

2024 WL 3293348 (N.T.S.B.)

PETITION OF DONALD PARK FOR REVIEW OF DENIAL BY THE
ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION
OF THE ISSUANCE OF AN AIRMAN MEDICAL CERTIFICATE

Docket No.: SM-30588

June 6, 2024

***1 APPEARANCES:**

On behalf of the Administrator:

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Office of Administrative Law Judges

National Transportation Safety Board

ADMINISTRATIVE LAW JUDGE DECISION

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ORAL INITIAL DECISION AND ORDER

(1:00 p.m. CDT)

JUDGE TAPIA: This proceeding is authorized under [49 U.S.C. § 44703](#) and the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board and as required by the Board's rules on Petitions for Review.

By the authority invested in me as the Administrative Law Judge, I am issuing an Oral Initial Decision in Petition of Donald Park for review of his denial of the issuance of an airman medical certificate, Docket No. SM-30588.

Pursuant to due notice, an in-person hearing was held in San Antonio, Texas, on October 11-12, 2023, and May 2, 2024. Charles Soechting represented Petitioner, Donald Park. Nicholas Milliard represented the Administrator, Michael Whitaker at the Federal Aviation Administration, Office of Chief Counsel, Aviation Litigation Division.

Fair Hearing - The parties were given an efficient, orderly, and fair hearing, with ample opportunity to present evidence, call and examine witnesses, and present arguments. It's important to note that Petitioner Park has been in attendance throughout the proceeding, ensuring the integrity and transparency of the process.

While I will delve into specific evidence, it's crucial to note that I have thoroughly reviewed all evidence, both oral and documentary. I consider any evidence not explicitly mentioned as either cumulative or not significantly impacting the outcome of this decision, ensuring a comprehensive and fair assessment.

Petition - On June 30, 2022, Petitioner Park, through counsel, initiated this docket upon filing his Petition for Review of the Administrator's denial of his application for a first-class airman medical certificate. The Administrator's denial was based on Petitioner's alleged medical history or clinical diagnosis of substance dependence.

*2 After some delay, at no fault of either party, the case was docketed on February 3, 2023. Under the Board's Rules of Practice, the Administrator filed his Answer on February 17, 2023.

In that Answer, the Administrator contends that Petitioner Park's medical records support the Aerospace Medical Certification Division's determination that Petitioner is ineligible for an unrestricted medical certificate of any class under [14 C.F.R. §§ 67.107\(a\)\(4\), 67.207\(a\)\(4\), and 67.307\(a\)\(4\)](#).

Statement of the Issue - The issue before me is whether Petitioner Park has a medical history or clinical diagnosis of substance dependence, making him ineligible for an unrestricted medical certificate under Part 67 of the Federal Aviation Regulations.

The Burden of Proof - Petitioner Park must prove he is qualified to hold an unrestricted medical certificate. He must show that he does not have a history or clinical diagnosis of substance dependence demonstrated through the criteria of increased tolerance, and that the denial of his application was unjustified.

Exhibits - At the hearing, Petitioner's Exhibit P-1 was pre-admitted into evidence without objection. Exhibits P-2 and P-3 were admitted without objection. Exhibit P-4 was not admitted into evidence over objection.

The Administrator's Exhibits A-1 and A-2 were pre-admitted into evidence without objection. Exhibits A-3 through A-5 were admitted in evidence without objection.

The Petitioner's Case-In-Chief - As the first witness, Petitioner Park testified on his own behalf.

Background - Petitioner Park is 32 years old and lives in Irving, Texas, with his wife. He was an Army reservist, and he had been a civilian airline pilot for over three years.

In 2018, Petitioner Park was deployed to Afghanistan and flew Soviet helicopters. He was an instructor pilot and advisor to the Afghan Special Mission Wing with the U.S. Special Operations Command. His exceptional service in high-risk and combat missions earned him two air medals, among other awards. While in Afghanistan, Petitioner Park did not consume alcohol, which was also prohibited in the Muslim country. He later worked as an airline pilot for Envoy Air, a subsidiary of American Airlines.

Before moving back to Texas, Petitioner Park lived in Key West, Florida. He was a senior mission liaison officer advising the Department of Defense on counter-narcotic interdiction through analyzing intelligence. He and his wife moved back to Texas so that he could be an Embraer 145 instructor pilot. That's a non-flying position which does not require a medical certificate. He does this through ground school instruction and Level D simulators. He has over 1,000 flying hours on the Embraer 145.

The Accident - In February 2019, upon his return to the U.S. and before embarking on an airline re-training program for Envoy Air Airlines, Petitioner Park, with an unwavering dedication to his military career, was accepted into an Army fixed-wing C-12 unit in Nashville, Tennessee. He wanted to be close to a unit that would allow him to commute to his airline job. Towards the end of his training in April 2019, Petitioner Park testified that he spent a weekend with friends.

*3 He recalls drinking around a bonfire in a farm field, while his friends playfully teased him about his lack of experience with dirt bikes. Despite never owning a motorcycle, Petitioner Park testified that he mounted the bike, and his friends started it. He recalled stalling several times, but eventually, he engaged the clutch and the gas on the handlebar, and that's where his memory fades.

