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

In the Matter of:	)	
	)	
PATRICK CHRISTOPHER	)	
HALLAHAN,	)	TSA Docket Number 09-TSA-0043
	)	
Respondent	)	

FINAL DECISION AND ORDER

Patrick Christopher Hallahan, Respondent, appeals the initial written decision of the Administrative Law Judge (ALJ). In the initial decision Respondent was found to have violated 49 C.F.R. § 1540.109 in three instances and assessed a civil penalty of $22,000.00. For the reasons discussed below, Respondent's appeal is denied. The initial decision of the ALJ that Respondent violated 49 C.F.R. § 1540.109 and the civil penalty is upheld.

According to the Transportation Security Administration's (TSA's) rules of practice for civil penalty actions, a party may appeal only the following issues: (1) whether each finding of fact made by the ALJ 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 ALJ committed any prejudicial errors during the hearing that support the appeal. 49 C.F.R. § 1503.657(b).

Initial Written Decision

The initial written decision of the ALJ was issued on February 16, 2010. The ALJ's findings of fact are summarized as follows. Respondent was a ticketed passenger on a flight departing from San Diego International Airport on July 9, 2008. Respondent was carrying three bags, including a suitcase that contained a Continuous Positive Airway Pressure (CPAP) machine. Respondent noticed that there was an earlier flight that he hoped to get on in- stead of

his scheduled flight. When Respondent presented himself to the TSA Travel Document Checker (TDC), Respondent did not have a boarding pass and was directed by the TDC to return to the aircraft operator to obtain one. Respondent became upset and protested that he did not need a boarding pass. Respondent finally agreed to get a boarding pass, but said he was leaving his bags at the TDC station. The TDC instructed him not to do so, but Respondent ignored the instructions and left his bags there anyway. The TDC notified his supervisor who called TSA Behavior Detection Officers (BDOs) and airport law enforcement officers. Respondent returned to the TDC station, criticized the TDC as slow and was characterized as ranting and raving. The TDC was not intimidated by Respondent's behavior and the screening process at that point was not affected by Respondent's actions. The TDC verified Respondent's boarding pass.

Respondent proceeded to the xray equipment and his bags were subjected to x-ray screening. A Transportation Security Officer (TSO) asked Respondent if the bag containing a CPAP machine belonged to him. The TSO asked Respondent to remove the CPAP from the bag and place it in a separate bin for x-ray screening. Respondent became angry and cursed at the TSO pointing his finger in her face. Respondent's actions were aggressive and hostile and frightened the TSO. Respondent asked to speak to a supervisor and demanded the names of screening personnel. The TSO held her name tag out to Respondent while backing away from Respondent. The TSO was intimidated by Respondent's behavior.

A Lead TSO (LTSO) heard Respondent and asked him not to curse because there were children present. The LTSO began moving other baggage in front of Respondent's in order to keep screening operations going. Respondent asked that he be allowed to continue the screening process and moved within 10 inches of the LTSO's face, stating that he was going to enter the Walk Through Metal Detector (WTMD) and asked what the LTSO was going to do about it. The

LTSO said that if Respondent forced his way through the WTMD it was likely that he would miss his flight. Respondent reached across, slapped the LTSO's chest and grabbed his shirt and name tag. The force of Respondent's action caused the LTSO to spin around and knock Respondent's arm to dislodge his hand from the LTSO's shirt. No passengers entered the WTMD during this encounter. Respondent also stood in the WTMD and said that if he was not going through, no one was going anywhere unless they came through him. Respondent eventually sat down in a chair used by passengers to remove their shoes.

Two BDOs approached Respondent and one asked him to come with them so they could resolve the problem. Respondent refused. Law enforcement officers arrived and began questioning Respondent. The law enforcement officers escorted Respondent away from the checkpoint. As they were leaving, Respondent stated he wanted to say goodbye to his friend, referring to one of the BDOs. As he passed by the BDO, Respondent struck the BDO on the shoulder with such force that the BDO was pushed back into a table. The airport police reacted immediately to forcibly place Respondent under arrest by pushing Respondent against a wall and placing him in hand- cuffs. As a result of Respondent's actions, screening operations were suspended for a period of time. Respondent ultimately was charged with four misdemeanors. The charges were eventually dismissed if Respondent attended anger management class.

