U.S. DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION

In the Matter of:	)	
	)	
PAUL G. AMARA,	)	Docket No. 07-TSA-0020
	)	
Respondent.	)	

FINAL DECISION AND ORDER

Introduction

Pursuant to 49 C.F.R. §§ 1503.16(h) and 1503.233, Paul G. Amara (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 $2,000.00 for violation of 49 C.F.R. § 1540.105(a)(1). 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) whether each finding of fact is supported by a preponderance of reliable, probative, and

[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.

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 October 31, 2006, Respondent attempted to gain entry into the sterile area of the Albany International Airport, Albany, New York, by presenting a Transair International Airlines employee identification card to airport personnel and to TSA Transportation Security Officers (TSOs) at the screening checkpoint. Transair was not operational and Respondent was not authorized to pilot commercial aircraft on that date. Further, he was not a ticketed passenger and did not possess a valid boarding pass permitting him access into the sterile area. TSA issued a Notice of Civil Penalty to the Respondent on January 23, 2007 alleging that Respondent violated 49 C.F.R. § 1540.105(a)(1). That regulation states, "No person may: (1) tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure, implemented under this subchapter." Respondent, through his attorney, responded to the Notice of Civil Penalty in a letter dated February 12, 2007 disputing the allegations and stating that he would be represented by counsel in the matter.

TSA contacted Respondent's attorney by telephone on February 20, 2007 and left a message that TSA intended to file a Complaint, but would be willing to discuss the matter personally if he wished to do so. Respondent's attorney did not respond. On March 6, 2007, Respondent sent a letter requesting a hearing before an ALJ. Respondent did not mention that he would be represented by counsel at the hearing, nor did he mention that he was going to be out of

the country. He did provide a change of address. TSA contacted Respondent's attorney again by telephone on March 12, 2007. The attorney did not respond.

TSA served its Complaint on the Respondent by certified mail, return-receipt requested, on March 20, 2007. TSA's regulations require that an Answer must be filed within thirty days of service of the Complaint. 49 C.F.R. § 1503.209(a). TSA's regulations further state that, "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). Attached to the Complaint were instructions for filing an Answer that explicitly stated an Answer must be filed no later than 30 days after service of the Complaint and an "Answer to Complaint" form to assist in filing an Answer. Respondent failed to file an Answer within the specified time period.

On May 11, 2007, Respondent's attorney sent a letter to the ALJ advising that he represents Respondent and requesting an extension of time, to June 1, 2007, in which to file an Answer to the complaint because Respondent was out of the country and would not return until May 24, 2007. On May 15, 2007, TSA filed a Motion to Deem the Allegations in the Complaint Admitted and Motion for Decision. Respondent's attorney filed a letter dated May 23, 2007 stating that he was in the process of preparing a response to the TSA motions and a cross motion to dismiss the Complaint and that he intended to file the motions on June 1, 2007. On May 31, 2007, the ALJ granted TSA's motions and assessed a civil penalty of $2,000.00.

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 conclusions of law are 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.

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

There were no findings of fact in the initial decision. Respondent does not dispute that he failed to file an Answer as required by 49 C.F.R. § 1503.209(a). The Complaint was served on March 20, 2007. TSA's rules specifically provide that the date of service is the date of personal delivery; or, if mailed, the mailing date shown on the certificate of service. 49 C.F.R. § 1503.211(d). The Complaint clearly indicated that an Answer was required and even included a form that Respondent could have used to file the Answer. Whenever a party has a right or duty to act or to make a response within a prescribed period after service by mail, five days will be added to the prescribed period. 49 C.F.R. § 1503.211(e). Even considering the additional time permitted by the regulations for service by mail, Respondent failed to file in a timely manner. Respondent finally submitted a letter from his attorney dated May 23, 2007 that he intended to respond to the Complaint on June 1, 2007. A request for an extension of time must be filed not later than seven days before the document is due unless good cause for the late filing is shown. 49 C.F.R. § 1503.213(b). The request was not timely filed and failed to demonstrate good cause. Further, any motions that were to be filed on June 1, 2007 would not have been timely filed.

Pursuant to 49 C.F.R. § 1503.218(d), the ALJ properly concluded that there were no genuine issues of material fact because Respondent failed to file an Answer and therefore each allegation in the Complaint was deemed admitted. TSA's regulations require that the 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. § 1540.209(f). Respondent argues that the Complaint was improperly served because it was sent to the Respondent and not to the Respondent's attorney. TSA's regulations require that service must be made on each party, but also provide that service on a party's attorney of record or a party's designated representative is service on the party. 49 C.F.R. § 1503.211(a). Accordingly, the fact that service was made on the party and not the party's attorney does not constitute good cause for failing to file an Answer.