Petitioner Park testified that he later learned that he slammed an abandoned van 300 to 400 feet straight ahead on a flat farm field. He ended up in a medically induced coma for 28 days and two months in the hospital with severe injuries. After being released from the hospital, Petitioner Park endured multiple surgeries and several years of physical and occupational therapy. Due to his injuries, Petitioner Park testified his military career ended in June of 2022.

The Denial Letter - In May of 2022, upon receiving the Administrator's denial for an alleged history or diagnosis of substance dependence, Petitioner Park testified that he was shocked. He had never been treated nor diagnosed with substance dependence of any kind in his life. He immediately tried to contact someone at the medical certification office to unravel his confusion. Six days later, an agency representative informed him to follow the communication protocol by going through his Airman Medical Examiner, or AME.

Petitioner Park testified that his AME was equally confused.

He testified that before receiving that denial letter, the Administrator, through its medical certification division, requested more information regarding his injuries. Never was there any concern about substance dependence.

Nevertheless, to move forward, Petitioner Park testified that he looked into a couple of inpatient substance abuse treatment programs, and given their responses, he decided to appeal.

Petitioner Park testified that being marked as substance dependent is not only embarrassing but also degrading. He testified that everything that he has accomplished in his military career and that, as a civilian, he was now told he was forbidden to fly because of that label.

He testified that, morally, he could not play the part of being an alcoholic or someone with substance dependence to continue with his career.

Petitioner Park testified that he has only been intoxicated two times in his life: before he was deployed to Afghanistan and the dirt bike accident. The last time he consumed alcohol was on the 4th of July of 2021 while visiting his in-laws and 1/4th of a beer in October of 2022.

On cross-examination, when asked how much he drank before being deployed to Afghanistan, Petitioner Park testified he drank four to five beers and a few shots of whiskey. When asked, Petitioner Park testified the first time he drank in his life was part of a beer while in flight school before his 21st birthday.

In explaining the events leading up to the accident, Petitioner Park testified that he met with friends at a local bar and drank two to three beers around 8:00 p.m. At around 9:30 p.m., they returned to the property and started a bonfire, where he drank two to three beers and three large shots of tequila. Before the accident, Petitioner Park testified that he typically drank one or two beers when out playing pool every two to three weeks.

***4** Petitioner Park was referred to Exhibit A-1, Dr. Connell's evaluation, and asked why he told Dr. Connell that he first consumed alcohol at the age of 18 as opposed to age 20 in his earlier testimony.

He explained that at the age of 18, he had one sip of MD 20/20 alcohol. He was an athlete and avoided taking risks that may prevent him from playing sports. At the age of 20, he drank his first full beer.

He was then asked why he failed to tell Dr. Connell that he had been drinking the night of the accident and had a blood alcohol content (or BAC) of .207.

Petitioner Park testified that the report was initiated to satisfy the Administrator's request for a depression disorder diagnosis and that it had nothing to do with the Administrator's later allegation of substance dependence.

Next, Petitioner called Dr. Leonard Weiss.

Education - Dr. Weiss, a distinguished graduate of MIT and Wayne State University School of Medicine, is a Board-certified professional in neurology and forensic and addiction psychiatry. With a thriving practice in Austin, Texas, Dr. Weiss's expertise was acknowledged as he was qualified as an expert in forensic and addiction psychiatry without objection.

On July 15, 2023, Dr. Weiss conducted a comprehensive virtual examination of Petitioner Park. The examination included a psychiatric interview, a mental status examination, and a meticulous review of records, which formed the basis of his expert report dated August 7, 2023. Dr. Weiss's findings were further reinforced by the consistency between Petitioner Park's history, airman medical file, and his interview.

Evaluation - Dr. Weiss testified that he found no markers that would support a finding that Petitioner Park has or had a substance dependence issue. He testified that Petitioner Park did not downplay his use of alcohol and that, generally, statistical inferences show that heavy drinkers are driven at not taking responsibility for accidents that happened while intoxicated.

He also reviewed Dr. Connell's report. Dr. Connell also found no substance abuse problem upon his review of the records.

Dr. Weiss testified that he does not understand how a federal agency could determine that someone has a substance dependence problem based upon one blood test at one point in time and no other history. He testified that in removing the BAC, he found nothing to support either short or long-term substance dependence.

He testified that it's not medically appropriate to create a determination of substance dependence without examining the entirety of a person's relevant medical history. He explained that the preface of the Diagnostic and Statistical Manual of Mental Disorders (DSM) discusses the importance of medical history in making diagnoses. He testified that it would be inappropriate to decide on substance dependency without having more than just a single, one-time evidence of an acute alcohol event, which goes to the heart of the issue.

***5** He testified that Petitioner Park does not meet the definition of having an alcohol use disorder as outlined in DSM-IV or 5, nor does Petitioner Park meet the definition of substance dependence of the Federal Aviation Regulations criteria.

Dr. Weiss opined that based on his training, education, and experience, and a reasonable medical certainty, Petitioner Park never had a substance dependency problem.

To support his opinion, Dr. Weiss considered the factors and the science of dependence to determine whether a person has a dependency issue. He explained that just because a person vaguely may fit one of the criteria, that does not lead to a diagnosis in the DSM-IV or 5 of substance abuse or dependence, nor the diagnosis of alcohol use disorder.

