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McGoldrick and Civil Aviation Safety Authority [2012] AATA 913 (13 December 2012)

Last Updated: 25 July 2013

[\[2012\] AATA 913](#)

Division	GENERAL ADMINISTRATIVE DIVISION
File Number	2012/5328
Re	JACOB MCGOLDRICK
	APPLICANT
And	CIVIL AVIATION SAFETY AUTHORITY
	RESPONDENT

INTERLOCUTORY DECISION

Tribunal	Egon Fice, Senior Member
Date of Hearing	13 December 2012
Date of Written Reasons	21 December 2012
Place	Hobart

The application for a stay in these proceedings before the Tribunal has been refused.

...[sgd Egon Fice].....

Egon Fice, Senior Member

CIVIL AVIATION – Stay application – Suspension of Medical Certificates – Class 1 medical certificate – Class 2 medical certificate – undisclosed medical history – Post-Traumatic Stress Disorder – sleep disorder – adjustment disorder – anxiety – safety of air-navigation – safety relevant condition – helicopter pilot – receipt of a Department of Veterans’ Affairs pension

Administrative Tribunal Act 1975 (Cth) ss 37, 41(1), 41(2), 41(3)

[Civil Aviation Act 1988](#) (Cth) [ss 9, 31A](#)

[Civil Aviation Safety Regulations 1998](#) (Cth) regs 67.150, 67.155, 67.225(4), 67.265, 67.230,

67.240

Re Commonwealth of Australia and Quirke [\[1986\] AATA 57](#); [\(1986\) 9 ALD 92](#)

Re Dart and Director-General of Social Services [\(1982\) 4 ALD 553](#)

Re Griffiths Grif-Air Helicopters Pty Ltd and Civil Aviation Authority [\[1993\] AATA 274](#); [\(1993\) 31 ALD 380](#)

Re Labrador Liquor Wholesale Pty Ltd and CEO of Customs [\[2006\] AATA 485](#); [\(2006\) 63 ATR 1158](#)

Re Secretary, Department of Workplace Relations and Nicolas [\(2006\) AATA 497](#)

Re Tweed and Australian Securities and Investment Commission [\(2007\) AATA 1226](#)

Re VBJ and Australian Prudential Regulation Authority [\[2005\] AATA 642](#); [\(2005\) 60 ATR 1013](#)

American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders, 4th Edition (DSM – IV)

REASONS FOR DECISION

Egon Fice, Senior Member

21 December 2012

1. The applicant first applied for an Aviation Medical Certificate in November 2005. He was examined by Dr Robert J Macarthur, a Designated Aviation Medical Examiner (DAME) on 17 November 2005 for the issue of a Class 1 and Class 2 Aviation Medical Certificate. On that application the applicant indicated that his total number of flying hours at that time was 15. In answer to the question whether he had suffered any significant emotional or traumatic life event that required psychiatric treatment, the applicant said: *no*. Also, in answer to the question whether he suffered anxiety, depression, nervous breakdown or other psychiatric illness, the applicant again said: *no*. The applicant completed the declaration required for the issue of a medical certificate by confirming that he had answered every question correctly and completely. The  **Civil Aviation Safety**  Authority (CASA) issued the applicant a Class 1 and Class 2 medical certificate.
2. The applicant was again examined on 22 April 2008 for the renewal of his medical certificates. On that occasion he was examined by Dr H M Parker, a DAME. On the medical questionnaire completed by the applicant, in answer to the questions whether he suffered from any nervous breakdown or anxiety state; received any psychiatric examination or treatment and whether he had been rejected or discharged from any armed service for medical reasons, the applicant said: *no*. His medical certificates were renewed.
3. The applicant renewed his Class 1 medical certificate following an examination by Dr S J Birchley, a DAME, on 14 May 2009. Although page 5 of the medical report was not with the documents lodged by CASA under s 37 of the *Administrative Tribunal Act 1975* (AAT Act), it is reasonable to infer that the same answers were given to the questions I have referred to above regarding psychiatric illness as the medical certificate was renewed. His Class 1 medical certificate was renewed following a medical examination on 11 May 2010, 12 July 2011 and 29 February 2012.
4. On 19 November 2012 CASA wrote to the applicant stating that it had received information indicating he had a past history of a sleep disorder and post-traumatic stress disorder (PTSD). CASA said it had decided that it was in the interests of the safety of air navigation that his Class 1 & 2 medical certificates be suspended pending the provision of requested information

regarding his medical condition. The letter also stated that it directed him, under Reg 67.230 of the [Civil Aviation Safety Regulations 1998](#) (CASR), to authorise the release of certain medical information set out in that letter to CASA.

