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# Administrative Appeals Tribunal of Australia

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## Ryan and Civil Aviation Safety Authority [2014] AATA 494 (18 July 2014)

Last Updated: 21 July 2014

### [\[2014\] AATA 494](#)

Division	<b>GENERAL ADMINISTRATIVE DIVISION</b>
File Number	<b>2014/0971</b>
Re	<b>Peter John Ryan</b> APPLICANT
And	<b>Civil Aviation Safety Authority</b> RESPONDENT

### DECISION

Tribunal	<b>Deputy President P E Hack SC</b>
Date	<b>18 July 2014</b>
Place	<b>Brisbane</b>

The decision under review is set aside and the matter remitted to the respondent for reconsideration in accordance with a direction that a condition requiring the provision to the respondent of alcohol screening tests on a quarterly basis not be imposed on the applicant's class 1 or class 2 medical certificates.

.....[Sgd].....

## Deputy President P E Hack SC

### CATCHWORDS

*CIVIL AVIATION – medical certificate – problematic substance use – whether a history of problematic alcohol use – whether engaged in problematic alcohol use.*

### LEGISLATION

[Civil Aviation Act 1988](#) (Cth) [s 9A](#)

[Civil Aviation Regulations 1988](#) (Cth) reg 5.04(1)

[Civil Aviation Safety Regulations 1998](#) (Cth) [Part 67](#) reg 67.180(2)(e), table 67.150 items 1.5 and 1.6, table 67.155 items 2.5 and 2.6

### REASONS FOR DECISION

## Deputy President P E Hack SC

**18 July 2014**

1. The applicant, Mr Peter Ryan, is a commercial pilot by occupation. He holds a commercial pilot (helicopter) licence and a private pilot (fixed wing) licence. The respondent, the Civil Aviation Safety Authority, is of the view that Mr Ryan may have a problem with alcohol abuse. In February 2014, when the Authority renewed his aviation medical certificate, it imposed a condition which required him to undertake quarterly alcohol screening tests and to forward the results of those tests to the Authority.
2. Mr Ryan objects to the imposition of the condition. He says that it is unnecessary and unwarranted. He seeks a review of the Authority's decision to impose the condition.
3. For the reasons that follow I am satisfied that Mr Ryan is correct. The evidence does not warrant the imposition of such a condition.
4. Only brief reference is necessary to the statutory scheme. The starting point is [s 9A](#) of the [Civil Aviation Act 1988](#) (Cth). That section requires the Authority, in exercising its powers or performing its functions, to regard the safety of air navigation as the most important consideration. The Tribunal, in reviewing decisions of the Authority, is similarly bound to regard the safety of air navigation as the most important consideration.
5. A pilot, whether holding a commercial pilot licence or a private pilot licence, is required by reg 5.04(1) of the [Civil Aviation Regulations 1988](#) (Cth) to hold a current medical certificate appropriate to the duties authorised by the licence. Medical certificates are issued by the Authority pursuant to [Part 67](#) of the [Civil Aviation Safety Regulations 1998](#) (Cth). A person may apply to the Authority for the issue of a medical certificate.<sup>[1]</sup> Subject to an exception not presently relevant, the Authority is bound to issue a medical certificate if the applicant satisfies the requirements of reg 67.180(2) of the [Civil Aviation Safety Regulations](#). Only one of those requirements is in issue, that in paragraph (e) of reg

67.180(2). It has the effect that the Authority must be satisfied that either,

- (i) *the applicant meets the relevant medical standard; or*
- (ii) *if the applicant does not meet that medical standard – the extent to which he or she does not meet the standard is not likely to endanger the safety of air navigation...*

6. There are three classes of medical certificate: class 1, class 2 and class 3. Class 3 is not germane to this application. Subject to some exceptions relating to visual acuity, a person who satisfies criteria in table 67.150 to the [Civil Aviation Safety Regulations](#) meets medical standard 1.<sup>[2]</sup> With similar exceptions, a person meets medical standard 2 if the person satisfies the criteria in table 67.155 of those regulations. The criteria in issue<sup>[3]</sup> in the present case are in identical terms in each of the tables. Items 1.5 and 1.6 of table 67.150 are in these terms:<sup>[4]</sup>