Dr. Weiss testified that a person having trouble figuring out how to put the clutch in and kickstart a dirt bike indicates a high degree level of intoxication and non-tolerant for alcohol. He explained that the cluster of symptoms in this case is not consistent with an increased tolerance to alcohol because a person can drive well enough to have a wreck.

Dr. Weiss adamantly disagreed with the Administrator's expert Dr. Danczyk's opinion that because Petitioner Park could get onto a dirt bike, start, and operate it with a BAC of .207, it is consistent with reduced sensitivity to the effects of alcohol and, therefore, demonstrates increased tolerance.

Dr. Weiss explained the definition of tolerance as something that happens over time. As an analogy, he called it a movie, and considering just one episode does not fit.

He testified that his opinion went into more detail than the regulations cover in a relatively broad fashion. Dr. Weiss reiterated that in this case there was no evidence of substance dependence. He explained that increased tolerance is 1 of 11 factors under the DSM and 1 of 4 factors under the regulations. He testified that based upon reasonable medical probability and, beyond that, reasonable medical certainty, Petitioner Park meets zero criteria under the DSM and the Federal Aviation Regulations.

On cross-examination, Dr. Weiss acknowledged that the regulations' definition does not restrict the time frame for any of the four criteria that must be present.

He also confirmed that the DSM requires at least two criteria within the previous 12 months and that the regulations require any 1 of 4 at any time in an airman's lifetime. Dr. Weiss acknowledged that someone may not have substance dependence under the DSM but still have it under the regulations.

Dr. Weiss was asked why he failed to mention the regulations' definition of substance dependence in his reports. Dr. Weiss explained that he subsumed the regulations' criteria because the definition of increased tolerance is the same in the DSM and the regulations.

In his opinion, Dr. Weiss testified that Petitioner Park does not fit the criteria for increased tolerance. He explained the overlap and addressed the issue through the DSM.

***6** Dr. Weiss testified that he disagrees that making predictions to a high degree of certainty or likelihood about an individual's tolerance could be based on their BAC alone. A BAC alone does not tell you anything. Instead, it's a huge inference. He avoids these types of statements because they obfuscate the case.

When asked whether he thought the DSM's criteria were arbitrary, Dr. Weiss explained that there will always be some arbitrariness but that the DSM is less arbitrary than the regulations.

At the end of Dr. Weiss's testimony, Petitioner rested his case subject to rebuttal.

The Administrator's Case-In-Chief - In response to Petitioner's case, the Administrator called Dr. Daniel Danczyk.

Dr. Danczyk is employed at the Administrator's Office of Aerospace Medicine, Medical Specialties Division, as the psychiatry branch manager. His responsibilities include advising the federal air surgeon on mental health and policy development, case reviews, and psychiatric and substance use disorder recommendations. He also educates pilots, community clinicians, and AMEs.

Dr. Danczyk graduated from the U.S. Military Academy at West Point and served in the National Guard and the U.S. Army from 1998 to 2004. He has a single-engine land, private pilot, and instrument-rated certificates.

He furthered his medical education at Michigan State University, College of Human Medicine Medical School, and obtained a master's in public health from the University of Minnesota. His expertise in both medicine and aviation is recognized by his Board certifications in aerospace medicine from the American Board of Preventative Medicine and psychiatry from the American Board of Psychiatry and Neurology. Dr. Danczyk was qualified as an expert in psychiatry, including substance dependence, under the Federal Aviation Regulations without objection.

Dr. Danczyk testified that in deciding whether a medical qualification issue exists, he reviews the airman's medical file and the airman's medical examiner's flight physical, which triggered the case review. He contacts the airman or healthcare provider for any gaps in records.

He testified that interviewing an airman in person is not practical and not part of their procedures due to the high volume of cases. However, given the nature and quality of some of the reports they receive, Dr. Danczyk explained that it is a concern when attempting to assess an airman accurately. Therefore, if additional information is needed, a request is made to the airman, a community mental health specialist, or a Human Intervention Motivation Study (or HIMS)-trained psychiatrist.

Dr. Danczyk testified that a record review is not a sub-standard way of evaluating an airman and expressed no concerns about using a paper review, even in lieu of a personal interview. He acknowledged the advantages of an in-person interview in that it can sometimes fill in the gaps that the community psychiatrists may not be able to due to their unfamiliarity with the air medical regulations.

***7** From a regulatory standpoint, Dr. Danczyk testified that there are also disadvantages, such as compounding bias. In the community, there are many advocates for the airmen, and although there is nothing wrong with advocacy, sometimes being one step removed would be a disadvantage for someone in a regulatory role.

He testified that only one criterion is required for an individual to have substance dependence under the Administrator's standard in the airman's lifetime.

In support of his opinion, Dr. Danczyk testified that he reviewed Petitioner Park's airman medical file, Dr. Weiss's reports, a chart of symptoms of certain BAC levels, the Administrator's 2018 technical report regarding tolerance, and a literature review, all conducted in strict adherence to regulatory standards, which led him to opine that Petitioner Park has substance dependence under the regulations and meets the increased tolerance criteria.

Dr. Danczyk explained that increased tolerance develops over time. He looks at the entire history, collateral sources outside the patient, family members, and people who know the airman better than the evaluator. He explained that getting all the information for review is only sometimes possible.