5. The applicant lodged with the Tribunal on 26 November 2012 an application for review of CASA's decision to suspend his medical certificates. In addition, the applicant also lodged an application under s 41(2) of the AAT Act seeking a stay of the decision to suspend his medical certificates.
6. I heard the applicant's stay application on 13 December 2012. At the conclusion of the hearing, I told the applicant that his application for a stay must be refused. The parties requested that I provide written reasons for my decision and these are those reasons.

POWER TO GRANT A STAY

7. Generally, and subject to the provisions contained in [s 31A](#) of the [Civil Aviation Act 1988](#) (CA Act), the making of an application to the Tribunal for review of a decision does not affect the operation of that decision or prevent the taking of action to implement the decision (s 41(1) AAT Act). In this case, s 31A of the CA Act has no application as CASA was not required to give a show cause notice prior to taking the suspension action.
8. An applicant aggrieved by an agency decision may seek to stay the decision in accordance with s 41(2) of the AAT Act. It provides:

*(2) The Tribunal may, on request being made, as prescribed, by a party to a proceeding before the Tribunal (in this section referred to as the **relevant proceeding**), if the Tribunal is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review, make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the relevant proceeding relates or a part of that decision as the Tribunal considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review.*

9. Where the Tribunal has made an order under s 41(2), it may, on a request being made by a party to the proceedings, make an order varying or revoking the stay order (s 41(3)).
10. The provisions set out in s 41(2) of the AAT Act make it clear that the matters to be considered by the Tribunal when deciding whether to make a stay order are whether:
 - (a) it is desirable to do so after taking into account the interests of any persons who may be affected by the review; and
 - (b) it is appropriate for the purposes of securing the effectiveness of the hearing and the determination of the application for review.
11. As Deputy President SA Forgie said in *Re Griffiths Grif-Air Helicopters Pty Ltd and Civil Aviation Authority* [\[1993\] AATA 274](#); [\(1993\) 31 ALD 380](#), at 384:

(47) We have not found any further authority since the date of Liddle's case and also adopt the interpretation that the word "desirable" connotes a "positive aspiration" and that it is "something worthy of achievement" rather than "merely advisable". Unlike [s 157\(1\)](#) of the [Superannuation Act 1976](#) (Cth), [s 41\(2\)](#) does qualify the matters which the tribunal may take into account in forming its opinion as to what is desirable. The qualification relates to the interests of any persons who may be affected by the review.

12. The obvious persons who may be affected by a review of CASA's decision are the applicant and the respondent.
13. The matters which should be properly taken into account when considering whether a stay should be granted have been variously expressed, depending upon the nature of the matter before the Tribunal (see for example *Re VBJ and Australian Prudential Regulation Authority*

[2005] AATA 642; (2005) 60 ATR 1013; *Re Tweed and Australian Securities and Investment Commission* (2007) AATA 1226; *Re Secretary, Department of Workplace Relations and Nicolas* (2006) AATA 497; and *Re Labrador Liquor Wholesale Pty Ltd and CEO of Customs* [2006] AATA 485; (2006) 63 ATR 1158). In this particular matter, the relevant factors are as follows:

- (a) the prospects of success or the merits of the applicant's case on review;
- (b) whether the parties or anyone else would be prejudiced if the stay is not granted;
- (c) whether public safety is likely to be imperilled if the stay is granted; and
- (d) whether the review application, if successful, would be rendered nugatory or pointless if the stay was not granted.

