

**CIVIL AVIATION TRIBUNAL**

BETWEEN:

**Blair Wm. Jensen**, Applicant

- and -

**Minister of Transport**, Respondent

**LEGISLATION:**

*Air Regulations*, C.R.C. 1978, c. 2, s. 408(a)

**Physical disability of crew member.**

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**Review Determination**  
**L.R. Ohlhauser**

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**Decision: February 16, 1989**

**Heard:** Saskatoon, Saskatchewan, February 6, 1989

*I find that Mr. Jensen contravened section 408(a) of the Air Regulations and the suspension of the Minister of Transport is confirmed. Said suspension is to begin at 00:01 hours April 1, 1989, and is to end at 00:01 hours May 1, 1989.*

The aviation document of Mr. Blair Wm. Jensen, a senior commercial pilot, was suspended pursuant to section 9 of the *Aeronautics Act*, in that he apparently contravened section 403(a) of the *Air Regulations* in that he flew as a flight crew member of aircraft CF-GAA on the 30th of April, 1988, while under a physical disability that would have rendered him unable to meet the requirements as to physical condition for the issue or renewal of the said licence. Mr. Jensen is appealing this suspension.

Ms. Plonka introduced evidence through Mr. D. Gillespie, an inspector for Transport Canada. Mr. Gillespie was duly sworn and gave evidence indicating that aircraft CF-GAA was registered in Canada to R.J. Kreuger, Mobile Mechanics Incorporated. Mr. Gillespie testified that a complaint had been registered by the Fort McMurray flight service station regarding a flight plan filed by Mr. Jensen. The flight service station was concerned that the individual who filed the IFR flight plan and signed as pilot-in-command had his left arm in a sling under a sweater.

Further investigation into this incident included discussions with Mr. Kreuger and Mr. Jensen. In a letter by Mr. Kreuger directed to Mr. Gillespie (Exhibit No. 4), there was an indication that Mr. Jensen would fly the last leg of the journey, Fort McMurray to Yellowknife, as the pilot-in-command. Although Mr. Kreuger was in the left seat flying under the licence of Mr. Jensen, this was not a training flight; although in the past Mr. Jensen had been involved in the IFR training of Mr. Kreuger. Evidence introduced confirmed the flight plan filed for the altitude flown having regard for the weather required to be IFR (Exhibit No. 8)

Mr. B. Terris, a flight service station employee of Transport Canada, was sworn and gave evidence that he received an IFR flight plan from Mr. Jensen regarding the flight in question. He further testified that he recognized Mr. Jensen from previous encounters and recognized that Mr. Jensen's left arm was in a sling under his sweater.

The owner of the aircraft, Mr. R. Kreuger, was sworn and testified confirming the evidence already presented, that he flew the aircraft under the licence of Mr. Jensen. Under questioning, he indicated that if any unusual circumstances or emergencies took place, it was his clear understanding that Mr. Jensen was in control of the aircraft.

Dr. T.R. Evans, an orthopedic surgeon who had attended Mr. Jensen previously, was sworn. He gave evidence that in June of 1986, as a result of an aircraft accident, he had repaired Mr. Jensen's right fractured forearm with a plate and several screws. He testified that according to his patient's chart, he saw Mr. Jensen on April 13, 1988, in consultation regarding a fractured left humerus that apparently was injured several days previously. In order to ensure proper healing, his left arm was immobilized with a humeral brace and a sling to the left forearm. On April 29, 1988, Dr. Evans removed the plate and screws from Mr. Jensen's right forearm, under local anesthetic. Dr. Evans' notes indicate "he (Mr. Jensen) was carefully instructed in the care of the limb and the wound". A bulky, absorbent bandage was applied.

Dr. Evans testified that his general instruction to patients having undergone this procedure would be to guard cautiously the forearm for a six-week post-operative period. In addition, he recommended gentle gravity-assisted exercise be undertaken for the left arm. On questioning, Dr. Evans' opinion was that Mr. Jensen at that time did not have full use of his right arm. In answer to questions regarding safety, Dr. Evans indicated that Mr. Jensen's left arm, if stressed, could have refractured, as the bone union was fragile at that time.

Dr. J. Danforth, a regional aviation medical officer, was qualified as a medical expert in aviation medicine. Having heard the evidence given, it was his opinion that Mr. Jensen could not have met the requirements under section 408(a) of the *Air Regulations*. His evidence was that Mr. Jensen's medical condition caused serious functional sequelae which rendered him unfit to safely perform at any altitude or through a prolonged or difficult flight. Dr. Danforth testified that both the fractured left arm and the post-operative surgical condition of the right forearm were temporarily disqualifying.

Mr. A. Maskell, a senior flight test examiner, was sworn and accepted as an expert flight test examiner. He testified that emergency procedures, such as a single engine missed approach, would be difficult to carry out without two full functioning upper limbs. He stated that should he

be expected to carry out a flight test with a candidate who had a condition similar to Mr. Jensen's, he would have cancelled the IFR ride without considering emergency procedure testing. He testified that he would have been suspect of such a person's ability to fly an aircraft IFR or VFR.

Mr. Jensen, although aware of his right to legal counsel, chose to present his own case. Duly sworn, he testified that he was an AME and a senior commercial pilot with 7,000 hours' total time. He indicated that he had some reservations about the flight in question, having regard to his medical condition, but felt that if an emergency arose, he could remove his left arm from his sweater and adequately control the aircraft. He stated that he believed that he was medically fit only because a competent pilot was flying from the left seat of the aircraft. He testified that there was no emergency to get to Yellowknife and that this flight was not a training flight. He did agree that with the knowledge he gained at this hearing, he would not have acted as a pilot-in-command or flight crew of the aircraft for that flight.

The facts of this case are as follows:

1. Mr. Jensen filed an IFR flight plan indicating that he was the pilot-in-command.
2. Mr. Jensen flew as the pilot-in-command or flight crew of the aircraft of the flight in question.
3. Mr. Jensen had his left arm immobilized to ensure proper healing and his right arm bandaged post-operatively and was to use it with caution for six weeks.
4. Evidence today confirms the fact that Mr. Jensen was not fit to act as a pilot-in-command or flight crew.

I find that Mr. Jensen contravened section 408(a) of the *Air Regulations* and the suspension of the Minister of Transport is confirmed.

In regard to a penalty, I find that Mr. Jensen, an experienced senior commercial pilot and an instructor, was aware of his obligation regarding safety and to be an example to his students. This is not his first offence under the *Aeronautics Act*. From the evidence presented today, I find there were no mitigating circumstances for me to consider.

In an effort to balance denunciation, deterrence and rehabilitation, the suspension shall remain at 30 days to take effect on the 1st day of April 1989.