He testified that a BAC alone is not used to determine tolerance. One has to look at the patient's history to correlate what was going on when the BAC was taken. At that time, one must clinically correlate the history, symptoms, and all tests to an ultimate diagnosis.

As for Petitioner Park, Dr. Danczyk testified that he was able to learn a new behavior that someone who is not tolerant should not have been able to do. In addition, Petitioner Park was able to perform a very complex neurological activity. He was able to balance on the bike and drive it a distance without toppling over.

When asked to comment on Petitioner Park's testimony of the two instances of intoxication, Dr. Danczyk testified that it's relevant to show increased tolerance. It adds further history of repeated exposure to high levels of alcohol, and the BAC level itself shows it was developed over time.

He disagreed with Dr. Connell's opinion because he did not have all the information, such as the BAC. Dr. Connell also used the DSM and the regulation standard, similar to Dr. Weiss, to determine increased tolerance. He testified that the DSM's definition of substance dependence is different from the regulations. In addition, the regulation's time frame is at any point in the airman's lifetime.

Dr. Danczyk testified that the Administrator's purpose is to examine the safety of the national airspace. He explained that someone could meet the Administrator's definition of substance dependence but not the DSM-5 definition of substance dependence.

On cross-examination, Dr. Danczyk agreed that it's good practice to interview family or people with collateral knowledge to help fill in any gaps in the record. He also admitted that there was no record to show that the Administrator had contacted anyone to obtain details of what happened the night of the accident.

***8** Dr. Danczyk was asked what other information apart from the BAC did the government rely on to support the government's denial. He testified that alcoholism is a diagnosis and tolerance is a symptom. He testified that various aspects of Dr. Connell's and Dr. Weiss's reports provided additional history that supported the diagnosis and that the .207 BAC was satisfactory for him to support his opinion.

Outside of the accident, Dr. Danczyk admitted there was nothing concerning in Petitioner Park's airman's medical file -- no evidence to suggest that Petitioner Park had any interference in performing his family, school, or professional responsibilities due to substance dependence.

When asked, Dr. Danczyk admitted that the Administrator did not request that a drug abuse screening test or its equivalent be performed on Petitioner Park due to a concern about substance dependency. Lastly, Dr. Danczyk acknowledged that better information might have led to a better result based on a reasonable medical probability.

On redirect, Dr. Danczyk was asked about the abstinence requirement. He testified that to establish abstinence, the government looks to see that the individual has corroborating information that they have been abstinent. He testified that he saw no indication that Petitioner Park met the 2-year abstinence requirement.

The Administrator rested his case at the end of Dr. Danczyk's testimony.

In rebuttal, Petitioner Park returned to the stand.

Petitioner Park testified that if anyone had asked him to submit additional information, he would have done it immediately. He testified that short of going to the HIMS program or stating that he has alcoholism, he would have been willing to do almost anything to prove that he did not have a substance dependency problem.

Petitioner Park admitted he made a wrong decision after a rough year in Afghanistan that affected his life. He testified that through this process, as a prior military officer and an airline captain and stating that he has substance dependency through

a showing of increased tolerance has threatened his character and integrity. At this point, Petitioner Park testified that it is to clear his name.

At the end of Petitioner Park's testimony, he rested his case.

Credibility Determination - The Court's determination involves evaluating the weight of the evidence in the record. However, the witness credibility component is essential in all cases.

Petitioner Donald Park - Petitioner Park's testimony on direct and cross-examination was clear, candid, and straightforward. At no time was he evasive or non-responsive.

He did not try to minimize any aspect of his drinking experience. On cross-examination, when confronted with a question that counsel believed was inconsistent with his prior testimony, Petitioner Park answered the question without hesitation with a valid, reasonable, and believable response.

For instance, when asked why he did not inform Dr. Connell of his BAC of .207 on the day of the accident, Petitioner Park testified that the purpose of seeing Dr. Connell was to appease the Administrator's concern about his mental health and not about the Administrator's subsequent denial based on the allegation of substance dependence.

*9 When asked why he told Dr. Connell that the first time he consumed alcohol was at the age of 18, and in testimony, he testified he consumed alcohol at age 20, without hesitation, Petitioner Park explained that at 18, he sipped MD 20/20 alcohol. At the age of 20, he drank his first full beer.

The Court notes that at the time of the Administrator's request for information that led Petitioner Park to see Dr. Connell, no one, not even the Administrator, had mentioned substance dependence or indicated any problem with alcohol to Petitioner Park.

During direct and cross-examination, I gleaned nothing negative from Petitioner Park's testimony, demeanor, and the integrity of his responses. Instead, I saw a highly accomplished young man with a firm conviction for the truth.

His testimony was credible, especially when he explained why he chose to appeal -- words that stuck with me even after the hearing.

On direct examination, Petitioner Park was asked to explain his reason for appealing the Administrator's denial of a medical certificate.

Petitioner Park testified that, morally, he could not find himself going to a HIMS program and, quote, "play the part of an alcoholic," end quote.

Based on these reasons, the Court finds Petitioner Park credible in all respects

Let's go off the record.

(Off the record at 1:33 p.m.)

(On the record at 1:39 p.m.)