The ALJ concluded that Respondent's interfered with, threatened, and intimidated the x-ray TSO, the LTSO and the BDO in the performance of their screening duties in violation of 49 C.F.R. § 1540.109 and ordered that a civil penalty of $22,000 be assessed against Respondent. The ALJ found that Respondent's encounter with the TDC did not constitute interference with screening.

Respondent's Appeal

Respondent requested an appeal of the initial decision and submitted an appeal brief on April 6, 2010. Respondent challenged the findings of fact on the following grounds: (1) that Respondent was following the instructions given by TSA personnel to wait for a supervisor; and (2) that Respondent was a well-seasoned traveler and had never had any previous incident or issue with TSA screening personnel. Neither of these challenges have merit and I find that the Findings of Fact are supported by a preponderance of reliable, probative, and substantial evidence. The findings of fact acknowledge that Respondent asked to speak to a supervisor. Finding of Fact 42. The evidence is substantial that Respondent did not sit quietly until a supervisor arrived to address his grievance with TSA. Respondent was belligerent and abusive, both verbally and physically, toward TSA screening personnel. Findings of Fact 36, 37, 38, 39, 49, 51, 55, 63, and 69. Further, the evidence reveals that Respondent threatened to block other passengers from going through the Walk Through Metal Detector. Finding of Fact 55. The fact that the supervisor did not appear does not justify or excuse Respondent's behavior.

Respondent contends that any delays in screening operations were due to an ineffective and contradictory grievance resolution policy that is inconsistently administered and not communicated to passengers. Respondent offers no evidence to support this contention. There is no indication in the hearing record that Respondent was given contradictory directions by TSA and Respondent fails to specify where in the record alleged contradictory instructions were provided. The evidence does reveal that Respondent was offered an opportunity to speak with the BDOs so they could resolve his problem and he refused. Finding of Fact 58. However, even if Respondent's contentions were true, it would not excuse Respondent's behavior toward TSA

screening personnel. The fact that Respondent was an experienced traveler was not disputed. Finding of Fact 4.

Respondent also challenges the ALJ's conclusion of law that Respondent's actions constituted interference with screening in violation of 49 C.F.R. § 1540.109. I find that the conclusions of law are in accordance with applicable law, precedent, and public policy. Respondent says his statements to the x-ray TSO were rhetorical and not an overt threat. Interference with screening does not have to be physical interference. The U.S. Court of Appeals for the Sixth Circuit found that interference with a security officer in the performance of his duties can occur "by actively engaging the screener with loud and belligerent conduct" that inhibits the "screener's duty to both thoroughly screen passengers and to do so in an efficient manner." Rendon v. TSA, 424 F.3d 474 (6th cir. 2005). The evidence supports the ALJ's conclusion that Respondent's raised voice, use of profanity, and hostile and aggressive manner were frightening and intimidating and prevented her from continuing her screening duties.

Respondent states that the evidence does not support a finding of interference with the LTSO. The ALJ notes that the LTSO did not feel that the actual grabbing of the shirt and name tag rose to a level to immediately involve any other TSA personnel to resolve the issue. This does not mean that Respondent did not interfere with the LTSO in the performance of his screening duties. Respondent physically grabbed the LTSO's shirt. That action alone prevented the LTSO from conducting screening operations. In addition, Respondent tried to intimidate the LTSO by stating he was going to go through the WTMD and asking what the LTSO was going to do about it. Respondent's raised voice and intimidating words caused the LTSO to focus his attention on the Respondent instead of on his screening responsibilities. Respondent threatened

to block access to the WTMD. Screening operations were in fact stopped. The evidence supports the ALJ's conclusion that a violation of TSA's security regulations occurred.

