Federal Aviation Administration

Memorandum

Date: March 28, 2007

To: Frederick E. Tilton, MD, Federal Air Surgeon, Office of Aerospace Medicine, AAM-1

From: Rebecca MacPherson, Assistant Chief Counsel, Regulations Division, Office of the Chief Counsel, AGC-200

Subject: Withdrawal of an Application for Medical Certification and its Effect on the Exercise of Sport Pilot Privileges

This memorandum responds to your request for an interpretation regarding the eligibility of a person to exercise sport pilot privileges after being denied an application for an airman medical certificate by an aviation medical examiner when that person does not ask for reconsideration of the application. Specifically, you note that if a person does not ask for reconsideration during the 30-day period after the denial he or she is considered by the agency to have withdrawn the application under the provisions of Title 14, Code of Federal Regulations (14 CFR) § 67.409(a).

14 CFR § 61.23(c)(1) states that a person may exercise the privileges of the following certificates while holding and possessing either a medical certificate or U.S. driver's license:

> A student pilot certificate while seeking sport pilot privileges in a light-sport aircraft other than a glider or balloon;
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> A sport pilot certificate in a light-sport aircraft other than a glider or balloon; and
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> A flight instructor certificate with a sport pilot rating while as acting as pilot in command or serving as a required flight crewmember of a light-sport aircraft other than a glider or balloon.

Section 61.23(b)(2)(ii) states that if a person uses a current and valid U.S. driver's license to meet the requirements for the exercise of the privileges specified in § 61.23(c)(1) that person must "have been found eligible for issuance of at least a third-class airman medical certificate at the time of his or her most recent application (if the person has applied for a medical certificate)."

In the preamble to the Final Rule "Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft" (Sport Pilot Rule) the FAA stated that "the words "most recent application" refer to the latest medical application that is on file with the FAA and on which action was taken" (67 FR 44815, July 27, 2004). Specifically, resolution of the issue addressed in this interpretation is dependent upon whether an application for a medical certificate that is considered withdrawn under the provisions of § 67.409(a) constitutes an applicant's "most recent application."

When a person fails to ask for reconsideration of an application for a medical certificate after a denial by an aviation medical examiner under the provisions of § 67.409(a), the FAA considers the applicant to have acquiesced in the determination of the examiner and to have expressed a clear intent that the application should no longer be subject to further consideration by the agency. Although the application is considered withdrawn, that determination does not, however, negate the fact that the application had indeed been made. This view of the application's status is reflected in the regulatory history of § 67.409(a). 14 CFR § 406.12(e), the predecessor section of 14 CFR § 61.27(a) which later became § 67.409(a), stated that "in the event no application for reconsideration is made within thirty days of the action of the aviation medical examiner, the applicant will be deemed to have acquiesced in the action and to have withdrawn his application for *(a)* medical certificate." Although the language referring to the applicant's acquiescence is no longer contained in the current regulation, it was removed as a result of a non-substantive change to § 406.12(e) when that section was recodified as § 67.27 in 1962 (27 FR 7954, August 10, 1962). The FAA continues to consider failure to ask for reconsideration of an application for an airman medical certificate to constitute acquiescence in the decision of the aviation medical examiner and a removal of the application from any further consideration by the agency.

The FAA recognizes that the decision of an aviation medial examiner does not constitute a final agency action, however it does constitute an action taken by the agency for purposes of determining whether an application for an airman medical certificate is considered a person's "most recent application" and whether that person may exercise the privileges of the certificates specified in § 61.23(c)(1).

In the Sport Pilot Rule the FAA was careful to specify that the ability of a person to use a U.S. driver's license to exercise the privileges of the certificates specified in § 61.23(c)(1) is based on that person being found eligible for the issuance of his or her most recent application for an airman medical certificate. The agency did not draft the rule to preclude the exercise of these privileges based upon the more restrictive action resulting from a denial of a person's most recent application for an airman medical certificate. The FAA recognized that a person may apply for an airman medical certificate and, for a number of reasons, a final agency action may not be immediately forthcoming. In addition to the case where a person's application for a medical certificate is considered withdrawn, a final agency action may not be immediately forthcoming in cases such as those where an applicant may possess a medical condition that requires the submission of additional information or further medical evaluation. Under such situations, the agency considers it inappropriate for an individual to exercise the privileges of the certificates specified in § 61.23(c)(1) until a determination of that person's eligibility for the issuance of a medical certificate has been made.

As it is current agency policy to retain a copy of a withdrawn application for an airman medical certificate on file, an application that has been withdrawn under § 67.409(a) and not superceded by a subsequent application constitutes that person's "most recent application" under § 61.23(b). A person whose application for an airman medical certificate is considered withdrawn under the provisions of § 67.409(a) may therefore not exercise the privileges of the certificates specified under § 61.23(c)(1) while holding and possessing a U.S. driver's license until that person has subsequently been found eligible for the issuance of at least a third class medical certificate.

If you have any further questions please contact Mr. Paul Greer of my staff at (202) 267-7930.

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