

U.S. DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION
Washington, D.C.

In the Matter of:)
)
 RACHEL STRICKLAND,) Docket No. 05-TSA-0058
)
 Respondent)

FINAL DECISION AND ORDER

Introduction

Pursuant to 49 C.F.R. §§1503.16(h) and 1503.233, Rachel Strickland (Respondent) is appealing the initial decision of the Administrative Law Judge (ALJ) to the Transportation Security Administration (TSA) Decision Maker.¹ The TSA Decision Maker is the Under Secretary of Transportation for Security, now designated as the Assistant Secretary of Homeland Security, or “any person to whom the Under Secretary has delegated the Under Secretary’s decision making authority in a civil penalty case.”² The ALJ initial decision under appeal assesses a civil penalty on the Respondent in the amount of \$750.00 for violation of 49 C.F.R. § 1540.105(a)(2). For the reasons stated below, the initial decision of the ALJ is affirmed. Accordingly, Respondent’s appeal is denied.

Standard of Review

The regulations governing appeals of an initial ALJ decision specify the standard of review. 49 C.F.R. § 1503.233(b) states that “a party may appeal only the following issues: (1)

¹ 49 C.F.R. § 1503.16(h) states, “Either party may appeal the administrative law judge’s initial decision to the TSA decision maker pursuant to the procedures in subpart G of this part. If a party files a notice of appeal pursuant to 49 C.F.R. § 1503.233, the effectiveness of the initial decision is stayed until a final decision and order of the Administrator have been entered on the record. The TSA decision maker will review the record and issue a final decision and order of the Administrator that affirms, modifies, or reverses the initial decision. The TSA decision maker may assess a civil penalty but will not assess a civil penalty in an amount greater than that sought in the complaint.”

² 49 C.F.R. § 1503.202. By Delegation Order effective July 27, 2004, the Assistant Secretary delegated decision making authority in a civil penalty case to the TSA Deputy Administrator. The title of Deputy Administrator was changed to Deputy Assistant Secretary.

whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence; (2) whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and (3) whether the administrative law judge committed any prejudicial errors during the hearing that support the appeal.”

Synopsis of the Facts and Procedural History

On January 13, 2005, Respondent was an employee of Independence Air at Washington Dulles International Airport. Respondent had not been issued a Security Identification Display Area (SIDA) badge and thus, could not enter or be present in the SIDA without an escort.³

Respondent was escorted into the SIDA by an Independence Air employee who held a SIDA badge. Respondent did not remain with her escort and was requested to produce a SIDA badge by another Independence Air employee. Despite repeated requests, Respondent did not produce a SIDA badge which would have authorized her presence in the SIDA without an escort.

Respondent became uncooperative. A law enforcement officer asked Respondent to produce her SIDA badge. Respondent replied that she was told she did not need a SIDA badge. The officer asked Respondent to exit the SIDA. Respondent refused and was escorted out of the SIDA by the officer. Respondent would not explain why she was present in the SIDA without her escort. Respondent was arrested and charged with criminal trespass and obstruction of justice.

TSA served Respondent with a Notice of Proposed Civil Penalty on August 11, 2005. Attached to the Notice was an Options Sheet which explained that if Respondent requested a formal hearing before an ALJ, the hearing would be conducted in accordance with 49 C.F.R. § 1503. Respondent sent a request for a formal hearing on September 5, 2005. On September 14, 2005, TSA sent a letter to Respondent to further explain the options. The letter specifically

³ 49 C.F.R. § 1540.105(a)(2) states that no person may enter or be present within a SIDA without complying with the systems, measures, or procedures being applied to control access to, or presence, or movement in such areas.

indicated that TSA regulations required Respondent to file an Answer to the formal complaint. On September 15, 2005, TSA spoke with Respondent to inform her of the letter; however, Respondent refused to accept delivery of the letter. TSA filed a formal complaint on September 29, 2005, alleging that Respondent violated 49 C.F.R. 1540.105(a)(2) and proposed a civil penalty of \$750.00. On November 14, 2005, TSA sent another letter to Respondent again informing her of the requirement to file an Answer. On November 22, 2005, Respondent returned the Options sheet requesting a formal hearing before an ALJ. Respondent wrote that she was not filing an Answer and that she would not be represented by counsel. Respondent further claimed that she was not informed that she was required to file an Answer.

