de novo*.[32] However, we find no basis for reversal among respondent's several alternative arguments.

Respondent argues the doctrine of *res judicata* precluded the law judge's consideration of the Administrator's claims as to his mental fitness for a medical certificate. The doctrine stands for the proposition "that 'a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.'"[33] "Whether two cases implicate the same cause of action turns on whether they share the same 'nucleus of facts.'"[34] Under Board precedent, a claim is precluded when the following three elements exist: "(1) an

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[31] See, e.g., Smith, 5 N.T.S.B. at 1773 ("We make no finding in respect to petitioner's current mental or emotional status but merely note that the record supports a determination that the request for a current evaluation was reasonable when made and continues to be a reasonable prerequisite to consideration of his application for airman medical certification.").

[32] See generally Administrator v. Ducote, NTSB Order No. EA-5664 at 12 (2013) ("We review our law judges' decisions *de novo*."); Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

[33] Drake v. Fed. Aviation Admin., 291 F.3d 59, 66 (D.C. Cir. 2002) (quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n. 5 (1979)).

[34] Id. (quoting Page v. United States, 729 F.2d 818, 820 (D.C.Cir.1984)).

earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties or parties in privity with the original parties."[35]

Requisite elements for preclusion of the Administrator's claims do not exist in this case. Even if we were to assume, for the sake of argument, the resolution of the arbitration constituted a final judgment on the merits for *res judicata* purposes,[36] the issues resolved in the arbitral proceeding concerned respondent's rights under the collective bargaining agreement then in place between the Air Line Pilots Association and Eastern Air Lines—not whether respondent met the qualifications for an airman medical certificate on the basis of his conduct in 2012. The Administrator was not a party to the proceeding, which involved respondent, the union, and the air carrier. The doctrine of *res judicata* does not apply in this case.

Respondent further claims, without citation to any legal authority, medical records pertaining to his employment with Eastern were inadmissible because he did not consent to Eastern's release of the records to the FAA. As the Administrator notes in his reply brief, on January 24, 1986, in connection with an unrelated enforcement action involving respondent, the Administrator issued a subpoena to Eastern's director of flight medicine, requiring production of all medical records concerning respondent then in Eastern's possession. On their face, the records the law judge considered appear to have been produced in response to that subpoena. Respondent makes no showing to the contrary and offers no argument regarding the validity of the subpoena; we fail to discern a basis for concluding the Administrator did not lawfully obtain the medical records.

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[35] Petition of Bartel, NTSB Order No. EA-5622 at 4 (2012); Petition of Forrette, NTSB Order No. EA-5524 at 4 (2010).

[36] We do not reach the question of whether such a final judgment on the merits was present in this case because none of the other requirements for *res judicata* application are satisfied.

Finally, although respondent summarily states in his brief the Administrator failed to timely provide a copy of the EIR in this case, respondent cites no evidence in support of that allegation.[37]

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;

2. The law judge's oral initial decision is affirmed; and

3. The Administrator's emergency order of suspension of respondent's airman medical certificate is affirmed, pending respondent's demonstration of his qualification to possess the certificate.

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

[37] See 49 C.F.R. § 821.48(b)(1)(2) ("The appeal brief shall enumerate the appealing party's objections to the law judge's initial decision . . . and shall state the reasons for such objections, including any legal precedent relied upon in support thereof.").

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

OFFICE OF ADMINISTRATIVE LAW JUDGES

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* * * * * * * * * * * * * * * * * *
In the matter of:                  *
                                   *
MICHAEL P. HUERTA,                 *
ADMINISTRATOR,                     *
FEDERAL AVIATION ADMINISTRATION,   *
                                   *
                  Complainant,     *
     v.                            *   Docket No.:  SE-19363
                                   *   JUDGE GERAGHTY
DANIEL G. GELLERT,                 *
                                   *
                  Respondent.      *
* * * * * * * * * * * * * * * * * *
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Nakamura U.S. Courthouse
1010 5th Avenue, Courtroom 4
Seattle, Washington 98104

Wednesday,
March 27, 2013

The above-entitled matter came on for hearing, pursuant to Notice, at 9:30 a.m.

