

Before the
TRANSPORTATION SECURITY ADMINISTRATION

In The Matter of)	
)	
Robert Land,)	Docket No. 14-TSA-0168
)	
Respondent.)	

FINAL DECISION AND ORDER

Respondent Robert Land appeals the April 10, 2015 Order Granting TSA’s Motion to Deem Allegations Admitted and Motion for Decision issued by the Administrative Law Judge (ALJ) in the above-referenced matter. The ALJ granted the Motions requested by the Transportation Security Administration (TSA) in accordance with TSA’s regulations. For the reasons stated below, the Order is upheld and the appeal is denied.

Summary of Facts

Respondent was served with a Complaint on December 19, 2014 alleging that he violated 49 C.F.R. §1540.105(a)(1), “No person may: 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.” A civil penalty of \$1,500.00 was requested.

In the Complaint, TSA alleges that on April 13, 2014, Respondent pushed open an emergency exit door that was being closed by an airline employee, pushed the employee out of the way and proceeded down the loading bridge. Respondent refused to heed requests by two other airline employees to return to the gate and allegedly pushed a second airline employee out of his way. Respondent took a seat on the plane and refused to deplane when requested to do so by an airline supervisor. An airport law enforcement officer was summoned and Respondent deplaned with the officer. Respondent was arrested and transported to the airport precinct.

ALJ Order

The ALJ found that the Complaint, together with “Instruction for Filing an Answer,” was properly served and that Respondent had notice of the Complaint. Respondent did not file an Answer and did not participate in a pre-hearing conference call. TSA’s rules of practice require that a written Answer to the Complaint must be filed not later than thirty days after service of the Complaint. 49 C.F.R. §1503.611. TSA’s rules also state that failure to file an Answer without good cause is deemed an admission of the truth of each allegation contained in the Complaint. 49 C.F.R. §1503.611(d). Furthermore, TSA’s rules provide that the ALJ must grant a party’s motion for decision if the record establishes that there is no genuine issue of material fact and the party making the motion is entitled to a decision as a matter of law. 49 C.F.R. §1503.629(f)(5). The ALJ held that there is no evidence in the record conflicting with the allegations of the Complaint and that the allegations were deemed admitted. Accordingly, there was no issue of material fact and TSA was entitled to a decision as a matter of law. The ALJ also found the proposed civil penalty was consistent with the TSA Sanction Guidance Policy and was fair and reasonable.

Respondent’s Appeal

Respondent admits that he failed to file an Answer, but notes that he responded in writing to the TSA Final Notice of Proposed Civil Penalty. In his response to the Final Notice, Respondent denies that he failed to present himself for boarding, stating that he had a reservation and did not know that it had been cancelled. He states that the emergency exit door was open and, when confronted by an airline employee, showed the employee his airline American Express card and boarding pass. Respondent claims the employee pushed him backward with his chest. Respondent moved past the employee. He denies having any further physical contact

with other airline employees and states that he told all of them to scan his boarding pass.

Respondent states that someone asked him to deplane and that Respondent said he would leave if his ticket was scanned and he was allowed to reboard. Respondent admits that a more careful reading of the Complaint would have revealed that the same response should have been filed as an Answer, but that he neglected to do so. Respondent also states that a winter storm prevented him from participating in the telephone conference. He has no explanation as to why he did not contact TSA or the ALJ after the storm. Respondent requests ten days to file an Answer and a hearing on the merits.

TSA Response

TSA notes that Respondent failed to identify the nature of his appeal. If his filing is an appeal of an Initial Decision and Order, TSA states Respondent has no basis to appeal any of the issues allowed on appeal under TSA's rules of practice. 49 C.F.R. §1503.657(b). If his filing is considered an interlocutory appeal, TSA states Respondent failed to adhere to the rules of practice regarding an interlocutory appeal. 49 C.F.R. §1503.631. TSA also notes that instructions for Filing an Answer were included with the Complaint and that the cover letter accompanying the Complaint also advised Respondent of the requirement to file an Answer. TSA states that Respondent did not demonstrate good cause as to why an Answer was not filed. TSA also argues that the ALJ properly followed applicable law, precedent, and public policy in granting TSA's Motions and finding Respondent violated TSA regulations.

Final Decision and Order

According to 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 by the ALJ 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). While TSA questions whether Respondent has properly filed an appeal, the ALJ has issued an Order assessing a civil penalty in the amount of \$1,500.00 for violation of 49 C.F.R. §1540.105(a)(1) and advised Respondent of his right to appeal an Initial Decision. Therefore, I will decide this matter as an appeal of an Initial Decision.

In accordance with TSA's regulations and as discussed in the ALJ decision, Respondent is required to file an Answer to a Complaint. That requirement was communicated to Respondent in an attachment to the Complaint as well as in the cover letter accompanying the Complaint. I note that the attachment, Instructions for Filing an Answer, also states that the requirement is "a separate requirement to any document or Answer that you may have previously filed." Respondent's response to the Final Notice of Proposed Civil Penalty does not satisfy the requirement to file a written Answer to the Complaint. Respondent admits that he should have filed an Answer, but neglected to do so. That statement cannot be considered good cause as to why an Answer was not filed. TSA's regulations state that failure to file an Answer shall be deemed an admission of the allegations of the Complaint. 49 C.F.R. §1503.611(d). The ALJ properly applied TSA's regulations in granting TSA's Motion to Deem Allegations Admitted.

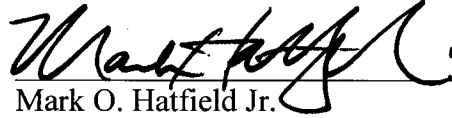
Because the allegations in the Complaint are deemed admitted, there are no material facts in dispute and the ALJ properly granted TSA's Motion for Decision. 49 C.F.R. §1503.629(f)(5). Based on the foregoing, the ALJ decision is upheld and the appeal is denied.

Any party may petition the TSA Decision Maker to reconsider or modify a Final Decision and Order. Petitions for reconsideration must be submitted not later than thirty days after service of the Final Decision and Order and must comply with the requirements of 49

C.F.R. §1503.659. A party may petition for judicial review of a Final Decision and Order as permitted by 49 U.S.C. §46110 and described in 49 C.F.R. §1503.661.

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Dated: _____



Mark O. Hatfield Jr.
Deputy Administrator