

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

In the Matter of:)
)
 EDWARD AMET,) Docket No. 2003 MCI 0008
)
 Respondent)

FINAL DECISION AND ORDER

Introduction

Pursuant to 49 C.F.R. §§1503.16(h) and 1503.233, Edward Amet (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 Initial Decision under appeal assesses a civil penalty on the Respondent in the amount of \$1,000.00 for violation of 49 C.F.R. §§ 1540.109. For the reasons stated below, TSA’s motion to dismiss the appeal is granted.

Synopsis of the Facts and Procedural History

On December 3, 2003 Respondent was a ticketed passenger at Kansas City International Airport. During the passenger screening process, a cork screw set with a knife blade attached was found in Respondent’s accessible property. Upon notification that the item was prohibited

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.

on board the aircraft, Respondent moved closer to the TSA screener and, while holding a key blade, told the screener, "You're dead." TSA served Respondent with a Notice of Proposed Civil Penalty and a Final Notice of Proposed Civil Penalty. Respondent requested a formal hearing before an ALJ. On August 11, 2004, TSA filed a formal Complaint alleging that Respondent intimidated, interfered, and threatened a security screener in violation of 49 C.F.R. § 1540.109.³ TSA's rules of practice require that a written Answer to the Complaint must be filed within 30 days after service of the Complaint and that failure to file an Answer without good cause will be deemed an admission of the truth of each allegation contained in the Complaint.⁴

Respondent did not submit an Answer and TSA filed a Motion to Deem All Allegations of the Complaint Admitted and Motion for Decision on November 1, 2004. The ALJ issued an Initial Decision on November 30, 2004 granting TSA's motion. The Initial Decision stated that there was no showing of good cause by the Respondent and that Respondent was properly served of the Complaint. The ALJ ordered a civil penalty be assessed in the amount of \$1,000.00 for violation of 49 C.F.R. §§ 1540.109.

On December 10, 2004, Respondent contacted the ALJ by telephone to inquire why his hearing was waived. Respondent sent the ALJ a facsimile transmission that contained the following documents: a letter inquiring whether the Respondent's request for a hearing was timely, Respondent's request for a hearing, a certified mail receipt, the scheduling order for the hearing, the Order Granting TSA's Motion to Deem Allegations of the Complaint Admitted, and the Final Notice of Proposed Civil Penalty. The ALJ interpreted the contact as a request for an appeal to the TSA Decision Maker and forwarded the correspondence received from the Respondent to the TSA Decision Maker on December 10, 2004.

³ That section states, "No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter."

⁴ 49 C.F.R. § 1503.209(a) and (f).

On May 22, 2006, TSA filed a Motion to Dismiss Appeal. TSA argued that if Respondent filed an appeal, Respondent failed to perfect the appeal as required under the rules of practice at 49 C.F.R. 1503.233(c).

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 are supported by a preponderance of reliable, probative, and substantial evidence;
2. Whether the ALJ's conclusion of law that Respondent violated 49 C.F.R. § 1540.109 was 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.

While it is not clear that Respondent intended to appeal the Initial Decision, because the ALJ spoke to the Respondent and interpreted the conversation to be a request for appeal; the TSA Decision Maker will also treat the conversation as a request for appeal.

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

The ALJ found that Respondent was properly served and failed to file a written response to the August 11, 2004 Complaint. These findings are fully supported by the record before the ALJ. In his correspondence to the ALJ, Respondent inquires as to whether the request for a hearing was timely filed. While it appears that the request was timely filed, the request for a hearing does not satisfy the requirement to file a written Answer to the Complaint. TSA's rules of practice require that a written Answer be filed not later than 30 days after service of the

Complaint and that the Answer specifically address each numbered paragraph of the Complaint. The rules state that, “Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation.” 49 C.F.R. § 1503.209(a) and (e). Further, the rules provide that, “a person’s failure to file an answer without good cause will be deemed an admission of the truth of each allegation contained in the complaint.” 49 C.F.R. § 1503.209(f). The record before the ALJ clearly demonstrates that Respondent has not made any type of written submission denying the allegations in the Complaint.

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

The ALJ concluded that the allegations of the Complaint were deemed admitted. The ALJ properly applied TSA’s rules of practice in reaching this conclusion. Respondent did not file a written Answer denying the allegations as required in 49 C.F.R. § 1503.209(f). That provision provides that failure to file an Answer without good cause will be deemed an admission of truth. Further, once the Motion to Deem the Allegations Admitted is granted, there are no genuine issues of material fact to be determined by the ALJ and the hearing becomes moot.⁵

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 to support Respondent’s appeal.

⁵ 49 C.F.R. § 1503.218(f)(5).

Finding 4: The assessment of a civil penalty in the amount of \$1,000.00 is appropriate.

The civil penalty initially assessed by TSA, and upheld by the ALJ in this proceeding is appropriate, justified, and within statutory limits.⁶

Finding 5: TSA's motion to dismiss the appeal is granted.

TSA filed a motion to dismiss the appeal for failure to perfect the appeal as specified in 49 C.F.R. § 1503.233(d). That section states that a party must perfect an appeal by filing an appeal brief not later than 50 days after the ALJ decision, unless otherwise agreed to by the parties. The rules of practice state that the TSA Decision Maker may dismiss an appeal, upon motion of any other party, where a party has filed an appeal but fails to perfect the appeal by timely filing an appeal brief. Respondent was provided with a copy of the appeal procedures with the ALJ decision.

Conclusion

For the reasons stated above, TSA's motion to dismiss the appeal is granted.

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.

Dated: 6/28/2007

_____/s/_____

Gale Rossides
Acting Deputy Assistant Secretary

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