Closing Arguments - On behalf of the Petitioner, counsel argues that Petitioner Park had a terrible accident. The case then starts to stray into what Dr. Danczyk believes happened on the night of the accident.

The Administrator's claim that Petitioner Park has a substance dependence issue and failed to provide adequate information is unfounded. If the Administrator had concerns about the quality of the information it received, it could have requested more information about Petitioner Park's alcohol use just as it did for more information about other medical issues in the December 2021 letter or communicated this in the May 2022 denial letter.

Upon receipt of the denial letter, Petitioner Park made several attempts to speak to someone at the certification division to inquire what he needed to provide the agency to satisfy any concerns. Counsel argues that Dr. Danczyk, while acknowledging the Administrator's workload and the government's time constraints, underlined the need for adequate information.

Counsel points out that Petitioner Park has dedicated his life to his country, and the worst that the Administrator can say is that at the age of 18, Petitioner Park took a sip of MD 20/20 alcohol, and before he was deployed to Afghanistan, Petitioner Park got intoxicated.

Petitioner Park never denied being intoxicated on the day of the accident. The Administrator has the blood alcohol test of .207. Counsel argues the Administrator never requested more evidence, nor did they indicate that Petitioner Park provided insufficient evidence.

***10** Counsel argues that it is unfortunate that the Administrator is understaffed and overwhelmed. However, all the government needed to say was they needed more information about the blood alcohol test. Instead, the Administrator's position is that the government had enough evidence to make its decision.

The Administrator has the burden of proof to meet the minimum medical foundation to decide whether Petitioner Park has a substance dependence problem, which the government could have done. Instead, the Administrator made an arbitrary and capricious blank decision without putting adequate thought, deliberate process, and information to support it.

The question then becomes, did the government meet its medical foundation requirement to show that it had a sufficient basis to find that Petitioner Park has a substance dependence problem? Counsel points out that although Dr. Danczyk stuck to his diagnosis, he finally admitted that the government did not request more information, which would have been helpful.

Counsel points out that the HIMS may be a good program for those who have alcoholism, and there is no question we all want the skies to be safe.

Counsel argues that what we have here is the Administrator focusing on one number. Looking at a number does not require a psychiatric degree to say a person has a substance dependence problem within the means of the federal regulations because that number is greater than .20. That is not what medicine is all about.

Credibility is crucial. Petitioner Park provided the government with everything it requested -- more information about his injuries and other medical records. Now, almost two years later, Dr. Danczyk contends that the government needed more information. Counsel argues that the Administrator could have informed Petitioner Park, through his counsel, what additional information the government needed to make an informed decision. It is the government's responsibility to ask for further information in a timely manner, and if they did not, they should not complain that insufficient information was provided.

Lastly, counsel argues Dr. Weiss had nothing to hide. He testified that he treats people with addiction and that he would have had no hesitation to state that Petitioner Park has a substance dependence problem. Dr. Weiss opined that based on a reasonable medical probability, Petitioner Park does not have a substance dependence problem.

On behalf of the Administrator, Counsel argues that Petitioner Park has failed to meet his burden. Counsel argues this point is further underscored by the fact that among the two experts, Dr. Danczyk's opinion is more persuasive, logical, and in-depth, adding weight to the Administrator's position.

Dr. Danczyk's explanation sheds light on why someone without increased tolerance would find it impossible to drive a dirt bike for the first time at a .207 BAC. Counsel argues that his testimony provides a clear understanding of what most likely transpired for Petitioner Park to be able to get on the bike, balance it, learn how to handle the clutch and throttle, and drive the bike 3-to 400 feet.

***11** Both experts defined increased tolerance similarly, and regardless of the circumstances, the evidence for increased tolerance is measured the same. The only difference between the DSM diagnosis and the regulatory standard is the number of needed criteria.

Counsel admits there is no evidence of severe drinking incidences other than the dirt bike incident; however, it does not necessarily prove that there is no alcohol dependence. Both experts testified that, at times, one may not have all the evidence of someone's alcoholic history; thus, one does not have a complete picture.

It may be because of insufficient records or because people with alcohol or substance abuse disorders will minimize or hide information about their history. Thus, one cannot simply take a person's substance abuse history at face value. It has to be considered in light of other evidence. Contrary to opposing counsel's argument, Dr. Danczyk did not look at the BAC alone and concluded that the government's inquiry was complete.

Dr. Danczyk relied on a scientifically grounded study that the Administrator conducted in 2018. It explained how the BAC affects individuals. The study revealed that somebody who could manage to operate a motor vehicle at a .207 has shown increased tolerance.

Counsel argues that three government doctors considered the evidence in the context of all the records received and determined that with this high BAC, the most likely explanation based on research and scientific analysis is that Petitioner Park meets the criteria of increased tolerance.

Dr. Danczyk's decision not to interview Petitioner Park or request additional information should not be misconstrued as a reliance on substandard procedures. Counsel contends conducting a paper record review is reasonable because the Administrator does not have time to interview every individual to obtain the complete medical history.

Counsel argues that Petitioner Park relies on the fact that the Administrator could have requested more information. However, the government found the information it had sufficient. Further, if the government had asked for more information, it could have been more damaging to Petitioner Park. We just don't know.