*1.5 Does not engage in any problematic use of substances (within the meaning given by section 1.1 of Annex 1, Personnel Licensing, to the Chicago Convention)*

*1.6 If there is any personal history of problematic use of a substance (within the meaning given by section 1.1 of Annex 1, Personnel Licensing, to the Chicago Convention):*

- (a) the person's abstinence from problematic use of the substance is certified by an appropriate specialist medical practitioner; and*
- (b) the person is not suffering from any safety-relevant sequelae resulting from the person's use of the substance; and*
- (c) the person provides evidence that the person is undertaken, or has successfully completed, an appropriate course of therapy*

The definition of "problematic use of substances" from the Convention is set out in a note to the table in these terms:

*The use of one or more psychoactive substances by aviation personnel in a way that:*

- a. constitutes a direct hazard to the user or endangers the lives, health or welfare of others; and/or*
- b. causes or worsens an occupational, social, mental or physical problem or disorder.*

Alcohol is included in the definition of psychoactive substances.

- 7. The factual background to this matter is largely, but not entirely, uncontroversial. I do not understand what follows to be in issue. I will deal separately with each area of controversy.
- 8. Mr Ryan is now in his 50s. He has held a pilot licence for more than 20 years. The first event of note occurred in July 2004 when Mr Ryan was injured in an altercation with security personnel at a nightclub. Mr Ryan says that the altercation arose when he intervened to prevent the security personnel from assaulting other persons. There is controversy about the extent to which Mr Ryan was affected by alcohol on this occasion. His evidence was that he had drunk only two or three glasses of wine with dinner. There is, apparently, a note made by his general practitioner, who Mr Ryan consulted after the event, that Mr Ryan was "intoxicated" at the time of the altercation.
- 9. Then, in August 2011, following a staff dinner, Mr Ryan rode (and crashed) a motor cycle with a blood alcohol level of 0.18%, significantly in

excess of the permissible limit of 0.05%. He was fined a considerable sum and his driver's licence suspended for a period of time.

10. In November 2011, when undertaking his regular aviation medical examination, Mr Ryan disclosed the fact and details of his conviction for driving whilst under the influence of alcohol. That disclosure prompted the Authority to require him to provide an assessment by a psychiatrist in relation to his alcohol consumption and its associated risk. He saw Dr David Storer, a consultant psychiatrist, in February 2012. Dr Storer spoke to Mr Ryan's general practitioner who had apparently made the notation of the July 2004 visit that Mr Ryan "had been injured in an altercation with a bouncer at a nightclub whilst intoxicated".<sup>[5]</sup> The general practitioner did indicate that,

*... there was no other reference on file to any alcohol-related incidents. Pathology tests taken during the years of [Mr Ryan's] attendance at the General Practice did not show evidence of excessive alcohol intake.*

Dr Storer expressed his conclusions in this way:<sup>[6]</sup>

*In my opinion, there is no evidence that [Mr Ryan] is currently suffering from any Psychiatric Disorder or Substance Use Disorder which is likely to make him medically unfit to hold an Aviation Licence.*

Dr Storer did suggest that Mr Ryan undertake a brief intervention with a counsellor involving education in safe drinking practices. That intervention was undertaken in April 2012 and the clinical nurse reported<sup>[7]</sup> that she had found no evidence of ongoing alcohol abuse. She expressed the opinion, based on clinical assessment and the result of two screening tests, that Mr Ryan did not have an alcohol abuse disorder.

