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U.S. Department of Transportation
Docket Management System
400 7th Street, SW., Room PL 401
Washington, DC 20591-0001

Ms. Marion C. Blakey
Administrator
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re: Request for Reconsideration of Exemption Denial
of David B. Patton
(Exemption No. 9275; Regulatory Docket No. FAA-2007-27890)

Dear Ms. Blakey:

Pursuant to 14 C.F.R. §11.101 and 49 U.S.C. § 44701(f), I hereby request reconsideration of the denial of my petition for exemption from § 121.383 (c) of Title 14, Code of Federal Regulations.

The denial of my petition for exemption from this rule, commonly known as the “Age 60 Rule,” was arbitrary and capricious. It further violates both constitutional and federal law, which protect me from discrimination based on my age. I specifically ask for reconsideration of the following factors that were not addressed in your letter of denial.

A. Failure to Consider My Individual Physical Condition and Capabilities as a Pilot.

The letter from the Federal Aviation Administration (FAA) constitutes a blanket denial of my petition without consideration of my physical condition or capabilities or experience in operating aircraft. See § 11.101 (a). Rather, the letter is identical to those sent to dozens of other pilots requesting exemption. The denial of my petition was based on a policy to treat all pilots as de facto public safety risks due entirely to their age. See 60 F.R. 65977. While I have maintained that I am fully capable both physically and mentally to serve as a pilot in this capacity, the denial letter omits any reference or evaluation of my individual case or capabilities. It solely addresses my age and denies my petition on that categorical basis. I ask that the FAA review my individual case and evaluate my individual ability to meet or exceed the qualifications required for pilots in the operation of these aircraft.

B. Factual Errors in the Denial of Exemption.

The denial letter states that the FAA “cannot overturn more than 40 years of precedent in this area without a deliberative process.” This statement is in error. See § 11.101 (b). If, as I allege below, the Age 60 rule is unlawful and arbitrary, the FAA is under an obligation to

suspend the rule immediately. Furthermore, the denial letter does not address the fact that the FAA is allowing pilots over 60 to routinely fly into and out of the United States as employees of foreign airlines. Thus, while asserting public safety as a concern, the FAA permits the same pilots barred under this policy to fly many of the same routes over U.S. territory by simply changing their airlines. Likewise, the letter fails to address the fact that other agencies, including the National Aeronautics and Space Administration, has rejected this limitation. Part 121, 14 C.F.R. §121.383 (c). Thus, the policy is not consistently applied to pilots within FAA's jurisdiction or within the government as a whole.

C. Failure to Comply with Federal Law Governing the Use of Age as a Determinative Factor in Denying Pilots the Right to Operate Commercial or International Flights.

The denial letter does not address controlling federal law that clearly states that age may not be used as a sole criteria in this agency determination. See § 11.101 (c). The rule violates the due process and equal protection rights under the United States Constitution as well as statutes protecting me from discrimination based on age or perceived disability. U.S. Const. Am. V & XIV; Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621, et seq.; Rehabilitation Act, 29 U.S.C. §794(a). The United States Equal Employment Opportunity Commission (EEOC) has advised, pursuant to Executive Order 12067, that the FAA cannot use age as a bona fide occupational qualification and that it is discriminatory under the ADEA. As noted above, it is also not true as a legal matter that the FAA cannot suspend this rule or grant interim waivers in light of the legal and policy flaws in the rule, particularly given the clear conflict in allowing pilots over 60 to fly for foreign airlines or other federal agencies. An agency order or action must be reversed if it is "not in accordance with law." 5 U.S.C. 706(2); see also *Nextwave Personal Communications, Inc. v. FCC*, 254 F.3d 130, 149 (D.C. Cir. 2001).

Given these flaws and omissions, I ask for a reconsideration of my denial and a consideration of my individual qualifications and capabilities. Finally, this letter is also to inform you that I am currently represented by the undersigned counsel in this matter. I ask that any further communications be sent through his office.

Thank you for your assistance on this matter.

Respectfully submitted,

David B. Patton

By Counsel

s/Jonathan Turley

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