SUSPENSION OF MEDICAL CERTIFICATES

14. Reg 67.230 provides that CASA may require medical examination of certificate holders. Insofar as it is relevant to this matter, it provides:

(1) If it is necessary, in the interests of the safety of air navigation, for the holder of a medical certificate to demonstrate:

- (a) that he or she continues to meet the relevant medical standard; or*
- (b) that holding the certificate does not adversely affect the safety of air navigation;*

CASA may direct the holder to do any 1 or more of the following:

(c) submit to an examination carried out by medical practitioner, specialist psychiatrist, clinical psychologist, audiologist, optometrist, orthoptist, orthotist, occupational therapist, specialist prosthetist or a practitioner of another kind specified in the direction;

(d) submit to an examination or test by a person (not necessarily a medical practitioner) expert in the safe performance of the particular activity to which the medical certificate relates;

(e) authorise the disclosure to CASA of any information about the holder, held by a person, organisation, body or authority referred to in subregulation (4), that may help CASA to decide whether:

- (i) the holder continues to meet that medical standard; or*
- (ii) the holder's holding the certificate may adversely affect the safety of air navigation.*

(2)...

(3)...

(4) For paragraph (1)(e), the persons, organisations, bodies and authorities are as follows:

(a) a medical practitioner, specialist psychiatrist, clinical psychologist, audiologist, optometrist, orthoptist, orthotist, occupational therapist, specialist prosthetist or similar practitioner who has examined or treated the holder;

(b) any other person or organisation (including a hospital) that has made a physical, psychological or psychiatric examination of the holder;

(c) any other person or organisation (including a hospital) that has treated the holder for a medically significant condition;

(d) an employer (including a former employer) of the holder;

(e) any other person, organisation, body or authority (including a police force or police service and, subject to Part VIIC of the [Crimes Act 1914](#), a court) that holds information relevant to deciding whether the person's holding the certificate may adversely affect the safety of air navigation.

15. In its written notice of 19 November 2012 CASA issued a direction to the applicant pursuant to Reg 67.230 requiring him to authorise the disclosure to CASA of:
 - (a) all specialist reports relating to psychiatric conditions and PTSD;
 - (b) all general practitioner records for the past 15 years; and
 - (c) all Australian Defence Force records for the past 15 years.
16. The power to suspend is set out in Reg 67.240 of the CASR. It provides:
 - (1) *If CASA directs the holder of a medical certificate to submit to an examination under regulation 67.230, or to authorise disclosure of information to CASA under that regulation, CASA may, in writing, suspend the medical certificate.*
 - (2) *If CASA suspends a medical certificate, CASA must give the holder of the certificate written notice of suspension and the reasons for the suspension.*
 - (3) *A suspension of a medical certificate takes effect when the holder of the certificate is told of the suspension, either orally or in writing.*
 - (4) *If:*
 - (a) *CASA suspends a medical certificate; and*
 - (b) *the holder of the certificate submits to an examination or test directed by CASA, or authorises the disclosure of information to CASA; and*
 - (c) *the examination, test or information shows that:*
 - (i) *the holder meets the relevant medical standard; and*
 - (ii) *the continued holding of the certificate by the holder will not adversely affect the safety of air navigation;*

CASA must:

 - (d) *end the suspension; and*
 - (e) *tell the holder in writing that the suspension has ended.*
 - (5) *If:*
 - (a) *CASA suspends a medical certificate; and*
 - (b) *the holder of the certificate submits to an examination or test directed by CASA, or authorises the disclosure of information to CASA; and*
 - (c) *the examination, test or information shows either or both of the following:*
 - (i) *the holder fails to meet the relevant medical standard;*
 - (ii) *the continued holding of the certificate by the holder will adversely affect the safety of air navigation;*

CASA must tell the holder in writing the respect in which the holder does not meet the medical standard.

