

1 UNITED STATES OF AMERICA
2 NATIONAL TRANSPORTATION SAFETY BOARD
3 (First Circuit)
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6 Petition of Susan A. Arechavala for a :
7 review of the denial by the Administrator :
8 of the Federal Aviation Administration : Docket
9 of the issuance of an Airman Medical : SM-2492
10 Certificate. :
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11 Seattle, Washington
12 May 22, 1980

13 Fred M. Zeder for Petitioner.

14 Darlene F. Romanias for Administrator.

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16 INITIAL DECISION AND ORDER

17 Jerrell R. Davis, Administrative Law Judge:

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19 ~~JUDGE DAVIS~~ This is a proceeding under
20 Section 602 (b) of the Federal Aviation Act of 1958, as
21 amended, in which Petitioner seeks review of the Adminis-
22 trator's denial of Petitioner's Application for a First-
23 Class Airman Medical Certificate.

24 Certification was denied on the basis of
25 Petitioner's history and clinical diagnosis of a psychosis.

1 The Administrator concluded that Petitioner's medical
2 circumstances were incompatible with flying safety, and
3 disqualifying under the standards set forth in Sub-
4 section (d) (1) (i) (b) of Sections 67.13, 67.15, and
5 67.17 of the Federal Aviation Regulations (FAR).

6 Sub-section (d) (1) (i) (b) provides that an
7 Applicant for Medical Certification must have no estab-
8 lished medical history or clinical diagnosis of a
9 psychosis. ^H An evidentiary hearing on the Petition for
10 Review was held today in Seattle, Washington. Section
11 821.25 of the Rules of Practice provide that, in pro-
12 ceedings under Section 602 (b) of the Act, the burden
13 of proof shall be upon the Petitioner.

14 The Evidence

15 The relevant testimony and exhibits may be
16 summarized as follows:

17 Dr. Harry D. Pass, a Physician licensed in
18 General Family Practice, testified that he delivered
19 Petitioner on October 15, 1960. He has been physician
20 to Petitioner's family all these many years.

21 The parties here today have, in effect, stip-
22 ulated that Petitioner during her childhood and adolescence,
23 from a medical standpoint, had an uneventful life; con-
24 sequently, no worthwhile point would be served in detail-
25 ing other matters elicited from Dr. Pass while he was

1 on the witness stand or as set forth in his letter of
2 October 27, 1978, which is Page 22 of Joint Exhibit No. 1.

3 It might be worth mentioning, however, that the
4 doctor did testify that Petitioner has used the medica-
5 tion Tetracycline on and off for antibiotic purposes and
6 for acne since 1976. He had no record of her using this
7 medication subsequent to September 16, 1980.

8 The next witness to testify on Petitioner's
9 behalf was Dr. Erwin Wirth, a Physician Board-certified
10 in Psychiatry. Dr. Wirth has behind him 40 years of
11 experience in the practice of psychiatry.

12 He first examined Petitioner in his office
13 here in Seattle on October 18, 1978. He had a total of
14 six interviews or sessions with her, and his write-up or
15 evaluations are reflected in Pages 16 through 21 of Joint
16 Exhibit No. 1.

17 *→ in Daytona Beach, Fla;*
18 Basically, he provides us with a resume of events
19 which occurred on the evening of September 14, 1978, and
20 which culminated in her admission to the Halifax Hospital
21 Medical Center in that city later that same evening.

22 In his medical write-up, which as previously
23 noted is reflected in Pages 16 through 21 of Joint Exhibit
24 No. 1, the doctor continued throughout to refer to the
25 incapacitation suffered by Petitioner on September 14,
1978 as a "toxic psychotic reaction". However, in this

1 respect it should be noted that while on the stand,
2 Dr. Wirth corrected himself and stated that he was in
3 error in using the term "psychotic" in any of his
4 descriptions of Petitioner's condition on that date.
5 As he put it, "In psychiatry, one has an awful lot of
6 latitude". He further said that the word "psychosis"
7 is bandied around too much.

8 He further stated in his write-up that her
9 episode was "a one-time unusual toxic event and is
10 unlikely to recur ever again".

11 He further stated therein: "I find her in
12 excellent physical and emotional health at this time".
13 It should be noted that the date of his medical write-
14 up was November 20, 1978, and it is my recollection
15 that he further testified that he last examined the
16 Petitioner on April 22, 1980 and found her condition
17 to still be in excellent physical and emotional health.

