

GENERAL INFORMATION	
KEYWORDS	Marine medical certificate, kidney stones, geographical limitations
FILE NO.	MA-0566-21
SECTOR (Marine or Aviation)	Marine
SPECIFIC JOB	Deck hand
DIAGNOSIS (Primary, Secondary, etc.)	Presence of calculi in the applicant's kidneys and his history of renal stones.
REVIEW	
DATE OF DETERMINATION	October 7, 2021
MEMBER	Dr. Thomas V. Davis
DETERMINATION	The member is referring the matter back to the Minister of Transport for reconsideration.
REASONS FOR THE DETERMINATION	
<p>Issuance of a marine medical certificate (MMC) with a limitation of Near Coastal Voyage, Class 2 (NC2) — As a result of the presence of calculi in the applicant's kidneys and his history of renal stones, the geographical limitation of NC2 was applied to his MMC, pursuant to subsection 278(4) of the <i>Marine Personnel Regulations (MPRs)</i>. Transport Canada (TC) noted that this limitation is applied to the MMC of any individual with kidney stones or who has the risk of forming/passing kidney stones. This measure is in place to mitigate the consequences on board ship of potential incapacitation due to this condition, magnified by the inaccessibility of care while at sea and the practical difficulties of dealing with possible complications (such as pain and infection). The applicant's representative argued that the Minister of Transport (Minister) must justify any restrictions it imposes and that the Minister has not provided sufficient reasons for why limitations were imposed on the applicant's MMC. As a result, the applicant could not reasonably argue against the reasons for the limitation. He further argued that there is a requirement to assess restrictions on a case-by-case basis as outlined in subsection 270(1) of the <i>MPRs</i>, which adopts the International Labour Organization (ILO) and International Maritime Organization (IMO) <i>Guidelines on the medical examinations of seafarers</i> (ILO/IMO guidelines). The member finds that there is inaccuracy of key information in that the letters from TC mention a history of passing kidney stones when the evidence from multiple sources is clear that the applicant has only had microhematuria and has never had renal colic or passed a stone. There is evidence of a lack of individual assessment in decision-making in the TC correspondence to the applicant, where the statement is made that restrictions are issued for "any individual with kidney stones." Blanket restrictions for any individual with kidney stones and individual assessment are incompatible. Although the <i>MPRs</i> require that an individual's specific circumstances be considered, and the ILO/IMO guidelines suggest limitations based on a case-by-case assessment, there is no evidence to demonstrate that such consideration and assessment took place in this case. Specifically, the member finds that there is not sufficient evidence, on a balance of probabilities, to conclude that the Minister considered the required criteria of subsection 278(5) of the <i>MPRs</i>, and to conclude that a case-by-case assessment was conducted in the applicant's situation, per the ILO/IMO guidelines. The member refers the matter back to the Minister for reconsideration of its decision to limit the applicant's MMC to NC2.</p>	
APPEAL	
DATE OF DECISION	
MEMBERS	
DECISION	
REASONS FOR THE DECISION	
OTHER/COMMENTS	