Respondent claims that the physical encounter with the BDO did not constitute interference because a slap on the shoulder is a common physical contact in situations where a conversation is resolved and that, at worst, Respondent simply ignored or forgot that this type of contact would be inappropriate. The evidence reveals that the slap was of sufficient force to push the BDO, who is described as a large, well-built man, into a table and cause the police officers to immediately, forcibly arrest the Respondent. Again, the evidence supports the ALJ's conclusion that a violation occurred. The evidence does not support Respondent's claim that the slap was intended as a friendly gesture. Further, the regulation does not require intent to be demonstrated. Finally, Respondent claims that only the legal status of the officers render the physical contact inappropriate. This claim is not sup- ported by case precedent. See, e.g., In the Matter of Michael Bengry, FAA Order No. 2003-9 at 5-6 (Sept. 12, 2003) (courts have held that it is unnecessary to prove that an assailant knew the victim was a federal officer); and U.S. v. Young, 464 F.2d 160, 163 (5th cir. 1972) (when the defendant intends to assault the victim and has no legal excuse such as self-defense, “knowledge of the official capacity of the victim is invariably unnecessary; the assailant takes his victim as he finds him”.) I agree that the striking of the BDO was egregious and constitutes interference with screening personnel in the performance of his duties.

Respondent also protests the amount of the civil penalty. The ALJ assessed a civil penalty that is greater than the amount proposed in the Complaint and is above the sanction guidance. Respondent believes that his actions do not merit the amount imposed because a distraction or hindrance to security protocols is not as serious as intentionally attempting to circumvent security. I disagree. Certainly a terrorist could intentionally use a distraction as a

means to circumvent security protocols. Respondent's actions not only interfered with screening operations, but also involved preventing others from undergoing WTMD screening. Respondent also attempted to enter the sterile area of the airport without proper documentation. Interference with screening is a serious offense that distracts security screeners from the performance of screening responsibilities and may allow a terrorist to circumvent security. It is no less important than other violations, contrary to Respondent's argument.

Respondent claims he was denied access to a surveillance video. The TSA rules of practice stipulate that the burden of proof is on the agency, except in two instances: the proponent of a motion has the burden of proof regarding the motion and a party that has asserted an affirmative defense has the burden of proof for the affirmative defense. 49 C.F.R. § 1503.639. The Respondent could have requested the tape prior to the hearing in order to present it as evidence to support his defense. Respondent failed to do so. Contrary to Respondent's assertions regarding the criminal justice system, it was not incumbent upon the agency to determine whether a tape existed or to enter it into evidence.

Respondent requests that his attitude be considered a mitigating factor regarding the amount of the civil penalty. Respondent notes that he did not use a weapon, did not intend to disrupt operations, has no history of violations, and did not attempt artful concealment. Respondent also requests that the expenses he incurred in defending the criminal charges be considered to mitigate the amount of the civil penalty. These factors have little, if any, relevance to the events of July 9, 2008 and do not provide a valid basis for reducing the civil penalty. Respondent did something far worse than simply attempt to resolve a complaint with a supervisor as he alleges. Respondent assaulted two TSA security officers and the assaults, his use of profanity, and his hostile and aggressive manner interfered with the screening duties of at least

three TSA security officers. His actions compromised their ability to perform their duties and undermined the security of all the passengers at the checkpoint. TSA's security officers have a right to be free from physical assault by passengers. The ALJ provided a sufficient basis for the civil penalty amount and his determination is within statutory limits. Accordingly, the amount of the civil penalty will not be reduced.

Conclusion

Based on the forgoing, I find that the findings of fact are supported by a preponderance of reliable, probative, and substantial evidence and that the conclusion of law that Respondent violated 49 C.F.R. §1540.109 is consistent with applicable law, precedent, and public policy. Finally, I find that the amount of the civil penalty is appropriate.

Either party may petition the TSA Decision Maker to reconsider or modify a Final Decision and Order. The rules of practice for filing a Petition for Reconsideration are described at 49 C.F.R. §1503.659. 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 serve a copy of the petition on all parties. A party may seek judicial re- view of the Final Decision and Order as provided in 49 U.S.C. § 46110.

Gale Rossides Deputy Administrator

Dated: 11/3/2010

__/s/_____
Gale Rossides
Acting Deputy Assistant Secretary