18 Dr. Wirth was generally critical of the
19 medical records compiled on Petitioner while a patient
20 at the Halifax Hospital Medical Center. He said, in
21 this respect, that the records were scant and full of
22 mistakes. I specifically recollect that he did testify
23 that a toxicity screening was not performed, which would
24 have either confirmed or denied his theory of what caused
25 Petitioner's incapacitation on the day in question, and

1 which will be discussed herein.

2 In his medical write-up of November 20, 1978,
3 Dr. Wirth suggested that Petitioner's incapacitation
4 could be attributed to some toxic reaction as a result
5 of ingestion of offending agents. On the stand today,
6 the doctor expressed the view that nutmeg on the five
7 or six apples consumed by Respondent as her dinner
8 dessert that evening, some beer, and the medication,
9 Tetracycline, that she had been taking contributed, in
10 the aggregate, to the manifestations noted by hospital
11 personnel at the Emergency Room at the time of her ad-
12 mission thereto. He concluded that she suffered what
13 he characterized as ~~a~~ "definitely a toxic reaction of
14 short duration".

15 On cross-examination, when asked whether acute
16 psychotic episode and toxic reaction are one and the
17 same, he replied in the negative, stating that the latter
18 is an organic response - not a functional disorder.
19 Further, in this respect, he stated that a toxic reaction
20 does not include a pre-psychotic personality.

21 Dr. Wirth sponsored Exhibit P-1, the assumed
22 purpose of which was to show that the ingestion of nutmeg
23 can cause bizarre central symptoms of euphoria and
24 hallucinations. Although the exhibit indicates that such
25 abnormal behavior does not occur unless nutmeg is ingested

1 in a large amount, the doctor expressed the view that
2 one can respond in the described fashion as a result of
3 a minute quantity of nutmeg, and ~~that~~ that, with the
4 combination of other drugs, such as Tetracycline and
5 consumption of beer can produce "unbelievable response".

6 The Petitioner testified in her own behalf, and
7 generally summarized the events leading up to her ad-
8 mission to the Emergency Room of Halifax Hospital Medical
9 Center on the evening of September 14, 1979. Other than
10 her recollection of euphoria, shortly after leaving the
11 cafeteria where she had consumed the spiced apples
12 containing nutmeg, her memory was generally vague, she
13 had a hazy recollection of being pushed into ^a security
14 car on the campus of Embry-Riddle University, that she
15 was attending at the time, and being shoved into the
16 Emergency Room of the Hospital, and later finding herself
17 the next morning in the hospital bed with the usual
18 restraints applied for patients who are under severe
19 mental strain or disorder, and who apparently may injure
20 themselves if they are not kept in restraints.

21 Her final testimony of any significance is to
22 the effect that subsequent to her visit to Dr. Wirth's
23 office on April 22, 1980, she had sought no professional
24 help of any kind.

25 Dr. Thomas R. Powers, a Physician Board-certified

1 in Psychiatry testified on behalf of Complainant.

2 Dr. Powers commenced his training in psychiatry
3 in 1971 and completed it in 1974. In his current practice
4 he sees between 20 and 30 patients a week, and has seen
5 some patients who have suffered from a condition described
6 as "toxic reaction".

7 Dr. Powers testified that he had reviewed
8 Petitioner's medical records and agreed with the diagnosis
9 of acute psychotic episode, which he said is the same as
10 acute schizophrenic episode, designated numerically as
11 295.4 on Page 34 of the Diagnostic and Statistical Manual
12 of Mental Disorders (Second Edition), generally referred
13 to as the DSM-II.

14 Dr. Powers further testified that the record
15 contained some evidence of toxic psychosis, therefore,
16 he could not rule out toxic psychosis because a toxic
17 screening was not performed, as indicated by Dr. Wirth.
18 That notwithstanding, he said that such a toxic reaction
19 would also be considered "psychotic".

20 On cross-examination, he conceded that he could
21 not "Point to anything" that Dr. Handel actually examined
22 ~~Petitioner~~ prior to September 16, 1978, which date is two
23 days after her hospital admission.

24 He also conceded that the phrase "acute psychotic
25 episode" is not found as terminology in the DSM-II, but

1 again, he insisted that it is synonymous with 295.4, acute
2 schizophrenic episode.