It was after the government received the .207 BAC lab test that the Administrator realized there was a substance dependence issue and determined that Petitioner Park met the criteria for increased tolerance based on the scientific policy.

Counsel points out that Petitioner Park is a good man with a good life and deserves good things. However, it should not be a reason to decide in his favor. It is not a case about sympathy. Instead, it is a case of medical evidence. Petitioner Park has increased tolerance under the Administrator's definition -- standards that focus on safety rather than a clinical diagnosis.

Both experts agree that individuals with substance abuse issues tend to minimize or hide their history. Counsel contends it was not only the BAC that formed a sound basis to deny Petitioner Park an airman medical certificate but also Petitioner Park's concealment of history with Dr. Connell. Specifically, Dr. Connell did not find Petitioner Park with substance dependence because he lacked critical information on the BAC.

***12** In addition, Dr. Weiss did not address Petitioner Park's inconsistencies. Petitioner Park claimed complete abstinence since the April 2019 incident but later told Dr. Connell that he was still drinking as of January 2022. He recognized that discrepancy

and corrected it to Dr. Weiss before his testimony. Dr. Weiss's purported attention to detail and his less than careful distinction between the regulations standard and the DSM make his opinion less persuasive.

Among the experts, Dr. Danczyk's experience is more aviation-focused on aerospace medicine, and he has spent time evaluating pilots for substance abuse disorders. His experience differs from Dr. Weiss, making his testimony more persuasive.

Dr. Weiss testified that there is no evidence of tolerance built up over time. On the contrary, Dr. Danczyk testified that building tolerance over time can be as quick as two to three weeks. Thus, the fact that the record does not show a pattern of binge or heavy drinking going back in time does not show a lack of tolerance.

Counsel argues that Petitioner Park's evidence is a sympathetic story of frustration with the Administrator, but he failed to satisfy his burden of proof.

In rebuttal argument, Petitioner Park, through counsel, argues that the Administrator states that the government does not have to request additional information. It can be a guess as long as the government thinks it is right, could be right, or might be right. The government does not even have to care because it can do what it wants because of its broad grant of authority to make medical decisions that nobody can overcome.

Dr. Weiss has a tremendous reputation and a tremendous CV for working on both sides of these issues. He is a board-certified psychiatrist and a board-certified addiction specialist.

Other than the government's doctors, no one has ever stated that Petitioner Park has an issue with alcohol and is substance dependent. Petitioner Park does not have a substance dependency problem, and shame on Dr. Danczyk for opining that he does, knowing that all that he relied on was a number and a 2018 report.

Discussion & Analysis - Having summarized the testimony and the parties' arguments, I now discuss the evidence.

In *Petition of Witter*, NTSB Order EA-4500 (1996), the Board stated, "In proceedings that challenge the denial of a medical certificate, the burden of proof is on the Petitioner to establish his medical qualifications by a preponderance of the reliable, probative, and substantial evidence."

The Court's determination relies on the Petitioner's airman medical file, among other evidence, and the testimony of expert witnesses Dr. Weiss and Dr. Danczyk. In *Petition of Ruhmann*, NTSB Order EA-3710 (1992), in weighing medical and expert testimony, the Board reviews and draws conclusions based on the quality of the medical opinion. This quality depends on the medical opinion's logic, objectivity, persuasiveness, and depth.

***13** The Court, recognizing the crucial role of expert opinions in legal proceedings, finds the medical credentials and educational backgrounds of Dr. Weiss and Dr. Danczyk to be remarkably impressive. In light of the divergent opinions presented, the Court has carefully reviewed both experts' opinions and testimony.

The Court, after careful consideration, finds Dr. Weiss's opinion more compelling in determining whether Petitioner Park meets the criteria of substance dependence through increased tolerance. The Court acknowledges that Dr. Danczyk's opinion, while at times overreaching and unpersuasive, has been duly considered in this case.

Dr. Danczyk opined that Petitioner Park meets the criteria of increased tolerance, evidenced by his ability to learn how to operate a dirt bike, which someone who is not tolerant should not have been able to do with a BAC of .207. Petitioner Park performed a complex neurological activity by balancing the bike and driving it a distance without toppling over.

In contrast, Dr. Weiss testified that a person having trouble figuring out how to start and operate a dirt bike indicates a high degree level of intoxication and non-tolerant for alcohol. Petitioner Park's collection of symptoms is also not consistent with increased tolerance to alcohol because a person can drive well enough to have a wreck.

Dr. Weiss's opinion was persuasive and rooted in logic and depth. His personal experience with alcoholism and the knowledge gleaned from that experience is powerful, and his experience as a practitioner, psychiatrist, and addiction specialist bolsters his opinion.

Dr. Weiss testified that just because a person vaguely may fit one of the criteria, that does not lead to a diagnosis of substance dependence under the DSM-IV and 5, nor the regulations. He testified that he does not understand how a federal agency could determine that someone has a substance dependence problem based upon one blood test and no other history.

He testified that making predictions to a high degree of likelihood about an individual's tolerance could be based on their BAC alone, which does not tell anyone anything other than to make an enormous inference. Dr. Weiss testified that he avoids making these interpretations because it obscures the case. He testified that in removing the BAC, he found nothing to support either short or long-term substance dependence. Based on his training, education, experience, and reasonable medical certainty, Dr. Weiss testified that Petitioner Park never had a substance dependency problem.