MERITS OF THE APPLICANT'S CASE

17. When considering an applicant's prospects of success for the purposes of the stay application, it is not appropriate to conduct a preliminary trial of the issues (see *Re Dart and Director-General of Social Services* ([1982](#)) [4 ALD 553](#) at 555). Rather, the Tribunal must consider whether there are facts and circumstances which, if established at the substantive hearing, would provide a basis for the applicant's success in the review on application; or whether there are points of law raised which, if sustained, would lead to that conclusion (see *Re Commonwealth of Australia and Quirke* [[1986](#)] [AATA 57](#); ([1986](#)) [9 ALD 92](#) at 95).
18. Dr Alan Michael Drane, a Senior Medical Officer employed in the Aviation Medicine Section of CASA, provided a statement to the Tribunal dated 12 December 2012 which was admitted into evidence. It was Dr Drane who made the decision to suspend the applicant's medical certificates. He explained that the basis for his decision was that he was informed in early November 2012 by CASA investigator, Mr Mark Haslam, that the applicant had for some years been in receipt of a disability pension from the Department of Veterans' Affairs (DVA) as a result of suffering from PTSD and a sleep disorder. He was satisfied that the information had been obtained from a credible and reliable source and warranted further investigation. CASA put into evidence a number of medical reports which dealt with a claim for compensation made

- by the applicant following his service in the Australian Regular Army between 1996 and 1998.
19. I had in evidence a report prepared by Dr A P McClure, a psychiatrist, dated 11 April 2001. Dr McClure reported that the applicant suffered bullying, intimidation and physical assaults in the course of his Army service. He said the applicant sustained a significant head injury and in another assault, he required admission to hospital between 25 and 26 November 1997. Apparently the applicant suffered further assaults while on posting to Malaysia and, following his return to Australia, he went AWOL (absent without official leave) in November 1998. The applicant apparently lived in the United Kingdom for about 12 months but was arrested on his return to Australia. He is reported as having participated in media and parliamentary investigations into alleged *bastardisation* in the Australian Defence Force. As a result of his involvement in that investigation, he said he had received a number of death threats from former members of the army. He had difficulty sleeping at night and consumed considerable quantities of alcohol. He is reported as having used amphetamines on a regular basis to keep himself awake at night because he felt unsafe.
 20. Dr McClure formed the opinion that while the applicant described some of the features of PTSD, those symptoms were then insufficient for a diagnosis to be made regarding the definition of the disorder set out in the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders, 4th Edition (DSM – IV). He nevertheless found that the applicant met the diagnostic criteria for Chronic Adjustment Disorder with anxiety.
 21. I also had in evidence a report by Dr John Saboisky, a psychiatrist, who examined the applicant on 15 January 2004. According to Dr Saboisky, the applicant told him that he had worsening episodes of panic attacks in the preceding six months. These occurred *pretty much every day*. He told Dr Saboisky that he had been diagnosed as having panic attacks and had been prescribed medication but could not tell him what it was. He said he had not taken any medication. After recounting the history given to him by the applicant, which was not dissimilar to that given to Dr McClure, although now appearing to have some embellishment, Dr Saboisky concluded that he had an adjustment disorder with anxiety and anger. He attributed that to the applicant's experience in the Army. Dr Saboisky was of the opinion that his symptoms would gradually resolve in time and he thought they were likely to cease within 12 months of cessation of his case, by which I understood to mean his claim for compensation. Dr Saboisky was also of the view that the applicant was clearly capable of employment although he would be likely to have significant interpersonal difficulties.
 22. Dr Thomas Wilmot, a psychiatrist, provided the psychiatric report dated 26 February 2005 which was taken into evidence. The history given to Dr Wilmot seemed once again to have been embellished by the applicant. He described sleeping with a 12 gauge shotgun by his side for fear of being attacked. He told Dr Wilmot that he was currently unemployed and thought that would be that situation until he died. Dr Wilmot reported that the applicant presented with a diagnosis of chronic Adjustment Disorder with Anxiety. He said that many of the applicant's features appeared to be the symptomatology connected with PTSD although his history did not include a life-threatening event. He described the applicant as a 25 year old man who seems to live in fear and turmoil. He provided a differential diagnosis of PTSD, maladaptive personality disorder, persisting physical symptoms and social isolation.
 23. Dr David Alcorn, a psychiatrist, examined the applicant on 18 March 2008 and provided a report which was admitted into evidence. Dr Alcorn provided a detailed history given to him by the applicant. In this report, for the first time, apparently the applicant told Dr Alcorn that he did use cocaine in the past but was no longer using it. He said he did not use any other illicit drugs including amphetamines which he had previously told Dr McClure he had used. Again, the reported history appears to be embellished and is inconsistent with some elements of past history given to other psychiatrists. For example, he said he had held an aviation licence for a private fixed wing aircraft since the age of 16 years. He also said he had originally applied to join the Air Force in Townsville but was subsequently excluded as being too young. This was despite the fact that he had consistently said he left school after year 10 which does not meet the standard required for acceptance into the air force as a pilot. Dr Alcorn diagnosed the applicant as having PTSD (a provisional diagnosis) with a differential diagnosis of Adjustment

Disorder with Anxiety of chronic duration.

