



*To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.*

*NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive and all related Handbooks, Attachments, and Appendices, establish Transportation Security Administration (TSA) policy and must be applied accordingly.*

**REVISION:** This revised directive supersedes TSA MD 1100.77-1, *OPR Appellate Board*, dated May 26, 2011.

**SUMMARY OF CHANGES:** Section 4, Definitions, removed and placed in the Handbook to TSA MD 1100.77-1, *OPR Appellate Board*; Section 5, Responsibilities, updated; and Section 6, Policy, updated.

1. **PURPOSE:** This directive provides TSA policy and procedures for impartial Office of Professional Responsibility (OPR) Appellate Board (OAB or Board) review of appeals of specified adverse actions taken against Transportation Security Officers (TSOs).
2. **SCOPE:** This directive applies to all TSOs, as defined in the Handbook, in permanent positions who are not serving a TSA trial period, and TSOs in temporary positions who have completed two years or more of current continuous service in a time-limited appointment of more than two years. Refer to [TSA MD 1100.31-1, \*Trial Periods\*](#), for additional information.
3. **AUTHORITIES:** The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)
4. **DEFINITIONS:** See the [Handbook to TSA MD 1100.77-1, \*OPR Appellate Board\*](#).
5. **RESPONSIBILITIES:**
  - A. The Assistant Administrator for OPR (AA/OPR) is responsible for appointing the Chair of the OAB and Board members.
  - B. The Chair of the OAB is responsible for the Board's management and operations, including:
    - (1) Convening Board panels as needed;
    - (2) Presiding over Board meetings;
    - (3) Ensuring Board decisions are made in accordance with all applicable laws, regulations and policies; and
    - (4) Issuing written Board decisions.

- C. The Assistant Administrator for the Office of Security Operations (AA/OSO) or designee is responsible for nominating and forwarding to the AA/OPR the names of OSO employees eligible to serve as Board members. The nominees shall be J band or above with satisfactory performance ratings and no adverse or disciplinary actions within the last two years.
- D. Board members are responsible for deciding each appeal on its individual merits in accordance with TSA policies and procedures, as applicable.
- E. Management officials are responsible for complying with the procedures set forth in this directive and the accompanying Handbook and for providing timely responses to any requests for documents and other information made by the Board.
- F. Appellants and their representatives, if applicable, are responsible for complying with the procedures set forth in this directive and the accompanying Handbook.

## 6. POLICY:

### A. Jurisdiction.

- (1) The Board is authorized to review appeals of the following specified adverse actions:
  - (a) Suspensions of more than 14 days;
  - (b) Indefinite suspensions;
  - (c) Involuntary demotions for performance/conduct;
  - (d) Furloughs of any length. For more information see [TSA MD 1100.63-2, \*Furlough \(Agency Placement of Employees in Nonpay, Nonduty Status\)\*](#);
  - (e) Removals under the provisions of [TSA MD 1100.75-3, \*Addressing Unacceptable Performance and Conduct\*](#);
  - (f) Removals under the following procedures:
    - (i) Involuntary Workforce Reductions in accordance with [HCM 351-2, \*TSO Involuntary Workforce Reduction Procedures\*](#); or
    - (ii) Uniformed Services Employment and Reemployment (USERRA) removals under the provisions of [TSA MD 1100.30-17, \*Uniformed Services Employment and Reemployment\*](#).
  - (g) Other actions, as directed by the TSA Administrator or designee.

(2) The Board is not authorized to review and decide allegations of discrimination and harassment based on race, color, religion, sex, national origin, age, disability, sexual orientation, protected genetic information, parental status, and retaliation. Nor will it consider and decide whistleblower retaliation allegations. If such allegations are raised in connection with the adverse action appeal, the Board will only decide, as appropriate, whether management proved the charges by the applicable standard of proof, whether there is a nexus between a legitimate government interest and the matter at issue, and whether the penalty was reasonable.

B. Board Panels. Board panels convened to hear and decide appeals shall be composed of three voting members: the Chair and one member each from OPR and OSO.

