

GENERAL INFORMATION	
KEYWORDS	Aviation medical certificate, cancer
FILE NO.	Q-4621-01
SECTOR (Marine or Aviation)	Aviation
SPECIFIC JOB	
DIAGNOSIS (Primary, Secondary, etc.)	Metastatic pulmonary adenocarcinoma
REVIEW	
DATE OF DETERMINATION	June 16, 2021
MEMBER	Dr. Richard Zabrodski
DETERMINATION	The member confirms the Minister of Transport's decision not to renew the applicant's aviation medical certificate.
REASONS FOR THE DETERMINATION	
<p>Refusal to renew an aviation medical certificate — The applicant's diagnosis of "metastatic pulmonary adenocarcinoma," with the use of a new drug, Alecensaro (alectinib), is incompatible with a pilot licence. Subsequently, the applicant was not considered medically fit to exercise the privileges of any type of flight crew licence or permit, and his aviation medical certificate was not renewed. This was in accordance with paragraph 7.1(1)(b) of the <i>Aeronautics Act</i>, and <i>Canadian Aviation Regulations (CARs)</i> Standard 424.17(4), Medical Requirements Table, Medical Category 3, paragraphs 1.10, 2.10, 3.10 and 4.10. The Minister of Transport (Minister) argued that the applicant was no longer medically fit based on the <i>CARs</i> and International Civil Aviation Organization (ICAO) standards due to his current medical diagnosis. While there is mention of concerns regarding potential side effects related to the current medication treatment, the Minister's notice is solely regarding the lung disease diagnosis. The applicant argued that he is asymptomatic with minimal medication side effects and that his tumour condition is dormant, as described by his medical providers, who have also stated that they feel there are currently no safety concerns regarding his desired activity as a recreational pilot. I find that the Minister has proven, on the balance of probabilities, that the applicant has an established disease of the lungs that is still likely to result in both unpredictable and incapacitating symptoms during normal or emergency operations in the future. The decision to refuse to renew the applicant's aviation medical certificate was based on the medical requirements of the <i>CARs</i> and ICAO standards and the identified risks associated with the applicant's specific medical condition. The member agrees with the assertion that the legal and regulatory bureaucracy has not yet caught up with the science. The development of new and novel treatments for this rare lung cancer subtype has improved the applicant's quality of life while also dramatically extending his lifespan over the past nine years. The member would expect that both the ICAO and Transport Canada (TC) will be able to better respond to similar cases as more scientific data becomes available, as TC physicians will undoubtedly see more of these clinical scenarios in the future. Based on the applicant's current symptoms and the advice of his attending physicians, the member can also appreciate why the applicant feels that he should still have a licence to fly as a recreational pilot. The Minister's decision that the applicant no longer meets the required medical standards for the renewal of his aviation medical certificate is therefore determined to be reasonable and is upheld.</p>	
APPEAL	
DATE OF DECISION	May 6, 2022
MEMBERS	Patrick Vermette, Martine Guay, Andrew Wilson
DECISION	The appeal is allowed in part and the appeal panel is referring the matter back to the Minister of Transport for reconsideration.

REASONS FOR THE DECISION

Prior to the appeal hearing, the appellant submitted a motion to submit additional evidence at the appeal hearing. This included evidence that was only available to the appellant following the review hearing and new recent medical reports and other documents in response to some of the statements made by the review member in his determination regarding the appellant's health and which the appellant wishes to refute. In its appeal decision, the appeal panel concluded that: (a) some of the submitted documents were available prior to the review hearing; (b) medical reports dated after the review hearing were not available at the time of the hearing and, therefore, the review member could not have based his determination on them. The appeal panel also concluded that none of the additional evidence would have been necessary to support the appellant's position for the purposes of the appeal, as it determined that the appeal panel is referring the matter back to the Minister for reconsideration.

The appellant's grounds for appeal were based on (1) the review member erred, as he did not properly apply the applicable standards to the facts of the case, in particular, regarding the presence of a disability or progressive disease of the lungs; (2) the review member erred in finding that the appellant was diagnosed with hypertension and hyperlipidemia and (3) the review member failed to take into account that the specific lung cancer with which the appellant was diagnosed does not present the same risks as general lung cancer; therefore the risk assessment made did not reflect his actual condition.

The appeal panel finds that the review member did err in his interpretation of the applicable standards requirements and their application to the facts and the specificities of the appellant's case, and that he did not provide sufficient reasons to confirm the Minister's decision. As such, the review determination was founded on insufficient reasons and did not pass the reasonableness standard of review. It is clear the review member preferred the recommendations of the AMRB to the case presented by the applicant. What is lacking is an appropriate chain of analysis explaining why, given all possible alternatives, the views of the AMRB were preferred by the review member. This absence renders the review determination unreasonable. In providing a degree of flexibility to the appellant's case, the Minister could consider applying certain conditions regarding aviation limitations (such as aircraft type, altitude, duration of time of flight, etc.) and medical reporting (such as regular CT scans, blood tests, MRIs, oncology consults every three to six months, etc.). The appeal is allowed in part and the panel is referring the matter back to the Minister for reconsideration.

OTHER/COMMENTS