24. The most recent medical report was prepared by Dr Anthony Sheehan, also a psychiatrist. It is dated 14 November 2012. According to Dr Sheehan, the applicant told him that he was currently not working and that he had not worked for many years. This is despite the fact that he told CASA that he has been working extensively since obtaining his pilot licence in 2005, accumulating some 3500 hours total flying time. The history taken by Dr Sheehan again appeared to have been significantly embellished. He apparently said he thought about studying, going to university when, clearly, with a year 10 formal education, he would not be admitted to tertiary studies. He also said he sat exams for a *fast jet pilot*. There are no such exams. In summary, Dr Sheehan said that it appeared the applicant's Adjustment Disorder symptoms continued to improve since the last assessment by Dr Alcorn in 2008. Dr Sheehan described his current symptoms as mild and certainly not impacting significantly on his work capacity. His diagnosis was Mild Chronic Adjustment Disorder with Anxiety Condition.
25. I also had in evidence a statement prepared by Mr Mark Alexander Haslam, a Senior Investigator attached to the Investigations Branch of CASA, which is dated 12 December 2012. While it would serve no purpose to outline all of the concerns Mr Haslam expressed in his report, it is sufficient just to mention that CASA has had difficulties in having the applicant provide it with his pilots' logbook. Mr Haslam identified concerns about endorsements and the hours recorded by the applicant. According to Mr Haslam, of some 996 hours aeronautical experience recorded in the applicant's pilots' logbook, he suspected that some 504 hours of that experience involved false entries. He also apparently gave false information regarding his continued involvement with the Department of Defence, claiming he had completed some tours in Afghanistan and that he carried out close protection work.
26. Mr Haslam recorded that he had been contacted by an officer from DVA enquiring about the applicant and his aviation qualifications and experience and whether there were any records held supporting commercial work that he carried out. It was at this time that Mr Haslam was alerted to the fact that the applicant was the recipient of a DVA pension which related to psychological problems. Mr Haslam also obtained a report from Dr Stanley Ian Emmett, a DAME, who examined the applicant on 29 February 2012 in respect of the renewal of Class 1 and 2 medical certificates. Dr Emmett reported that the applicant did not, at any stage during the interview, disclose any medical or psychiatric issues, or that he was claiming or in receipt of any pension. He did mention that he had been in the military but Dr Emmett did not record any issues with the military or any reason for leaving.
27. In his report Dr Emmett said that at approximately 1:30 PM on 23 November 2012 the applicant rang the medical practice and spoke to one of the receptionists who told him that there was an *agitated pilot* demanding an appointment for an aviation medical examination that afternoon. Dr Emmett returned his call a short time later and, having been notified of the suspension of the applicant's Class 1 and 2 medical certificates on 19 November 2012, asked the applicant why his medical certificates had been suspended. The applicant replied that an opposition company had been feeding false information about him to put him out of business. Dr Emmett said that he got the impression he thought that by doing a medical, he (the applicant) would have a temporary injunction against the suspension of his medical certificates. Dr Emmett told the applicant that he would e-mail the questionnaire for him to fill out but that he would not be able to complete an examination on that day. Dr Emmett said that on talking to the applicant, he noted that he was agitated and he appeared to disclose a lack of understanding that this was about a legal requirement as much as a matter related to medical conditions. He had not heard from the applicant since that conversation.
28. The applicant obtained a report from Mr Gary Bakkar, a clinical psychologist, on 5 December 2012. Mr Bakkar did not have the benefit of the medical reports to which I have referred above. Nevertheless, he recorded that he reviewed the applicant's psychological, medical and family history and his current functioning and circumstances. He said there was particular focus on his time in the defence force and the stressors he experienced during and after this time and his personal and professional functioning since. Mr Bakkar referred to the assaults and abuse the applicant suffered while in the Army. He said the applicant told him that

