

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

In the Matter of:)	
)	
MICHAEL J. RENDON,)	TSA Docket No. 2002GL750103
)	
Respondent)	

ORDER

Introduction

Respondent, Michael J. Rendon (“Respondent”) has filed this administrative appeal to the Transportation Security Administrator (“TSA”) Decision Maker under the provision of 49 C.F.R. § 1503.16(h).¹ The TSA Decision Maker is the Under Secretary of Transportation for Security (now designated as the Assistant Secretary of Homeland Security and Transportation Security Administrator) or “any person to whom the Under Secretary has delegated the Under Secretary’s decision-making authority in a civil penalty action.” 49 C.F.R. § 1503.202.²

Respondent is appealing a decision of an Administrative Law Judge (“ALJ”) affirming TSA’s finding that Respondent violated 49 C.F.R. § 1540.109 by interfering with, assaulting, threatening, or intimidating screening personnel in the performance of their screening duties. Respondent also is appealing the ALJ’s affirmation of TSA’s assessment of a civil penalty, in the amount of \$700, against Respondent for this violation.

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 § 1530.233, the effectiveness of the initial decision is stayed until a final decision and order of the Under Secretary have been entered on the record. The TSA decision maker will review the record and issue a final decision and order of the Under Secretary 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 By Delegation Order effective July 27, 2004, Assistant Secretary David M. Stone delegated his decision-making authority to the TSA Deputy Administrator.

Respondent filed a brief of his arguments for this appeal, to which TSA filed a brief in reply. This decision is based upon those briefs, as well as the record of the hearing before the ALJ. For reasons stated below, the decision of the ALJ is affirmed. Accordingly, Respondent's administrative appeal is denied.

Standard For Review

The regulation governing appeals from decisions of ALJs in cases involving violations of 49 C.F.R. § 1540.109 clearly establishes the standard of review. It states at 49 C.F.R. § 1503.233:

(b) Issues on appeal. A party may appeal only the following issues:

(1) 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.

In this appeal, Respondent argues that the findings of fact made by the ALJ were not supported by a preponderance of the evidence, and the ALJ's conclusion of law, that Respondent violated 49 C.F.R. § 1540.109 by interfering with the screening process and by intimidating a TSA screening employee, was unfounded. Respondent further argued that his words to screening personnel at the security checkpoint were constitutionally protected speech, and the TSA regulation is unconstitutionally broad. Consideration of the constitutional issues is beyond the scope of this administrative proceeding, therefore those issues are not addressed in this decision.³

³ See Califano v. Sanders, 430 U.S. 99, 109 (1977): "Constitutional questions obviously are unsuited to resolution in administrative hearing procedures...." See also So. Ohio Coal Co. v. Donovan, 774 F.2d 693, 700 (6th Cir. 1985): " Questions

Synopsis of the Facts and Procedural History

On July 27, 2002, Respondent was a ticketed passenger for a flight departing Cleveland Hopkins International Airport (Transcript (Tr.), 138-40). As he entered the magnetometer at the Concourse C checkpoint, the magnetometer alarm sounded. (Tr., 44-45). TSA security screener Richard Pindroh (Mr. Pindroh) asked Respondent to step aside for additional screening with a hand-wand metal detector, in accordance with standard operating procedures. (Tr., 45-46, 139-40). Respondent asked Mr. Pindroh whether he could re-enter the magnetometer after removing his watch, and Mr. Pindroh declined the request, explaining that procedures required Respondent to undergo secondary screening with a hand-wand. (Tr., 46-47, 248-249, 304-305). Respondent removed his watch and made a movement toward the magnetometer, but he was stopped by Mr. Pindroh. (Tr., 46-47). Respondent became argumentative, speaking loudly and using profanity. (Tr., 48, 141-142). Mr. Pindroh asked Respondent to lower his voice and discontinue using profanity. (Tr., 48, 308). Respondent began shouting obscenities at screening personnel. (Tr., 49, 98, 181). As Respondent's disruptive behavior escalated, Mr. Pindroh stopped other passengers waiting in line to enter the magnetometer. (Tr., 48, 143). Mr. Pindroh's supervisor and a Cleveland police officer responded to the scene. Respondent refused to submit to a hand-wand screening. (Tr., 183).

As Respondent's disruptive behavior further escalated, other law enforcement officers responded to assist screening personnel and to remove Respondent from the checkpoint. (Tr., 184, 188). As Respondent was escorted away from the checkpoint, all of the screening at the checkpoint was stopped, in accordance with standard procedures. (Tr., 184). When he continued

concerning the constitutionality of rules or statues, however, are not the type of questions that are within an agency's domain...Rather, responsibility to deal with questions of constitutional interpretation lies in the federal courts..."

to exhibit disruptive behavior with the law enforcement officers, Respondent was placed under arrest for disorderly conduct.

On July 18, 2003, TSA filed a Notice of Proposed Civil Penalty proposing to assess Respondent a \$700 civil penalty for violation of 49 C.F.R. § 1540.109.⁴ On July 29, 2003, Respondent requested a hearing in the matter. A hearing was held before an ALJ, the Honorable Walter J. Brudzinski, in Cleveland, Ohio on January 9, 2004. Judge Brudzinski issued an oral decision at the conclusion of the hearing upholding the civil penalty assessment.

On January 26, 2004, Respondent gave timely Notice of Appeal of the ALJ's decision. After securing from TSA three separate agreements for extensions of time, Respondent perfected the appeal by filing a brief of his arguments on April 29, 2004. TSA filed a timely reply brief on June 4, 2004.⁵

Issues Decided

This final decision is based upon findings on the following issues:

1. That the ALJ's findings of fact are supported by a preponderance of reliable, probative and substantial evidence;
2. That the evidence demonstrates that Respondent interfered with, assaulted, threatened or intimidated screening personnel, Richard Pindroh, in the performance of his screening duties, and thus violated 49 C.F.R. § 1540.109; and
3. That the assessment of a civil penalty in the amount of \$700 is appropriate.