The Court notes Dr. Weiss's thoroughness and virtual examination of Petitioner Park to obtain a complete picture to fill in any gaps, these actions did not go unnoticed. In his report, Dr. Weiss outlined in great detail Petitioner Park's background and the circumstances of the accident: an alcohol-involved accident that resulted in serious injuries. Dr. Weiss testified that at no time did Petitioner Park try to downplay his use of alcohol and took full responsibility for the heavy drinking that led to the accident, which he found noteworthy.

***14** On the other hand, Dr. Danczyk's reliance solely on a paper review without making any effort to seek more information or contacting collateral sources such as healthcare providers and family members is a significant and concerning oversight.

Despite Dr. Danczyk's testimony that seeking information from collateral sources is not always possible, the record is devoid of any attempts to do so. In the same vein, Dr. Danczyk testified that a BAC, along with other history, is considered to correlate with the circumstances when the BAC was taken. However, the Court sees no evidence to suggest that this correlation was thoroughly examined.

The Administrator relies on the BAC and its 2018 study, which indicates a BAC of over .20 is good evidence of increased tolerance. Although the Administrator's counsel asserts that the government relied on BAC-level symptoms and outside literature to show increased tolerance, that alone was not enough when inconsistent evidence showed otherwise.

Beyond that, if the Administrator was concerned that Petitioner Park was alcohol dependent, the Administrator could have requested that Petitioner Park obtain a drug abuse screening test, or its equivalent, be performed on him by a reputable testing center and that the result be sent to the Administrator.

Both experts testified that increased tolerance is a product of gradual development. The record shows that Petitioner Park's life has been characterized by focusing on his military career, engaging in highly technical missions without excessive or heavy drinking, and similar activities. Petitioner Park himself testified that at a young age, he avoided risky behavior -- one being consuming alcohol -- that may jeopardize him from playing sports. He also confirmed that he had been intoxicated on only two occasions in his life. The Court, applying rigorous logical reasoning, finds interpreting these two isolated incidents as evidence of increased tolerance over time untenable.

Above all, once the government obtained the BAC lab results, it stopped all investigations, halted any need for additional information, and discarded any notion of discovering anything other than Petitioner Park has a substance dependence problem.

To the Administrator, the BAC lab result became a sure-fire winner in showing substance dependence through increased tolerance regardless of any other evidence demonstrating otherwise simply because, according to the Administrator, the BAC was sufficient, and any additional information was unnecessary to support that contention.

While practical, the Administrator's paper record review was deficient in showing that Petitioner Park meets the tolerance criteria. It's important to note that Dr. Danczyk, a respected authority in the field, testified that a record review is not an inferior way of evaluating an airman and expressed no concerns about using a paper review even in place of a personal interview. However, it's crucial to acknowledge that a paper review, despite its practicality, may not always provide a complete picture.

***15** Dr. Danczyk's testimony, as it stands, is marked by uncertainty. He followed the annotation guidance, which was based on the medical opinions of the government's doctors, Dr. Flynn and Dr. Dumstorf. They believed that the BAC indicated alcohol dependency due to increased tolerance. However, Dr. Danczyk's responses during cross-examination were often wavering and uncertain. He expressed a belief, but not a scientific certainty, that Petitioner Park was substance dependent. He also conceded that better information could have led to a more accurate conclusion based on a reasonable medical probability.

Petitioner Park was fearless in answering opposing counsel's questions on the witness stand. He testified that short of going to a HIMS program and playing the part of an alcoholic, he would have been willing to do almost anything reasonable to prove to the Administrator that he did not have a substance dependency.

In his closing argument, the Administrator, through counsel, argued that had the government requested more information, it could have been more damaging to Petitioner Park. At the very least, the Administrator's argument is troubling. The Court understands that the Administrator's purpose is to maintain the safety of the national airspace. In doing so, however, the Administrator must not only emphasize but also prioritize the importance of considering any evidence that may support the airman instead of ignoring any potential evidence in a sweeping manner as if getting it wrong is acceptable.

The Administrator further argues that Petitioner Park's case, while sympathetic, should not be decided on emotional grounds. Instead, it should be based on the impartial medical evidence. As the embodiment of justice, the Court agrees that this case is indeed sympathetic. However, it also impartially and unequivocally recognizes the solid evidence that strongly indicates that Petitioner Park does not suffer from alcohol dependence. Petitioner Park, unfortunately, finds himself in this predicament, incurring legal fees to make things right. Sometimes, an accident is just that -- an accident -- showing, as Dr. Weiss testified, a high degree level of intoxication and non-tolerant for alcohol.

As noted, Dr. Weiss defined tolerance as a progression that unfolds over time, like a movie; therefore, a single episode does not align with this definition. If the government is relying on one incident, one factor, or one BAC to show substance dependence, where, at the same time, circumstantial evidence leads a reasonable person to the conclusion that the airman may not have a substance dependence, in that case, additional measures such as follow-up interviews or collateral sources must be sought. These actions are not a mere formality but a necessary step to ensure the accuracy and fairness of the government's determination. This approach, designed to be fair and just, does not require interviewing all applicants, only those that raise the question that the government's theory may be overreaching, such as in Petitioner Park's case.