(1) Panel: Three voting members of a panel are required for a quorum, one of whom must be the Chair.

(2) Voting: Appeals are decided by majority vote. The decision date and votes will be recorded in the case file.

(3) Other Attendees: In addition to voting members, Board panels may be attended by OAB program staff members, invited subject matter experts, and invited observers, including attorneys from the Office of Chief Counsel.

C. Impartiality of Board Members. Each Board member will act impartially when deciding appeals.

(1) No one in attendance at a Board panel may disclose the vote or opinion of any particular Board member.

(2) No one may attempt to influence the vote or opinion of a Board member in any matter before the Board, except by written submissions in accordance with this directive, or by persuasion during discussion at the Board panel, based upon evidence properly before the Board.

(3) No Board member's performance evaluation, pay, or consideration for awards may be based in whole or in part on the member's vote or opinion as a Board member.

D. Standard of Proof and Burden of Proof.

(1) In proceedings before the Board, management bears the burden of proving the charge(s) by a preponderance of the evidence or substantial evidence, as applicable. A preponderance of evidence means that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a purported fact is more likely to be true than untrue. Substantial evidence

is the degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. It is a lower standard than preponderance of the evidence.

- (2) The Board may take notice of matters not subject to reasonable dispute, including matters of common knowledge and matters that can be readily verified.
  - (3) If the evidence establishes management's charge(s), management must also show that the penalty was reasonable. The Board will consider the *TSA Table of Offenses and Penalties* in evaluating the reasonableness of a penalty. The Board may mitigate a penalty, but may not impose a harsher penalty.
- E. Procedural Matters. The Board will conduct a complete review of all appealed actions properly before the Board. It will evaluate the evidence and review the procedural and substantive issues, as appropriate. The Board will examine each appealed action for due process issues and procedural compliance with TSA MD 1100.75-3. The Board panel will review and consider procedural errors when deliberating the appeal.
- F. Right to Representation. Under the provisions of [TSA MD 1100.63-3, \*Employee Representation\*](#), an appellant has a right to have a representative of his or her choosing to assist in preparing and presenting an appeal to the Board. Any representative must be designated in writing, signed personally by the appellant. Management may disallow the representative for the reasons set forth in TSA MD 1100.63-3.
- G. Costs and Expenses. All appeal expenses, including, but not limited to, any travel expenses and attorney's fees, are the appellant's sole responsibility.
- H. Decisions. The Board has the authority to sustain, mitigate, or overturn management actions. The Board also has the authority to order back pay and other remedial action as it deems necessary, in accordance with [TSA MD 1100.55-10, \*Back Pay\*](#). The Board will issue a written decision for each appeal generally within 14 days of the date it decides the appeal.
- I. Orders. The Board may issue orders dismissing appeals for lack of jurisdiction or untimeliness and the Board may issue other orders necessary to arrive at or implement its decision.
- J. Request for Reconsideration of a Decision. A timely request for reconsideration from the appellant or management will be considered by the AA/OPR, or designee, at his or her discretion. The Board, on its own, may also decide to reconsider any decision.
- 7. PROCEDURES:** See [Handbook to TSA MD 1100.77-1, \*OPR Appellate Board\*](#).

**8. APPROVAL AND EFFECTIVE DATE:** This policy is approved and effective the date of signature unless otherwise specified.

**APPROVAL**

*Signed*

September 19, 2013

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James G. Duncan  
Assistant Administrator for  
Professional Responsibility

\_\_\_\_\_  
Date

*Signed*

September 26, 2013

\_\_\_\_\_  
Karen Shelton Waters  
Assistant Administrator for Human Capital

\_\_\_\_\_  
Date

**EFFECTIVE**

September 30, 2013

\_\_\_\_\_  
Date

Distribution: Administrator, Deputy Administrator, Assistant Administrators, Regional Directors, Federal Security Directors, Supervisory Air Marshals in Charge, Business Management Division Directors, Administrative Officers, and Human Resources Specialists.

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