

SERVED: January 22, 2025

NTSB Order No. EA-5992

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 22nd day of January, 2025

_____)	
Petition of)	
)	
CHASE SUBITCH)	
)	
for review of the denial by)	Docket NA-30210
the Administrator of the)	
Federal Aviation Administration)	
of the issuance of an airman)	
medical certificate.)	
_____)	

OPINION AND ORDER

1. Background

Petitioner, through counsel, appeals Chief Administrative Law Judge Stephen L. Woody’s December 14, 2023, Order Not Accepting Petition for Review (Order).¹ By that Order, the law judge dismissed the petition. We affirm the dismissal and deny petitioner’s appeal.

¹ A copy of the law judge’s Order is attached.

A. Facts and Procedural Background

On June 9, 2021, petitioner was issued a first-class medical certificate with a limitation due to deficiencies in his color vision.² At petitioner's request, the aviation medical examiner (AME) authorized a Medical Flight Test (MFT) and Occupational Color Vision Test (OCVT), on July 23, 2021. If passed, the MFT/OCVT would satisfy the color vision screening requirement and remove the corresponding limitation from petitioner's certificate.³ Petitioner subsequently failed the nighttime component of the test on August 24, 2021.⁴ In a letter dated October 1, 2021, the AME informed petitioner that his MFT/OCVT results rendered him ineligible for a first-class airman medical certificate and issued him a third-class airman medical certificate with the same limitation.⁵

Petitioner sought reconsideration of this result from the FAA through multiple channels to no avail.⁶ He requested FAA Federal Air Surgeon reconsideration via email in October 2021 and received a response in January 2022 informing him that he was ineligible to "upgrade" to first- or second-class medical certification.⁷ Then in October 2022, petitioner took a different color vision test with a new AME.⁸ The new AME sent the FAA a letter requesting removal of the limitation on petitioner's certificate.⁹ The FAA's Aerospace Medical Certification Division (AMCD) Manager informed petitioner, in a letter dated May 12, 2023, that the FAA would not consider his

² Administrator's Reply Brief at 2.

³ Brief for the Petitioner at 5; Administrator's Reply Brief at 2.

⁴ Brief for the Petitioner at 5; Administrator's Reply Brief at 2.

⁵ Brief for the Petitioner at 5; Administrator's Reply Brief at 2-3.

⁶ *See generally* Petition for Review, Brief for the Petitioner, and Administrator's Reply Brief.

⁷ Brief for the Petitioner at 5; Administrator's Reply Brief at 2-3.

⁸ Brief for the Petitioner at 5; Administrator's Reply Brief at 3.

⁹ Brief for the Petitioner at 5; Administrator's Reply Brief at 3.

new results and that his certificate remained valid as issued.¹⁰ In June 2023, petitioner, through counsel, asked the AMCD Manager: 1) to reconsider this decision; and, 2) whether the May 12, 2023, letter constituted a final denial by the FAA Administrator of petitioner’s application for a medical certificate.¹¹ The AMCD Manager replied in a September 24, 2023, letter that: 1) there would not be a reconsideration of the request; and 2) the May 12, 2023, letter was not a final denial by the FAA Administrator of petitioner’s application for a medical certificate.¹²

On November 20, 2023, petitioner filed a petition with the NTSB Office of Administrative Law Judges for review of the AMCD Manager’s September 24, 2023, letter arguing that it constituted a reviewable denial of an airman medical certificate application.¹³ Specifically, petitioner asked that the NTSB review the FAA’s “‘quasi’ denial of an unrestricted airman medical certification pursuant to 49 U.S.C. 44703(d).”¹⁴ Petitioner also argued that “despite the language to the contrary, the Administrator’s September 24, 2023 letter is a final denial in that it deprives Petitioner of the right to receive an unrestricted medical certificate.”¹⁵

B. Law Judge’s Order

On December 14, 2023, the law judge issued an Order Not Accepting Petition For Review. The law judge found that the petition was not timely, and that petitioner failed to establish jurisdiction for appeal.¹⁶ Specifically, the law judge noted that petitioner’s most colorable basis for appeal would have been the FAA’s issuance of a third-class airman medical

¹⁰ Brief for the Petitioner at 6; Administrator’s Reply Brief at 3.

¹¹ Brief for the Petitioner at 6; Administrator’s Reply Brief at 3.

¹² Brief for the Petitioner at 6; Administrator’s Reply Brief at 3.