3 Finally, Dr. Powers, in response to a question
4 as to whether a combination of nutmeg, Tetracycline and
5 beer could produce what he could describe as a toxic
6 psychosis, responded that such probability was unlikely,
7 or "remotely possible".

8 Discussion and Conclusions

9
10 The critical issue herein is whether Plaintiff's
11 mental state in September, 1978, constituted a psychosis.

12 Dr. Wirth's testimony, in the aggregate, im-
13 pressed me as being more logical, more objective, more
14 in depth, more persuasive.

15 The Administrator, on the other hand, has relied
16 upon a psychiatric report prepared two days after
17 Petitioner's admission to the hospital. In this respect,
18 it is interesting to note that Dr. Handel's examination,
19 as reflected on Page 30, indicated that Petitioner was
20 in no acute distress, was thoroughly oriented as to time;
21 place and person, and that no suicidal or homicidal
22 tendencies were demonstrated. Yet, he comes up with a
23 diagnosis of acute psychotic episode. This is confusion
24 worse confounded.

25 The record herein has tended to strengthen my

1 suspicion that perhaps no other branch of medicine
2 mystifies the public and ^{heeds} ~~breathes~~ such a host of vague
3 diagnostic terms as does psychiatry. This case points
4 up the need to heed the admonition found in the last
5 paragraph of Norman Cousins's book, entitled "Anatomy
6 of an Illness": "It all began, I said, when I decided
7 that some experts don't really know enough to make a
8 pronouncement of doom on a human being. And I said I
9 hoped they would be careful about what they said to others;
10 they might be believed and that could be the beginning
11 of the end".

12 To sum up, Petitioner has, in my judgment, met
13 her burden and has shown by a clear preponderance of the
14 evidence that her mental state in the fall of 1978 was
15 non-psychotic, and did not constitute a psychosis.

16 Contentions of the parties as to fact or law
17 which have not been discussed hereinabove have been given
18 due consideration and are found to be either not materially
19 significant or not justified.

20 Findings and Order

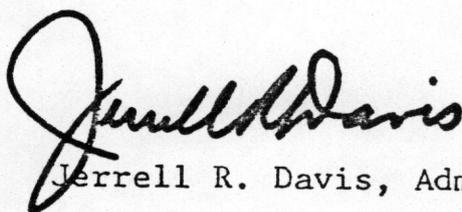
21 Upon consideration of all evidence of record,
22 it is found that (1) Petitioner has met her burden by
23 establishing by a preponderance of the reliable, substan-
24 tial and probative evidence that she is qualified for
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1 medical certification under Sub-section (d) (1) (i) (b)
2 of Sections 67.13, 67.15, and 67.17 of the FAR, and (2)
3 safety in air or air transportation and the public
4 interest do not require affirmation of the Administrator's
5 denial of medical certification.

6 It Is Ordered, That the denial of Petitioner's
7 Application for Medical Certification be, and it is hereby,
8 reversed.

9 It Is Further Ordered, That, unless stayed by
10 the timely filing of a Notice of Appeal, this Order shall
11 become effective June 2, 1980, and the Administrator
12 shall issue a First-Class Airman Medical Certificate to
13 Petitioner upon valid application therefor, provided she
14 is otherwise and fully qualified at such time.

15 Dated at Seattle, Washington, this 22nd day of
16 May, 1980.

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18 Jerrell R. Davis, Administrative Law Judge

19 Edited
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20 Appeal

21 An appeal from Decision and Order herein may
22 be made by filing with the National Transportation Safety
23 Board, Docket Section, Dodge Center, Suite 301, 1010
24 Wisconsin Avenue Northwest, Washington, D. C. 20007, and
25 serving upon the other party a Notice of Appeal within

1 ten days from today, perfected by the filing and serving
2 of a brief in support thereof within 40 days from today.
3 The procedure on appeal is set forth in detail in Section
4 821.43, 821.47 and 821.48 of the Rules of Practice.

5 Off the record.

6 (DISCUSSION OFF THE RECORD)

7 JUDGE DAVIS: On the record. There being no
8 further matters to come before ^{the bench} ~~me~~ in connection with this
9 matter, I declare this hearing adjourned.

10 (HEARING ADJOURNED AT 6:48 P.M.)

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