he finally went to federal politicians and the Department of Defence. He went to Malaysia but the assaults and abuse continued. He apparently told Mr Bakker that when he returned to Australia the matter became public (via the 60 Minutes television program) and the response to his *whistleblower* status grew more dangerous and involved his family. Out of concern for his family, the applicant withdrew from legal proceedings and signed a release from the Defence Department. Dr Bakker then said: *It appears that the paperwork surrounding this included the diagnosis by a military psychiatrist of PTSD and "Adjustment Disorder With Anxiety"*.

29. Mr Bakker also recorded that the applicant had since trained and commenced a new career as a pilot and he described over 1000 incident-free hours of difficult helicopter flying, such as crop dusting, with only appropriate levels of caution and anxiety. He apparently told Mr Bakker that PTSD was never fully explained to him at the time of his diagnosis.
30. When Mr Anthony Carter, a principal lawyer with the legal branch of CASA, asked the applicant about an engine failure incident which occurred on 25 January 2012 resulting in the total loss of a helicopter, he admitted that the incident occurred. However he justified his statement regarding the 1000 hours flying incident free by stating that he had substantial fixed wing hours as well as in excess of 900 hours helicopter flying time. In other words, if the fixed wing hours were included in the total flying hours, his statement about having a 1000 hours incident free was entirely correct. However, that fails to take into account the context in which it appears Mr Bakker made that statement. There is no reference in Mr Bakker's statement about fixed wing flying. In fact, when I asked the applicant why it appeared he claimed to have had some 3500 hours total flying time, he said he did although his fixed wing pilots' logbook was lost during the cyclone *Yasi* which affected North Queensland in 2011. The answer to that question needs further explanation because it is difficult for me to understand, as a pilot with 20 years flying experience, why the applicant kept a fixed wing flying logbook and a rotary wing flying logbook.
31. While it is not my role at this stage of the preceding to determine whether CASA was justified in suspending the applicant's Class 1 and 2 medical certificates, I can say with a substantial degree of certainty that the evidentiary material before me strongly supports CASA taking the actions which it took on 19 November 2012. Furthermore, the applicant did not at any time deny that he failed to tell CASA or any of the DAMEs who have examined him since 2005 of his medical history and diagnosis of mental disorders. Had he done so, I have no doubt that further examinations would have been requested because an applicant with a medical history or clinical diagnosis of a mental condition which is safety-relevant does not meet the criteria for medical standard 1 or medical standard 2 in table 67.150 or 67.155 of the CASR. Nor, for that matter, does an applicant who has a problematic use of substances or any personal history of problematic use of a *psychoactive substance*. Furthermore, a DAME must not issue a medical certificate to an applicant if the DAME is satisfied that the applicant has knowingly or recklessly made a false or misleading statement in relation to the application for a medical certificate (Reg 67.225 (4)).
32. In addition to the above, Reg 67.265 sets out the obligations of the holder of a medical certificate to tell CASA of changes in their medical condition. The applicant clearly failed to comply with this regulation.
33. Given the evidence I have received thus far in this proceeding, I find that the applicant's prospects of succeeding in this claim before the Tribunal are poor.

PREJUDICE IF STAY WERE NOT GRANTED

34. The issue of hardship is usually examined under this heading. The applicant claimed he would suffer hardship if he were not permitted to continue to work as a helicopter crop duster pilot because he had family to support.
35. Other than the applicant's statement about the hardship he would suffer if a stay were not granted, there was no other evidence before me about his financial situation. There was, however, evidence to the contrary. In the report prepared by Dr Sheehan on 14 November 2012, Dr Sheehan reported that the applicant lived in rented accommodation alone. Apparently the applicant told him he had a girlfriend on the mainland. When asked about

this, the applicant said that he told Dr Sheehan this because he wanted to protect his family from the threats he received following his decision to *go public* about the assaults and bullying he received while in the Army. He was concerned that CASA would pass on the information to DVA. With respect to the applicant, there was no reason given why this information would be passed on to DVA.