¹³ Pet. for Review at 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Order Not Accepting Petition For Review at 1-2.

certificate on October 1, 2021, which revoked petitioner’s existing first-class airman medical certificate. This would have resulted in a deadline to petition the NTSB for review of November 30, 2021, nearly two years before petitioner actually filed in this case. The law judge also held that the FAA’s September 24, 2023, letter did not constitute a final denial of an airman certificate, contrary to petitioner’s assertions. Therefore, there was no jurisdiction to review that letter under 49 U.S.C. § 44703(d)(1).¹⁷

C. Issues on Appeal

Following the law judge’s order, petitioner timely submitted a notice of appeal and supporting brief citing, *inter alia*, 49 U.S.C. § 44703(d)(1) as the basis for his appeal, which states that “an individual whose application for the issuance or renewal of an airman medical certificate has been denied may appeal the denial to the National Transportation Safety Board.”¹⁸ Petitioner asserts, *inter alia*, that the law judge erred in ruling that: 1) the Petition for Review was untimely; and 2) the Administrator’s May 12, 2023 and September 24, 2023 letters were not a final denial by the Administrator.¹⁹ The Administrator argues in reply that each of petitioner’s assertions are invalid and that the law judge’s ruling dismissing the Petition for Review should be affirmed.²⁰

¹⁷ *Id.*

¹⁸ Pet. for Review; Brief for the Petitioner.

¹⁹ Brief for the Petitioner at 7-15.

²⁰ Administrator’s Reply Brief at 1-13.

2. Decision

A. Standard of Review

On appeal, we are bound by the standards set forth in 49 C.F.R. § 821.49 and review the law judge's decision *de novo*, as our precedent requires.²¹

B. Petition For Review Is Not Timely

An individual whose application for the issuance or renewal of an airman certificate has been denied may appeal the denial to the NTSB.²² A petition for review of the Administrator's denial of an airman medical certificate must be filed with the Board within 60 days after the date on which notice of the Administrator's denial was served on the petitioner.²³ Petitioner filed for review on November 20, 2023, and argues that the 60-day period for appeal started on September 24, 2023, the date of the AMCD Manager's letter, making the deadline for his appeal November 22, 2023. Petitioner therefore asserts his appeal was timely.²⁴ Even viewing the facts in the light most favorable to petitioner, the Board finds this argument unconvincing.

The Board agrees with the law judge that the most plausible date from which to count 60 days for appeal is October 1, 2021, the date petitioner's first-class airman medical certificate was revoked and replaced with a third-class certificate.²⁵ As this would have resulted in a deadline of November 30, 2021, nearly two years before petitioner filed in this case, the petition for review

²¹ *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).

²² 49 U.S.C. 44703(d).

²³ 49 C.F.R. § 821.24(a).

²⁴ Pet. for Review at 1; Brief for the Petitioner at 5-14.

²⁵ *Id.*

is thus untimely by this measure.²⁶ Consequently, it is not necessary to determine whether in fact the FAA's action on this date constituted a final denial subject to Board review since, even if it were, the appeal would still be untimely.

On May 12, 2023, the AMCD Manager informed petitioner that the additional color-vision testing he had received was not a valid basis for "upgrading" his existing medical certificate from third-class to first-class.²⁷ Even had petitioner established that the May 12, 2023, letter was in fact a denial subject to Board review, he would have had to file his petition for review no later than July 11, 2023, which he failed to do.²⁸ Consequently, it is not necessary to determine whether in fact the FAA's action on this date constituted a final denial subject to Board review.

C. September 2023 Letter Also Not Reviewable

On June 28, 2023, petitioner requested clarification regarding whether the AMCD Manager's May 12, 2023, letter constituted a final denial of an airman certificate.²⁹ On September 24, 2023, the AMCD Manager replied unequivocally that the May letter "is not a denial."³⁰ In an apparent attempt to generate a 60-day window within which the subject petition for review could be construed as timely filed, petitioner asserts that this September 24, 2023, letter somehow constitutes a denial ripe for Board review.³¹ The Board agrees with the law

²⁶ *Id.*

²⁷ Brief for the Petitioner at 6; Administrator's Reply Brief at 3.

²⁸ *See* Administrator's Reply Brief at 12 n. 7.

²⁹ Pet. for Review at Exhibit A.

³⁰ *Id.*

³¹ Pet. for Review at 1; Brief for the Petitioner at 5-14.

judge's assessment that this letter merely responded to petitioner's June 28, 2023, letter and is thus not a valid basis for petitioner's attempt to seek Board review under 49 U.S.C. §44703.³²

D. Conclusion

The Board strictly adheres to the standards of timeliness set out in our Rules.³³ As detailed above, an examination of each of petitioner's interactions with the FAA establishes that the timeliness requirement is not met in this case.³⁴

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied; and
2. The law judge's Order Not Accepting Petition for Review is affirmed.

HOMENDY, Chair; BROWN, Vice Chairman; GRAHAM, CHAPMAN, and INMAN, Members of the Board, concurred in the above opinion and order.

³² Order Not Accepting Petition For Review at 1-2.

³³ *Administrator v. Smith*, NTSB Order No. EA-5672 at 3-4 (2013) (citing *Administrator v. Hooper*, 6 NTSB 559, 560 (1988), *on remand from Hooper v. Nat'l Transp. Safety Bd.*, 841 F.2d 1150 (D.C. Cir. 1988)).