11. In June 2012 the Authority decided to grant Mr Ryan class 1 and class 2 medical certificates but each was conditioned on Mr Ryan providing to the Authority quarterly carbohydrate deficient transferrin (CDT) and liver function tests. Mr Ryan says that he did not receive the letter imposing these conditions. For whatever reason he did not comply with the requirement although a CDT test was undertaken on 11 December 2012 in connection with Mr Ryan's annual aviation medical examination. On 20 February 2013 the Authority granted Mr Ryan class 1 and class 2 medical certificates for a term of 12 months. They were each made subject to a condition requiring quarterly liver function, full blood count and CDT tests.
12. Mr Ryan did not comply with the condition. He took the view that a device he had installed in his car was a more efficient method of detecting excessive alcohol use. The Authority did not share that view and on 25 July 2013 cancelled Mr Ryan's medical certificates on the basis that he had failed to comply with the condition. Thereafter Mr Ryan commenced proceedings in the Tribunal<sup>[8]</sup> seeking a review of the cancellation decision. That application was resolved on 16 October 2013 when the Tribunal, pursuant to [s 42C](#) of the [Administrative Appeals Tribunal Act 1975](#) (Cth), made a consent decision setting aside the decision to cancel and substituting a decision that the class 1 and class 2 medical certificates remain in force subject to a condition requiring Mr Ryan to undertake, and provide to the Authority, quarterly liver function, full blood count and CDT tests, the first of such tests being required to be undertaken no later than 6 December 2013. That testing was undertaken.
13. It would seem that Mr Ryan was under the impression that the Authority had agreed that the requirement for quarterly testing would not be imposed once he renewed his medical certificates in early 2014. It had not agreed to do so although it is understandable that Mr Ryan may have gained that impression from the terms of the consent decision. In any event, on 10 February 2014 when Mr Ryan's class 1 and class 2 medical certificates were issued, they were each made subject to a condition that Mr Ryan provide quarterly liver function, full blood count and CDT tests to the Authority. Mr Ryan's application to the Tribunal, lodged on 7 March 2014, seeks a review of the Authority's decision to impose that condition.

14. For completeness I note that following the imposition of the condition, and in compliance with it, Mr Ryan has had tests undertaken on 27 February 2014 and 13 June 2014.
15. The first question is whether Mr Ryan meets the relevant medical standards. In the context of the present controversy that requires consideration of the further questions whether Mr Ryan has any personal history of problematic use of alcohol or has engaged in any problematic use of alcohol.
16. The Authority submits<sup>[9]</sup> that Mr Ryan does not meet the class 1 or class 2 medical standards because he,

*...has a history of problematic use of alcohol which the [Authority] has been unable to monitor sufficiently to ensure that [Mr Ryan] does not continue to use alcohol in a problematic way.*

His history, it submits, evidences "at least 2 separate incidents of problematic use of alcohol". The incident of July 2004 and the events leading to the drink-driving conviction in August 2011 are those incidents.

17. The Authority's submissions put a broad interpretation on items 1.5 and 1.6 in table 67.150 (and the equivalent items in table 67.155). It did not suggest that a particular event, in and of itself, amounted to problematic use of alcohol. Rather, it submitted that events such as the July 2004 incident and the conviction for driving whilst under the influence demonstrate that Mr Ryan engaged in problematic use of alcohol or had a history of problematic use of alcohol. Mr Ryan did not suggest that any different approach was required.
18. Viewed in that way it is necessary to consider what is revealed by the July 2004 incident. At its highest for the Authority the material allows an inference to be drawn that Mr Ryan told his general practitioner, following the incident, that he had been intoxicated at the time of the incident. Mr Ryan's evidence was that he was not intoxicated, that he had consumed two or three glasses of wine during a meal, an amount I would not regard as being excessive. The Authority has been on notice, at least since early June 2014 when Mr Ryan filed his statement, that he disputed the proposition that he had been intoxicated on this occasion. It did not seek the production of the general practitioner's clinical notes by summons or otherwise and it did not seek to controvert Mr Ryan's evidence in any other way. No satisfactory reason is advanced why I should reject the evidence of Mr Ryan concerning this incident, including his evidence of modest consumption of alcohol, and prefer the second-hand hearsay account that he had been "intoxicated". I am not prepared to do so. I accept Mr Ryan's evidence. I am not satisfied that this event demonstrates anything adverse or out of the ordinary about his consumption of alcohol.
19. There is no doubt that in August 2011 Mr Ryan did consume excessive amounts of alcohol. He explained that he had been taking a prescription corticosteroid medication for a medical condition in the weeks leading up to the incident. His behaviour, including his consumption of alcohol, on this occasion was, he said, quite out of character for him. He attributed that to the combined effect of the prescription medication and alcohol. With the agreement of the parties I have consulted the consumer medical information for the particular drug.<sup>[10]</sup> That warns that alcohol, as well as a variety of other medications, "may interfere" with the drug and may react with it "resulting in untoward or sometimes dangerous side effects".
20. It is impossible to say now whether Mr Ryan's excessive drinking on this occasion was caused, or contributed to, by his use of the prescription medication. I do, however, accept that the undoubtedly excessive consumption of alcohol on this occasion was very much out of the ordinary for him. In particular, I do not regard this event as demonstrating an underlying pattern of Mr Ryan engaging in problematic use of alcohol or of having a history of problematic use. It was, on the view I take of it, very much an isolated event. I would add that even had I considered that Mr Ryan had reported himself as having been intoxicated in July 2004 I would not have reached any different overall conclusion. It would have meant that on two occasions in the last 10 years Mr Ryan drank to excess. That hardly warrants the description of engaging in problematic use, or a history of problematic use, of alcohol.