BEFORE: PATRICK G. GERAGHTY,
Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

ROBERT SPITZER, Esq.
Office of the Regional Counsel
Federal Aviation Administration
Northwest Mountain Region
1601 Lind Avenue
Renton, Washington 98057
425-227-1417
425-227-1007 (Fax)

On behalf of the Respondent:

DANIEL GELLERT, pro se
110 Ridge Top Place
Sequim, Washington 98382
360-683-5170

1 ORAL INITIAL DECISION AND ORDER

2 ADMINISTRATIVE LAW JUDGE GERAGHTY: Pursuant to Notice,
3 this matter came on for hearing on March 27, 2013, in Seattle,
4 Washington, on the appeal of Daniel Gellert, herein after referred
5 to as Respondent, from an Emergency Order of Suspension, which
6 serves herein as the complaint, issued on behalf of the
7 Administrator, Federal Aviation Administration, herein the
8 Complainant.

9 The matter has been heard before this Judge, and as
10 provided by the Board's Rules, I am issuing a Bench Decision in
11 the proceeding.

12 As indicated, pursuant to Notice, this matter came on
13 for hearing on the date stated in the Notice of Hearing. At that
14 time, the Complainant was represented by one of its staff counsel,
15 Robert Spitzer, Esquire, of the Regional Counsel's Office,
16 Northwest Mountain Region. The Respondent was present at all
17 times and elected to represent himself pro se.

18 The parties were afforded full opportunity to offer
19 evidence, to call, examine and cross-examine witnesses and to make
20 argument in support of their position.

21 AGREEMENTS

22 By pleading and answer filed on behalf of the
23 Respondent, it was admitted that the allegations contained in
24 paragraphs 1, 2, 3 and 4 of the complaint were valid. Therefore,
25 the admission as to the truth of those allegations, having been

1 admitted, they are taken as having been established for purposes
2 of this decision.
3 DISCUSSION
4 The action taken by the Complainant here is based upon
5 the charge that by reason of failure to comply with a request by
6 the Administrator to submit to a further evaluation to establish
7 whether or not he is medically qualified, that the Respondent is
8 in regulatory violation of the provisions of §67.413 of the
9 Federal Aviation Regulations, which provides for action by the
10 Administrator to suspend a certificate where the airman fails to
11 provide the requested the medical information or history necessary
12 for the Administrator to determine whether that individual meets
13 the medical standards to hold an airman medical certificate.
14 The standard in this type of case has been addressed by
15 the Board repeatedly. It states as the standard that the
16 Administrator need only show that a reasonable basis exists for
17 the reexamination or additional information request made by the
18 Administrator to the particular airman; for example, the case of
19 Administrator v. Hutchins, which is Board Case EA-4899 (2001).
20 The Board has also held, for example, in Administrator v.
21 Bradford, which is at 3 NTSB 336 and 337, that the financial
22 inability of an individual to incur the costs of the reexamination
23 is not valid reason to forestall the affect of a suspension for
24 failure to comply with that request.
25 On the denials by the Respondent to further allegations

1 in the complaint, I address first in inverse order. It is
2 established by the testimony given by the Administrator, the
3 Complainant's witness, and also in Exhibit A-2, and looking at Tab
4 2 of that exhibit, it is shown that on or about April 13, 2012,
5 the Administrator, through his agents, did send a letter to the
6 Respondent requesting a reexamination for the purposes of
7 determining his eligibility, the Respondent's, to hold an airman
8 medical certificate. Therefore, I find the allegation in
9 Paragraph 7 is established by a preponderance of the evidence.
10 I further find that the letter did specifically request
11 that the Respondent submit to an evaluation by a Board-certified
12 forensic psychiatrist in order to satisfy the request, which I
13 have previously referenced. Therefore, the allegation in
14 paragraph 8 of the complaint is also established on the
15 preponderance of the evidence.
16 As even admitted by the Respondent in his testimony as
17 of this date, which is March 27, 2013, the Respondent has not
18 complied with that request for further medical examination.
19 Therefore, the allegation in paragraph 9 is also found to be
20 established.
21 I will discuss the testimony in light of the numerous
22 motions filed by the Respondent, even though all of the
23 allegations of the complaint obviously have been established. But
24 I think a brief discussion of the testimony is appropriate. The
25 Complainant called Dr. McDonald to testify on behalf of the