36. Given the false and misleading information that the applicant has provided to various DAMEs and to the various psychiatrists who examined him on behalf of Comcare in relation to his medical claim arising out of military service, I have no confidence that the applicant has provided me with accurate information about his family. Even if I am wrong about that, I cannot elevate his hardship concerns above that of the safety of air navigation.

EFFECT ON AVIATION SAFETY

37. It should be apparent that in aviation matters, this factor must be given prominence when considering whether a stay should be granted (see s 9A (1) of the CA Act). Where there is a real risk to the safety of air navigation, a stay should not be granted.
38. Although Mr Bakker, a clinical psychologist, provided a report in which he said he held a confident opinion that the stress experienced by the applicant as a result of his Army service had no current bearing on his capacities and safety as a pilot, Mr Bakker did not have the benefit of the numerous psychiatric reports to which I have referred above. In my opinion, the further information which CASA has sought in its suspension letter of 19 November 2012 needs to be analysed with some care before one can reach the conclusion that the applicant does not have a safety-relevant medical condition. He clearly does not meet the criterion dealing with mental fitness in either table 67.150 or 67.155. Therefore, he does not meet medical standard 1 or medical standard 2. Whether his medical condition can be described as safety-relevant at this point in time can only be determined by further examination of his objective medical history. I cannot confidently place any reliance on what the applicant now says about his medical status because he has plainly disclosed himself to be an unreliable historian.
39. This factor weighs heavily against granting the applicant's application for a stay.

REVIEW RENDERED NUGATORY

40. A review would be rendered nugatory if, despite being successful on the substantive application, an applicant has suffered irreparable damage. There was no evidence put forward by the applicant that he would suffer irreparable damage were a stay refused.
41. In fact, as I explained to the applicant in the course of the hearing, he could have the issue of his mental fitness resolved reasonably quickly if he were to comply with the direction CASA issued under Reg 67.230. In any case, there was nothing before me to suggest that if the applicant were to satisfy CASA that his medical fitness was no longer in issue or safety-relevant, then his medical certificates would not be reissued. Other issues of course may arise given that the evidence disclosed some concern about endorsements and total flying hours recorded by the applicant in his pilots' flying log book, but that is not a matter dealing with his medical certificates.
42. I find that a review would not be rendered nugatory in the event that the applicant was successful at the substantive hearing of this matter.

CONCLUSION

43. Having considered all of the relevant factors which need to be considered on an application for a stay, my view is that a stay should be refused. The applicant's prospects of succeeding on this application are very low. He has admitted he failed to disclose a history regarding his mental fitness to the DAMEs who examined him in the course of applying for aviation medical certificates and renewal of those certificates. Had he disclosed that history, he would not have satisfied the standard for the issue of a Class 1 or Class 2 medical certificate. The only issue which would then arise is whether his current mental state constitutes a safety-relevant

condition. That can only be determined after careful analysis of the applicant's medical history.

- 44. I cannot say with any confidence whether the applicant will suffer prejudice if the stay is not granted. It is clear from the history he has given to various medical practitioners over the past seven years that what he says cannot be relied upon.
- 45. While it is not possible to say with any degree of certainty that the safety of air navigation will be imperilled if the applicant were granted a stay, that remains a real possibility. In itself, this factor weighs heavily against granting the stay to the applicant.
- 46. There was no evidence before me which might even suggest that a review would be rendered nugatory if a stay were not granted.
- 47. Given the findings I have made on this application, a stay of the operation of the decision to suspend the applicant's Class 1 and 2 aviation medical certificates must be refused.

I certify that the preceding 47 (forty -seven) paragraphs are a true copy of the reasons for the decision herein of Egon Fice, Senior Member

....[sgd].....
Associate

Dated 21 December 2012

Date of hearing	13 December 2012
Date of written reasons	21 December 2012
Representative for the Applicant	Self-represented
Representative for the Respondent	Mr A Carter
Solicitors for the Respondent	← Civil Aviation Safety → Authority, Legal Branch

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