³⁴ *See, e.g., Administrator v. Mason*, NTSB Order No. EA-5634 at 3 (2012) (denying petition for reconsideration and declining to reach the merits of petitioner's case when petition was not timely filed). Although the Board is bound by precedent to strictly adhere to timeliness and thus does not address whether the Administrator issued a final denial to petitioner prior to the September 23, 2023 letter, the Board acknowledges that a final denial could plausibly occur in a case where an applicant receives a medical certificate other than what was applied for and the Administrator does not explicitly identify that decision as a final denial.

Served: December 14, 2023

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

Petition of

CHASE SUBITCH

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

Docket NA-30210

ORDER NOT ACCEPTING PETITION FOR REVIEW

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On November 20, 2023, Chase Subitch (“Petitioner”), through counsel, emailed to this office a petition for review of an alleged denial of unrestricted airman medical certification. The petition included letters from the Federal Aviation Administration (“FAA” or “Administrator”) dated September 24, 2023 and May 12, 2023, an expert opinion from an FAA Senior Aviation Medical Examiner (“AME”), and a report regarding Petitioner’s vision testing from the same FAA Senior AME. The petition did not include a denial of an unrestricted license or any reasoning for a denial under the Federal Aviation Regulations (“FAR,” codified at 14 C.F.R.), or a copy of the issuance of a certificate with restrictions.

The FAA’s May 12, 2023 letter indicated Petitioner would not be permitted to take additional color vision tests in furtherance of removing restrictions on his certificate, but noted the Petitioner’s certificate would remain valid until the normal date of expiration. The FAA’s September 24, 2023 letter acknowledged receipt of correspondence from Petitioner’s counsel and stated the FAA’s letter dated May 12, 2023 was not a denial of Petitioner’s medical certificate but served as “a reminder” that a restriction remained on Petitioner’s certificate. The expert report submitted with the petition (“Exhibit B”) referred

to a “October 01, 2021 FAA RFS letter to Airman Subitch issuing a 3rd class with Limitations” that was not included with the petition.

Under 49 U.S.C. § 44703(d), “an individual whose application for the issuance or renewal of an airman certificate *has been denied*” by the FAA may seek review of that determination by the Board (emphasis added). Here, Petitioner concedes that the September 24, 2023 letter is not a formal, administratively final denial of his application for unrestricted medical certification. Rather, Petitioner’s counsel claims the correspondence from the FAA dated September 24, 2023 constituted a final denial because “it deprives Petitioner of the right to receive an unrestricted medical certificate.”

The final denial of an unrestricted license occurred on October 1, 2021, when the FAA issued a special issuance medical certificate.¹ Subsequent statements by the FAA about the decision or restrictions do not constitute a final denial. Additionally, the grant of a special issuance certificate and any terms thereunder are *wholly within the FAA’s discretion*, and *the Board has no jurisdiction whatsoever* to review any restrictions related to an FAA special issuance or denial of request to remove them.² As a result, I must find that the Board is not presented with any action over which it has review authority in this proceeding. Given this lack of jurisdiction, I cannot accept petitioner’s petition in this matter.³ I note that my non-acceptance of this petition is without prejudice to any petition that Petitioner may, in the future, submit for review of an administratively final denial of unrestricted medical certification by the FAA.

THEREFORE, IT IS ORDERED that the petition for review of denial of medical certification is NOT ACCEPTED.

Entered this 14th day of December, 2023, at Washington, D.C.

1s/ Stephen R. Woody
 STEPHEN R. WOODY
 Chief Administrative Law Judge

¹ Rule 24(a) of the Board’s Rules of Practice in Air Safety Proceedings (49 C.F.R. § 821.24(a)) provides that a petition for review be filed with the Board within 60 days after the date on which notice of the Administrator’s denial was served on the Petitioner. This filing cannot serve as a petition of the October 2021 decision because it is untimely.

² See *Petition of Doe*, 5 NTSB 41, 43 (1985); *Petition of Sleeter*, 5 NTSB 686, 688-89 (1985); *Petition of Reder*, NTSB Order EA-4438 (1996).

³ I note that petitioner remains medically certificated under special issuance authority until the expiration of his current certificate.

APPEAL (DISPOSITIONAL ORDER)

Important: All appeal-related filings described below must also be simultaneously served on all other parties to this proceeding.

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) to:

National Transportation Safety Board
Office of Administrative Law Judges
490 L'Enfant Plaza East, S.W.
Washington D.C. 20594
Telephone: (202) 314-6150 or (800) 854-8758
FAX: (202) 314-6158
E-mail: aljappeals@ntsb.gov

Please note: The Office of Administrative Law Judges prefers to receive appeals via e-mail.

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. That brief must be filed directly with the:

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

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 directly with the Office of General Counsel within 30 days after that party was served with the appeal brief.

All papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel.

The Board directs your attention to Rules 7, 8, 43, 47, 48 and 49 of its Rules of Practice (49 C.F.R. §§ 821.7, 821.8, 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.