In an affidavit, Respondent states that he was out of the country from April 11, 2007 until May 10, 2007. However, Respondent and his attorney were both aware that a civil penalty proceeding had been initiated as early as February 2007, and even responded to the Notice of Civil Penalty that was served on the Respondent on February 12, 2007. Both Respondent and his attorney had ample opportunity to make certain that any required documents were filed on time. The Respondent's absence in April and May does not constitute good cause for failing to file an Answer as required.

Finally, I note that the Respondent requested that the ALJ reconsider his initial decision. TSA's rules of procedure do not permit reconsideration of the initial decision. Any appeal of an initial decision must be submitted to the TSA Decision Maker for determination. 49 C.F.R. § 1503.233.

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

As explained in the initial decision, TSA's rules of procedure provide that 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). As the case precedent cited in the initial

decision confirms, the ALJ must deem the allegations of the Complaint admitted since Respondent failed to file an Answer and did not show good cause as to why an Answer was not filed. See, *In the Matter of Larry's Flying Service,* FAA Order No. 98-4, 1998 FAA LEXIS 350 (Mar. 12, 1998).

49 C.F.R. § 1503.218(f)(5) provides that the ALJ must grant a party's motion for decision, "if the pleadings, depositions, answers to interrogatories, admission, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of fact and that the party making the motion is entitled to a decision as a matter of law." Since the allegations in the Complaint were correctly deemed admitted, there were no genuine issues of fact. The ALJ properly determined that TSA was entitled to a decision as a matter of law and no hearing was required.

Respondent argues that the assessment of a civil penalty violates his Fifth Amendment right not to be subject to double jeopardy because he was arrested on a criminal charge based on the same underlying facts. The "Double Jeopardy Clause" of the Fifth Amendment provides that no "person [shall] be subject for the same offence to be twice put in jeopardy of life or limb." The Supreme Court has long held that the Clause protects only against the imposition of multiple criminal punishments for the same offense. *Helvering v. Mitchell,* 303 U.S. 391, 399 (1938); *United States, ex rel. Marcus v. Hess,* 317 U.S. 537, 548 (1943); *Breed v. Jones,* 421 U.S. 519, 528 (1975); *Hudson v. U.S.,* 522 U.S. 93, 95 (1997). The Fifth Amendment does not bar the imposition of the civil penalty as determined by the ALJ in the initial decision.

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

The ALJ's analysis of the facts and conclusions of law do not demonstrate any prejudicial error that would support Respondent's appeal.

Finding 4: The assessment of a civil penalty in the amount of $2,000.00 is appropriate.

The civil penalty order by the ALJ in the amount of $2,000.00 is appropriate, justified, and within statutory limits. In fact, the civil penalty is below the TSA Sanction Guidelines for violation of 49 C.F.R. § 1540.105(a)(1).[3]

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. The procedures for filing a petition for reconsideration are listed at 49 C.F.R. § 1503.234.

A party may seek judicial review of the Final Decision and Order as provided at 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 9, 2008

Gale D. Rossides
Deputy Administrator

[3] TSA's Sanction Guidelines are listed on its web site at www.tsa.gov.

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

In the Matter of:	)	
	)	
PAUL G. AMARA	)	DOCKET NO. 07-TSA-0020
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the Final Decision and Order of the Transportation Security Administration Decision-Maker has been filed this 20th day of May, 2008, with the Enforcement Docket Clerk:

ALJ Docketing Center, US. Coast Guard
U.S. Custom House, Room 412
40 South Gay Street
Baltimore, MD 21202-4022
ATTN: Enforcement Docket Clerk

I further certify that a copy of the Final Decision and Order of the Transportation Security Administration Decision-Maker has been mailed, first-class postage prepaid, this 20th day of May, 2008, to the following:

Honorable Walter Brudzinski
United States Coast Guard
One South Battery Park Building, Room 217
New York, New York 22202-4220

Anthony Molligo, TSA Counsel
LaGuardia Airport
75-20 Astoria Blvd, Suite 300
East Elmhurst, NY 11370

Dominick J. Viscardi, Counsel for Respondent
15 Father Jogues Place
Ticonderoga, New York 12883-1407

Paul G. Amara, Respondent
72 Battle Hill Road,
Hague, New York 12836

Linda Kent

LINDA KENT
Counsel to the TSA Decision Maker
Transportation Security Administration