1 complaint. On the basis of the doctor's curriculum vitae and
2 even as stipulated by the Respondent, Dr. McDonald is extremely
3 well-qualified to express an opinion on the issues in this
4 case. I did accept his testimony as that of an expert witness.
5 I only summarize the testimony. However, he did
6 testify overall that he had reviewed the entire Blue Ribbon
7 copy of the Respondent's airman medical records, and that based
8 upon his examination of the entire file that he, in fact,
9 concurred with the opinion expressed by Dr. Chesanow, which was
10 found on exhibit A-3, with the basis of requesting a further
11 examination or medical evidence to be furnished by the
12 Respondent. Of course, A-2 is reference to the letter, which
13 transmitted that request in April to the Respondent to submit
14 to the examination. So Tabs 2 and 3 do go together. But in
15 any event, Dr. McDonald did indicate that he concurred with the
16 opinion of Dr. Chesanow that there was a reasonable basis to
17 request that the Respondent submit to a further psychiatric exam
18 to establish his medical qualifications.
19 Specifically, Dr. McDonald referred to the overall tone
20 and import of correspondence that is included in the records as
21 submitted by the Respondent to the FAA, and indicates to him that
22 they raise a reasonable question as to the current status of the
23 Respondent to be a holder of an airman medical certificate. The
24 information, although there is a gap in which the Respondent
25 apparently did obtain various airman medical certification, that

1 based upon the view as of February 24, 2012, that there does exist
2 a question and that the only way to resolve the question is to
3 have further medical examination or evaluation that is a current
4 evaluation. The doctor referred back to the earlier
5 examinations, particularly that as found on Tab 5 from Dr. Watt
6 in which Dr. Watt specifically had reference to paranoid
7 personality, and the subsequent tabs down through Tab 8, which
8 are consistent with that expressed in Tab Number 5 by Dr. Hart.
9 So to summarize, Dr. McDonald was of the opinion that
10 based upon all the evidence which he reviewed strictly limited
11 from the time of Respondent's initial contact with the FAA up
12 until the time of the request for the reexamination, which
13 would be in February 24, 2012, just based on that history, that
14 it raised a reasonable question and that question can only be
15 resolved by means of a current evaluation.
16 Dr. McDonald also agreed that there was an error in
17 the statement made by Dr. Chesanow, as reflected in Tab 3, which
18 refers to the Respondent as the individual who was the pilot in
19 command of the Eastern Airlines flight that crashed with
20 fatalities. I believe that was in Florida back in 1986, sometime
21 around there. That is an erroneous statement. However,
22 Dr. McDonald says that he did take that as being erroneous;
23 however, that it did not change his opinion because based upon the
24 entire history, that there still is raised a reasonable question
25 as to the Respondent's current medical condition from the

1 standpoint of a medical evaluation or mental qualification.
2 Dr. McDonald also indicated that he then broke out
3 separately and reviewed the subsequent writings and submissions
4 that the Respondent had made numerous times in the course of
5 contact with the Board and with the FAA in the course of this
6 proceeding, stating that in his opinion that the theme and overall
7 sense gleaned from those communications, that they support the
8 conclusion that he would reach and had reached based only on the
9 information up to February 24, 2012.
10 I do make that point that initially I wanted to restrict
11 the testimony as to the reasonableness of an opinion strictly
12 based upon what happened up to February 24th because that's the
13 time that the Complainant made the request. Any subsequent data
14 should not be considered in support of that as a basis for that
15 request, but could be viewed simply as something that follows on
16 and either confirms or does not support the opinion. But in this
17 case, the doctor, Dr. McDonald, correctly separated the two, said
18 that the FAA's request was reasonable at the time it was made and
19 that anything further thereafter simply supports that conclusion.
20 The Respondent testified on his own behalf. There was
21 no offer of any medical testimony to contradict the opinions
22 offered by Dr. McDonald. The Respondent, obviously, from his
23 testimony and his pleadings, views the events differently from the
24 FAA, that there was no investigation of his charge concerning
25 statements allegedly made concerning the murder of his daughter.