TSA filed a Motion for Decision on December 6, 2005 arguing that, pursuant to 49 C.F.R. § 1503.209(f), Respondent's failure to file an Answer without good cause constitutes an admission of the truth of each allegation contained in the complaint. TSA further contended that because Respondent failed to file an Answer, there were no genuine issues of material fact to be resolved, and, therefore, TSA's motion must be granted in accordance with 49 C.F.R. § 1503.218(f)(5).⁴

The ALJ granted TSA's motion in an Order dated January 6, 2006 and assessed a civil penalty in the amount of \$750.00. The ALJ noted that while Respondent claimed that she was not informed she had to file an Answer, the record is clear that she failed to file an Answer or any documentation within the 30 day period of time required by TSA's rules. The ALJ observed that TSA had informed Respondent that TSA had not received an Answer to the complaint, that TSA had provided Respondent with a copy of the rules, and that TSA had emphasized that she

⁴ This provision states that the ALJ "must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law."

should “*pay particular attention to Section 1503.209 regarding your obligation to file an Answer.*” [emphasis in the original]. On January 7, 2006, Respondent filed an Answer and an appeal of the ALJ initial decision. Respondent denied all allegations and stated that she had a written statement of what happened, although she did not include it in her appeal. She claimed that she had a witness who was a manager at Independence Air who would testify that the allegations were not true. She noted that the officer who placed her under arrest did not appear at her criminal trial and that the criminal charges against her were dismissed. Finally, Respondent requested that the Decision Maker conduct a formal hearing.

Findings

According to the standard of review required in an appeal, Respondent’s appeal may address only the following issues:

1. Whether the ALJ’s findings of fact regarding Respondent’s presence within the SIDA without an escort and failure to produce a SIDA badge are supported by a preponderance of reliable, probative, and substantial evidence;
2. Whether the ALJ’s conclusions of law that TSA met its burden to show that there were not genuine issues of material fact and that Respondent violated 49 C.F.R. § 1540.105(a)(2) were made in accordance with applicable law, precedent, and public policy; and
3. Whether the ALJ committed a prejudicial error during the hearing that supports the appeal.

In her appeal, while Respondent denies the allegations, Respondent does not present argument on any of these issues and thus, the appeal is denied and her request for a hearing is

also denied. Respondent also failed to perfect her appeal within the 50 days required by 49 C.F.R. § 1503.233(c). Moreover, the civil penalty assessment is appropriate.

Finding 1: The ALJ's findings of fact are supported by a preponderance of reliable, probative, and substantial evidence.

I agree with the initial decision of the ALJ that Respondent failed to file an Answer as required by TSA's rules despite repeated attempts by TSA to encourage Respondent to do so.

Finding 2: The ALJ's conclusions of law were made in accordance with applicable law, precedent, and public policy.

The ALJ properly concluded that TSA met its burden to demonstrate that this case presents no genuine issue of material fact and, therefore, was entitled to a decision as a matter of law in accordance with TSA regulations and applicable legal precedent.

Finding 3: There was no prejudicial error during the hearing to support the appeal.

While there was no hearing, the ALJ's analysis of the facts and conclusions of law do not demonstrate any prejudicial error which would support Respondent's appeal.

Finding 4: Respondent's request for a formal hearing before the TSA decision maker is denied.

Pursuant to TSA regulations, the TSA decision maker has sole discretion to permit oral argument on appeal.⁵ Based on my review of the record, oral argument is not required in this case.

Finding 5: Respondent failed to perfect her appeal as required by TSA regulations.

Respondent had sufficient time to perfect her appeal within 50 days after service of the initial decision as required in 49 C.F.R. § 1503.233(c). TSA regulations permit the decision maker to dismiss an appeal, on the TSA decision maker's own initiative or upon motion of any

⁵ 49 C.F.R. § 233(h).

party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief.

Finding 6: The assessment of a civil penalty in the amount of \$750.00 is appropriate.

I find that the civil penalty ordered by the ALJ in the amount of \$750.00 is appropriate, justified, and within statutory limits. In fact, the assessment is significantly below the amount recommended for entering or being present within a secured area, AOA, SIDA, or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in such areas contained in TSA's Sanction Guidelines.⁶

Petition to Reconsider and Judicial Review

A party may petition the TSA decision maker to reconsider or modify a final decision and order. A party must file the petition with the TSA Enforcement Docket Clerk not later than 30 days after service of the TSA decision maker's final decision and order and must serve a copy of the petition on all parties. 49 C.F.R. § 1503.234 contains the process for filing a petition.

A party may seek judicial review of the final decision and order as provided in 49 U.S.C. 46110.

Conclusion

For the reasons stated above, the initial decision of the ALJ is affirmed. Accordingly, Respondent's appeal is denied.

Dated: May 30, 2006

_____/Signed/_____
Robert D. Jamison
Deputy Assistant Secretary

⁶ 49 U.S.C. § 46301. TSA's Sanction Guidelines are listed on its web site at www.tsa.gov.