

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

Friedman v. Federal Aviation Administration

841 F.3d 537 (D.C. Cir. 2016) · No. No. 16-1007 · Decided November 15, 2016

SUMMARY

The D.C. Circuit held that the FAA's conduct constructively denied Eric Friedman's application for a first-class medical certificate, making the matter final agency action subject to judicial review. Friedman, an insulin-treated diabetic commercial pilot, challenged the FAA's demand for at least 90 days of continuous glucose-monitoring data. The court remanded the matter to the FAA to provide reasons for its denial because the agency had not supplied a sufficient explanation or administrative record.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Brown; Rogers; Pillard
JURISDICTION	Federal
DECIDED	November 15, 2016
DOCKET	No. 16-1007
DISPOSITION	remanded
PROCEDURAL POSTURE	Petition for review of an order and related agency conduct by the Federal Aviation Administration concerning Friedman's application for a first-class airman medical certificate.
STANDARD OF REVIEW	The court applied the Administrative Procedure Act's arbitrary-and-capricious framework and reviewed whether the FAA's conduct constituted final agency action under the applicable finality principles. It also considered whether the governing regulations supplied a judicially manageable standard.
PRECEDENTIAL VALUE	Published federal appellate opinion; precedential
PARTIES	Eric Friedman v. Federal Aviation Administration

TOPICS

judicial review of agency action

administrative law

final judgment rule

standard of review

medical licensing

PRACTICE AREAS

administrative law

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judicial review of agency action

QUESTIONS PRESENTED

1. Whether the FAA's repeated requests for continuous glucose monitoring data, deadlines threatening denial, and refusal to issue a definitive decision constituted final agency action subject to judicial review.
2. Whether the FAA's special-issuance regulations supplied a judicially manageable standard for review of its decision concerning Friedman's first-class medical certificate.
3. Whether the FAA provided a reasoned explanation and an adequate administrative record supporting its demand for continuous glucose monitoring data and denial or constructive denial of Friedman's application.

HOLDINGS

1. The FAA's conduct constituted a constructive denial and final agency action because the Agency had effectively made up its mind to require continuous glucose monitoring data, set and allowed denial deadlines to pass, and refused either to issue a definitive denial or to proceed without the data.
2. The FAA's regulations provide a judicially manageable standard for reviewing the special-issuance decision because they require consideration of whether the applicant can perform the duties authorized by the requested certificate without endangering public safety and require consideration of safety risks to persons and property.
3. The FAA failed to provide a reasoned explanation or an adequate administrative record supporting its demand for continuous glucose monitoring data and its denial or constructive denial of Friedman's application.

KEY QUOTATIONS

“The Agency cannot manipulate its own processes, threatening denial but then refusing to deny or otherwise take definitive action on Friedman’s application, in an effort to thwart judicial review.”

“Where an agency has clearly communicated it will not reach a determination on a petitioner’s submission due to petitioner’s recalcitrance but simultaneously refuses to deny the petitioner’s submission on those grounds, it has engaged in final agency action subject to this Court’s review.”

FACTUAL BACKGROUND

Eric Friedman, a commercial airline pilot with insulin-treated diabetes mellitus, held a third-class medical certificate and sought the first-class certificate required for his commercial pilot position. The FAA repeatedly requested continuous glucose monitoring data for at least ninety days, despite Friedman's statements that he did not use a continuous glucose monitor and letters from his physicians and an expert panel stating that such

monitoring was not necessary or appropriate for certification decisions in his case. The FAA warned that failure to comply would result in denial, but instead left his first-class application under consideration while granting him another third-class certificate.

PROCEDURAL HISTORY

Friedman applied for a first-class medical certificate under the FAA's special-issuance process. The FAA repeatedly requested at least ninety days of continuous glucose monitoring data, warned that failure to provide it would result in denial, and then left the application formally under consideration without issuing a definitive denial. Friedman petitioned the D.C. Circuit for review, and the court held that the FAA's conduct constituted final agency action subject to review.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The FAA must provide reasons for its denial or constructive denial of Friedman's application for a first-class medical certificate. Friedman's additional allegations were left for proceedings on remand.

CASES CITED

- Flytenow, Inc. v. FAA, 808 F.3d 882, 888-89 (D.C. Cir. 2015)
- Comcast Corp. v. FCC, 526 F.3d 763, 769 n.2 (D.C. Cir. 2008)
- Bennett v. Spear, 520 U.S. 154, 177-78 (1997)
- Rhea Lana, Inc. v. Dep't of Labor, 824 F.3d 1023, 1027 (D.C. Cir. 2016)
- City of Dania Beach v. FAA, 485 F.3d 1181, 1187 (D.C. Cir. 2007)
- Environmental Defense Fund, Inc. v. Ruckelshaus, 439 F.2d 584, 591 (D.C. Cir. 1971)
- Ciba-Geigy Corp. v. EPA, 801 F.2d 430, 435-37 (D.C. Cir. 1986)
- Environmental Defense Fund, Inc. v. Hardin, 428 F.2d 1093, 1098-99 (D.C. Cir. 1970)
- SecurityPoint Holdings, Inc. v. Transportation Security Administration, 769 F.3d 1184, 1187 (D.C. Cir. 2014)
- Air One Helicopters, Inc. v. FAA, 86 F.3d 880 (9th Cir. 1996)
- Air Line Pilots Ass'n International v. Civil Aeronautics Board, 750 F.2d 81 (D.C. Cir. 1984)
- Drake v. FAA, 291 F.3d 59, 70 (D.C. Cir. 2002)
- Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 410 (1971)
- Safe Extensions, Inc. v. FAA, 509 F.3d 593, 601 (D.C. Cir. 2007)
- Union of Concerned Scientists v. U.S. Nuclear Regulatory Commission, 824 F.2d 108, 109, 113 (D.C. Cir. 1987)
- Safe Extensions, Inc. v. FAA, 509 F.3d 593, 606 (D.C. Cir. 2007)
- Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743-44 (1985)
- Sierra Club v. Thomas, 828 F.2d 783, 793 (D.C. Cir. 1987)

- Village of Bensenville v. FAA, 457 F.3d 52, 68 (D.C. Cir. 2006)

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