

SERVED: June 19, 1997

NTSB Order No. EA-4558

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 12th day of June, 1997

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|---------------------------------|---|----------------|
| Petition of                     | ) |                |
|                                 | ) |                |
| ROGER A. PETERSON               | ) |                |
|                                 | ) |                |
| for review of the denial by     | ) | Docket SM-4192 |
| the Administrator of the        | ) |                |
| Federal Aviation Administration | ) |                |
| of the issuance of an airman    | ) |                |
| medical certificate.            | ) |                |

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**OPINION AND ORDER**

On May 21, 1996, Administrative Law Judge William E. Fowler, Jr., issued a written decision granting the Administrator's motion to dismiss and terminating this proceeding, in which the petitioner sought review of a November 24, 1995 determination by the Federal Flight Surgeon that he is not qualified for a third-class airman medical certificate.<sup>1</sup> The law judge agreed with the Administrator that the petition for review was barred by the doctrine of *res judicata*, since, among other things, the Board

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<sup>1</sup>A copy of the law judge's decision is attached.

had less than two years earlier upheld a certificate denial predicated on the same medical condition.<sup>2</sup> We affirm the law judge's grant of the motion to dismiss.

Although styled an appeal brief, the documentation submitted by the petitioner in support of his appeal does not even refer to the law judge's decision,<sup>3</sup> much less contain any basis for concluding that it should be overturned for any legal or factual infirmity.<sup>4</sup> Instead, the submission, for the most part, consists of a copy of the brief petitioner filed in connection with his previous, unsuccessful appeal to the Board from the Administrator's November 1993 denial of an earlier application for a medical certificate.<sup>5</sup> That brief, which presented petitioner's objections to a different law judge's determination, on a full evidentiary record, that petitioner had not met his burden of proving he was medically qualified for a third-class certificate, provides no basis for assessing the validity of the *res judicata* ruling in this case.

In the absence of any arguments or reasons demonstrating

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<sup>2</sup>See Petition of Peterson, NTSB Order EA-4216 (July 25, 1994).

<sup>3</sup>The petitioner is an attorney representing himself in this matter.

<sup>4</sup>The Administrator has filed a reply opposing the petitioner's appeal.

<sup>5</sup>The petitioner has also attached to his "brief" additional information related to his medical condition that was not available either at the time the Federal Flight Surgeon considered petitioner's eligibility for certification or when the law judge ruled on the motion to dismiss.

that the law judge's determination should be disturbed, no ground appears on which the instant petition could be granted.<sup>6</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The appeal from the May 21, 1996 order of the law judge is denied, and
2. The order of the law judge is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>6</sup>Section 821.48(b) of our rules of practice specifies that:

Each appeal brief shall set forth in detail the objections to the initial decision, and shall state whether such objections are related to alleged errors in the law judge's findings of fact and conclusions or alleged errors in his order. It shall also state the reasons for such objections and the relief requested.