***16** In short, the weight of the evidence supports Petitioner Park's contention. The Court finds the testimony of Petitioner Park highly credible, and that of his expert witness, Dr. Weiss, is undoubtedly persuasive. On the other hand, Dr. Danczyk's opinion is deficient in overcoming other evidence to support the Administrator's position that the BAC alone shows Petitioner Park is alcohol-dependent.

The Court notes that the Board has decided numerous cases over the years involving alcohol-related motor vehicle events, and the majority of them involve criminal DUI incidents where the driver drove a car on public streets.

In *Petition of Lazzari*, NTSB Order EA-5907 (2021), the Board stated, quote, “[w]e do not find that every DUI or other alcohol-related event is, without more, per se disqualifying,” end quote. The Board ultimately found the petitioner disqualified due to substance dependence, as in that case, there was more to consider. The petitioner in *Lazzari* had a road rage DUI arrest, and in another incident, he was found passed out in the street with a BAC of .328.

Petitioner Park's case is distinguishable from *Lazzari*'s because Petitioner Park only had one event in his entire lifetime. Additionally, although Petitioner Park's BAC was elevated at .207, it was still well shy of the BAC in *Lazzari*.

In *Petition of Bates*, NTSB Order EA-4195 (1994), the Board upheld the law judge's decision reversing the Administrator's denial of a medical certificate where the petitioner had a history of a DWI arrest and conviction. The petitioner in *Bates* was also a helicopter pilot with a history of military service.

The Board stated quote, “[t]he Administrator had no evidence of marital or work-related problems. There was no evidence of alcoholic pattern. There was no indication that petitioner had been impaired by alcoholic intake or that alcohol was necessary to his normal functioning. And one DWI is not, in our view, proof of social dysfunction.” The same could be said, almost verbatim, about Petitioner Park, with the exception that Petitioner Park's accident was not a crime.

Because the Court finds that Petitioner Park met his burden to show that he does not have a medical history or a clinical diagnosis of alcohol dependence through the criteria of increased tolerance, an analysis of Petitioner Park abstaining from alcohol or any other substance on which one is dependent for at least two years is not applicable and moot.

Notwithstanding the foregoing, the Administrator also cites legal authorities supporting his position, and the Court addresses each case in turn.

In granting the Administrator's appeal in *Dustman*, NTSB Order EA-5657 (2013), the Board found that respondent's BAC of .239 was a factor in determining increased tolerance. However, other factors supported the criteria of increased tolerance: for instance, respondent's purposeful functioning after consumption, operating his vehicle despite his high BAC, and a history of blackouts and binge drinking spanning over ten years, among other episodic patterns of behavior. In contrast, Petitioner Park's history is devoid of any episodic patterns of behavior of alcohol-related factors. Petitioner Park's case is distinguishable from *Dustman*.

***17** In *Petition of Singh*, NTSB Order EA-5663 (2013), the Administrator's appeal was granted, as the Petitioner was found to be ineligible for a medical certificate due to substance dependence. The Administrator's expert played a crucial role in this, providing testimony that a high BAC of .29 indicated increased tolerance. Despite this, the petitioner also met the impaired control of use criteria. Notably, the law judge overlooked evidence in the airman file to support substance dependence, and the petitioner's doctor's opinions were based on clinical evidence rather than the regulations standard, which influenced the Board's decision in granting the appeal.

The Court draws attention to the stark contrast between Petitioner Park and Petitioner Singh's actions. Petitioner Park's airman medical record was considered, and his expert, Dr. Weiss's opinion, considered the regulations in determining whether Petitioner Park met the criteria of substance dependence. Unlike Petitioner Park, who mounted a dirt bike on a flat farm field and crashed it instantly after fumbling with the clutch and throttle, Petitioner Singh operated a motor vehicle on public roads long enough to cause two accidents. In addition, Petitioner Singh met another criterion to support a finding of substance dependence. Petitioner Park's case is distinguishable from the *Petition of Singh*.

For the foregoing reasons, the Court finds the preponderance of the reliable and probative evidence does not support the Administrator's Aerospace Medical Certification Division's determination that Petitioner is ineligible to receive a medical certificate under 14 C.F.R. §§ 67.107(a)(4), 67.207(a)(4), and 67.307(a)(4) due to substance dependence.

The Administrator prematurely, and without sufficient information, labeled Petitioner as having substance dependence. Through these proceedings, Petitioner Park has proven that he does not have, and has never in his life had, substance dependence.

ORDER

It is HEREBY ORDERED that safety in air commerce and air transportation, and by a preponderance of the reliable and probative evidence, shows that Petitioner established that he meets the requirements as defined in the Federal Aviation Regulations for an unrestricted medical certificate of any kind and that the Administrator's denial of his application based on an alleged history or diagnosis of substance dependence was unjustified.

It is FURTHER ORDERED that the Administrator's May 5, 2022, denial of Petitioner's application for an unrestricted first-class airman medical certificate is hereby REVERSED.

Entered this 6th day of June 2024 at San Antonio, Texas.

ALISA M. TAPIA
Administrative Law Judge

National Transportation Safety Board (N.T.S.B.)
2024 WL 3293348 (N.T.S.B.)

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