⁴ 49 C.F.R. §1540.109 states: "No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter."

⁵ A party appealing the decision of the ALJ must file with TSA a notice of appeal within 10 days after entry into the record of the ALJ's oral decision. 49 C.F.R. § 1503.233(a). The appeal must be perfected within 50 days after entry into the record of the ALJ's oral decision. 49 C.F.R. § 1503.233(c). The opposing party must file a reply brief no later than 35 days after the appeal brief is served on the party. 49 C.F.R. § 1503.233(e).

Findings

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

Following the hearing, the ALJ made the following findings of fact:

1. Respondent presented himself for screening at the security checkpoint on Concourse C of the Cleveland Hopkins International Airport on July 27, 2002. As Respondent proceeded through the magnetometer, the alarm sounded. Security screener Richard Pindroh asked Respondent to step aside to undergo a secondary screening.
2. Respondent entered into a discussion with Mr. Pindroh about whether or not he would be allowed to re-enter the magnetometer. Mr. Pindroh informed Respondent that he would not be allowed to go through the magnetometer a second time. Respondent then attempted to walk through the magnetometer again, and was stopped by Mr. Pindroh.
3. Respondent began arguing with Mr. Pindroh, using profanity and causing commotion until screening personnel stopped operation of the screening checkpoint.
4. Supervisory screening personnel were summoned, and law enforcement officers escorted Respondent away from the checkpoint.

A claim proven by a preponderance of the evidence is one where the party with the burden of proof provides evidence that is more likely true than not and, when balanced against opposing evidence, tips the scales in favor of that penalty. *Blossom v. CSX Transportation*, 13 F.3d 1477, 1480 (11th Cir. 1994). Substantial evidence is defined by the Supreme Court as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consolidated Edison v. NLRB*, 305 U.S. 197, 229 (1938).

I find all of the ALJ's findings of fact are supported by a preponderance of reliable, probative, and substantial evidence. The findings of fact are amply supported by testimony from two TSA screeners, a TSA supervisor, a Cleveland police officer, and to a lesser extent, a customer service representative for Continental Airlines and Respondent's wife. All of these witnesses were present at the checkpoint at some time during the incident.⁶

While the testimony does not provide a clean picture of the extent to which Respondent attempted to walk through the magnetometer a second time⁷, the evidence is clear that he was instructed not to do so. The testimony is also very clear that Mr. Rendon engaged in disruptive behavior at the security checkpoint and that screening of passengers at the checkpoint was temporarily halted until he was escorted from the area.

Finding 2: The evidence demonstrates that Respondent interfered with screening personnel, Richard Pindroh, in the performance of his screening duties, and thus violated 49 C.F.R. § 1540.109.

The ALJ made the following conclusions of law:

1. Respondent's actions at the Cleveland Hopkins International Airport disrupted the operation of the security checkpoint at Concourse C.
2. Respondent's actions intimidated screening personnel, Richard Pindroh, by putting him in apprehension of immediate battery.

In his appeal, Respondent argues that the intensity of his behavior at the checkpoint was exaggerated by witnesses testifying at the hearing. Therefore, he did not cause the screening

⁶ A seventh witness at the hearing was a private investigator called to testify to the content of her interview with Mr. Pindroh subsequent to the interview. She did not witness the incident herself.

⁷ Mr. Pindroh testified that Respondent started to enter the magnetometer a second time but was stopped by Mr. Pindroh. A Cleveland police officer testified that he saw Respondent go back and forth through the magnetometer. Respondent's wife testified that Respondent made no move toward the magnetometer.

operations to be halted at the checkpoint. I find this argument unpersuasive. Airport security screeners are given the task to move passengers through the security checkpoints as safely and as efficiently as possible. They have no reason or motivation to halt screening operations out of whimsy. If Respondent engaged in disruptive behavior at the security checkpoint and the security screener at the checkpoint halted screening operations, it is reasonable to conclude that Respondent's behavior was the reason for the stoppage, and an interference with the screener's performance of his screening duties.

Respondent also takes issue with the ALJ's conclusion that Respondent's behavior put Mr. Pindroh in apprehension of an immediate battery. Respondent argues that there is no evidence of any speech used by Respondent that constituted a threat of battery. I find this particular argument to be persuasive. The record does not show that Respondent's behavior caused Mr. Pindroh to fear immediate battery. Therefore, I do not uphold this portion of the ALJ's decision.

While I do not find that Respondent's behavior intimidated screening personnel, I do find that his behavior interfered with the screening process. I therefore uphold the ALJ's conclusion of law that the Respondent violated 49 C.F.R. § 1540.109.

Finding 3: That the assessment of a civil penalty in the amount of \$700 is appropriate.

Pursuant to 49 U.S.C. 46301⁸, Respondent is subject to a civil penalty not to exceed \$1,100 for each violation of a TSA regulation. Although 49 C.F.R. §1503.233(j) gives the TSA Decision Maker the authority to "affirm, modify, or reverse" the initial decision of an ALJ, including a reduction in the civil penalty assessment, I find that the \$700 penalty initially assessed by TSA, and upheld by the ALJ in this proceeding, is appropriate and justified.

⁸ "A person is liable to the United States Government for a civil penalty of not more than \$1,100 for violating ... chapter 449... of this title." 49 U.S.C. 46301(a).

Conclusion

For the reasons stated above, Respondent's appeal to overturn the decision of the ALJ is denied.

Dated: 9/9/2004

_____/s/_____
Carol DiBattiste
Deputy Administrator