

GENERAL INFORMATION	
KEYWORDS	Marine medical certificate, renal colic, geographical limitations
FILE NO.	MQ-0620-21
SECTOR (Marine or Aviation)	Marine
SPECIFIC JOB	
DIAGNOSIS (Primary, Secondary, etc.)	Renal colic
REVIEW	
DATE OF DETERMINATION	February 21, 2022
MEMBER	Martine Guay
DETERMINATION	The member refers the matter back to the Minister of Transport for reconsideration.
REASONS FOR THE DETERMINATION	
<p>The issuance of a marine medical certificate (MMC) with the limitation of Near Coastal Voyage Class 2 (NC-2) — Following a review of the applicant’s medical file, the applicant was advised by Transport Canada (TC) that he was fit to be a holder of an MMC with the geographical limitation of NC-2. Both parties acknowledge the applicant experienced an episode of “renal colic” in 2018, supported by the report of medical imaging, and that this diagnosis was reported in 2019 by the applicant’s attending physician. The representative for the Minister of Transport (Minister) argues that the decision to place geographical limitations on the applicant’s MMC was justified and reasonable, given the medical information available to TC at the time, pursuant to paragraph 6(a) and subsections 90(1) and (5) of the <i>Canada Shipping Act, 2001</i>. This decision may have been accurate in October 2019, but a person’s health status is not static; it evolves over time and TC should take that into account. Some three years later, the member finds that it would be unfair to the applicant for TC to consider only the medical information that was available in July 2018. Furthermore, it should be noted that even in July 2018, the radiologist had described “multiple bilateral intrarenal stones” as “non-obstructive”, which may suggest a low risk of stone evacuation. The member finds that the Minister has not demonstrated that the applicant does not meet the medical standards set out in paragraph 270(1)(d) of the <i>Marine Personnel Regulations (MPRs)</i>, in that he does not have the “physical and mental fitness to meet the occupational and operational requirements of the position that they occupy or seek to occupy.” The Minister must base its decision regarding the MMC on the criteria listed in subsection 278(5) of the <i>MPRs</i>, in particular, “the occupational and operational requirements of the position” of the seafarer and the “level of risk involved in the position” as well as “any relevant human rights consideration.” However, there is nothing to indicate that, in studying the applicant’s file, TC carried out an individual assessment on a “case-by-case” basis considering the specific requirements of the position he was seeking to occupy, as well as the level of risk that this position involved. Rather, it appears that TC has chosen to apply the same rules generally, and without nuance, to all “people who are at risk of suffering from kidney stones, as a result of their formation or their passage.” The member finds that the evidence does not demonstrate, on a balance of probabilities, that the Minister complied with the requirements of paragraph 270(1)(d) and subsection 278(5) of the <i>MPRs</i>, nor with the International Labour Organization (ILO) and International Maritime Organization (IMO) <i>Guidelines on the medical examinations of seafarers</i> (under diagnosis code N20-23), or section 4.18 of the TC publication <i>Seafarer Medical Examinations – A Physician Guide</i>, to establish that the applicant does not meet the medical standards for the issuance of an unrestricted MMC.</p>	
APPEAL	
DATE OF DECISION	
MEMBERS	
DECISION	

REASONS FOR THE DECISION	
	OTHER/COMMENTS