21. The correctness of the conclusion that I have reached is confirmed by other evidence in the proceedings. First, Dr Storer's report refers to the absence of evidence of excessive alcohol intake in pathology tests taken in the years of Mr Ryan's attendance at his general practitioner, at least up until early 2012. Next, the conclusion of Dr Storer is that there is no evidence that Mr Ryan was suffering from a substance use disorder likely to make him medically unfit to hold an aviation licence. The clinical nurse was of the same view. There were six CDT tests conducted between December 2011 and June 2014. None were abnormal. Five were described as normal and one, the test in December 2011, was marginally elevated but described as "equivocal" by the laboratory.<sup>[11]</sup> Finally I note that Mr Ryan had a device installed in his vehicle between August 2012 and August 2013 which prevented the vehicle from operating if the driver had consumed alcohol. Mr Ryan drove in excess of 19,000 km in that period without any adverse reading by the device.
22. The case for the Authority relies upon studies that show an increased risk of alcohol-related accidents or incidents in pilots who had been convicted of drink-driving. These studies led Dr Pooshan Navathe, the Authority's Principal Medical Officer and the decision maker in the present case, to conclude:<sup>[12]</sup>

*A history of driving whilst under the influence of alcohol is a serious issue from an aviation perspective.*

Whether that is so or not seems to me not to matter. The issue in the present case is whether the material establishes that Mr Ryan engaged in, or had a personal history of, the problematic use of alcohol. In my view it does not. That being so, I conclude that Mr Ryan satisfies the only criteria in issue in these proceedings and thus meets the medical standard for class 1 and class 2 medical certificates.

23. The result is that no occasion arises to consider the imposition of a condition such as was imposed in the present case. Mr Ryan's certificates should not be issued with such a condition.

I certify that the preceding 23  
(twenty -three) paragraphs are a true  
copy of the reasons for the decision  
herein of Deputy President P E Hack  
SC

.....[Sgd].....  
Associate

Dated 18 July 2014

Date of hearing	<b>11 July 2014</b>
Applicant	<b>In person</b>
Solicitors for the Respondent	<b>← CASA → Legal Services Branch</b>

[1] See reg 67.175, [Civil Aviation Safety Regulations 1998](#).

[2] See reg 67.150(1), [Civil Aviation Safety Regulations](#).

[3] The Authority's case, as originally formulated in its Statement of Facts and Contentions dated 4 July 2014, relied only on Item 1.5. In the course of the hearing it enlarged its case to encompass Item 1.6 as well.

[4] Items 2.5 and 2.6 of table 67.155 are the equivalent criteria to table 67.155.

[5] Exhibit 1, page 54.

[6] Exhibit 1, page 55.

[7] Exhibit 1, page 58.

[8] Application 2013/4044.

[9] The Authority's written submissions were lodged after the hearing (and a copy provided to Mr Ryan).

[10] The document has been made an exhibit in the proceedings and copies provided to both parties.

[11] Exhibit 1, page 51.

[12] Exhibit 3, page 2.

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