1 However, as part of the discovery and motions filed by the
2 Respondent and submissions by him in documents, which he wants and
3 has made part of the record, it does appear that the FAA attempted
4 to investigate that charge and that Mr. Williams, the regional
5 counsel, subsequently wrote a letter to the Respondent indicating
6 that they had checked it out but that they didn't have sufficient
7 information, and asked for additional information so that they
8 could continue to investigate Respondent's allegation.
9 Apparently, the Respondent never replied to that request. That's
10 just my observation there.
11 In any event, the standard here is a very light one. It
12 is whether there is a reasonable basis to request the
13 reexamination. It is not an issue of whether the Respondent is
14 medically qualified or not medically qualified because the FAA has
15 stated they cannot make that determination at this point. That's
16 why they made the request.
17 Here, there is no contrary medical opinion other than
18 that as expressed in Administrator Exhibit A-2 and by
19 Dr. McDonald. Therefore, I must conclude that based upon the
20 qualified medical opinion and testimony of Dr. McDonald that there
21 does, in fact, exist a reasonable basis for the Administrator, the
22 Complainant's, request for further medical examination, that the
23 Complainant has sustained by a preponderance of the evidence the
24 allegations contained in the complaint.
25 I find and conclude, therefore, that based upon the

1 weight of the evidence, as given by the expert testimony of
2 Dr. McDonald, that there be a reasonable basis to request a
3 further medical examination of the Respondent; that the Order of
4 Suspension, the complaint herein, be, and the same hereby is,
5 affirmed as issued.
6 ORDER
7 IT IS THEREFORE ORDERED THAT:
8 1. The Emergency Order of Suspension, the complaint
9 herein, be, and the same hereby is, affirmed as issued.
10 2. That Respondent's airman medical certificate of any
11 class, including the Third Class Medical Certificate issued by
12 Dr. Allen Berry, is hereby suspended immediately.
13 3. That the period of suspension shall continue in
14 effect until the Respondent has established his qualification to
15 hold an airman medical certificate.
16 Entered this 27th day of March 2013 in Seattle,
17 Washington.
18
19 _____
20 PATRICK G. GERAGHTY
21 Administrative Law Judge
22
23 APPEAL
24 ADMINISTRATIVE LAW JUDGE GERAGHTY: Either party to this
25 proceeding may appeal to the Board by filing with the Board within

1 10 days of the issuance of this Decision, which is today's date, a
2 Notice of Appeal. That document must be filed with the Office of
3 Administrative Law Judges, Washington, D.C. 20594, and with copies
4 served upon the opposing party. The appealing party must further,
5 but within 50 days from this date, file with the Board a brief in
6 support of that appeal. That appeal must be filed with the
7 General Counsel of the National Transportation Safety Board in
8 Washington, D.C., with copies served upon the opposing party.
9 Parties are advised that the Board may, upon motion or the motion
10 of the opposing party, move for the dismissal of an appeal absent
11 the timely filing of a supporting brief.
12 Anything else for the record, Mr. Spitzer?
13 MR. SPITZER: Nothing further, Your Honor.
14 ADMINISTRATIVE LAW JUDGE GERAGHTY: Thank you. The
15 proceeding is closed. Thank you.
16 (Whereupon, at 11:49 a.m., the hearing in the above-
17 entitled matter was closed.)
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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Daniel G. Gellert

DOCKET NUMBER: SE-19363

PLACE: Seattle, WA

DATE: March 27, 2013

was held according to the record, and that this is the original, complete, true and accurate transcript which has been compared to the recording accomplished at the hearing.

_____

Stephanie Kelly
Official Reporter