

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

In the Matter of:)
)
STEPHEN PIETRZAK,) Docket No. 05TSA0022
)
Respondent)

FINAL DECISION

Introduction

Pursuant to 49 C.F.R. §§ 1503.16(h) and 1503.233, Stephen Pietrzak (Respondent) is appealing the initial decision of an 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 decision under appeal assesses a civil penalty on the Respondent in the amount of \$500.00 for the violation of 49 C.F.R. § 1540.111(a)(1). For the reasons stated below, the 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)

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 § 1503.233, the effectiveness of the initial decision is stayed until a final decision and order of the Under Secretary have been entered on the record. The TSA decision maker will review the record and issue a final decision and order of the Under Secretary 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.” 49 C.F.R. § 1503.233 contains the specific appeal procedures.

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.

whether each finding of fact 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 administrative law judge committed any prejudicial errors during the hearing that support the appeal.”

Synopsis of the Facts and Procedural History

On December 12, 2003, Respondent was a ticketed passenger for a flight departing from Philadelphia International Airport. When Respondent presented himself for security screening prior to entering the sterile area of the airport, TSA discovered a butterfly knife in Respondent’s accessible property in violation of 49 C.F.R. § 1540.111(a)(1).³ TSA served a complaint on the Respondent on April 22, 2005 by registered mail assessing a civil penalty in the amount of \$500.00. The complaint was returned unclaimed on July 1, 2005. The complaint was resent on July 7, 2005. Respondent received the complaint, but did not file an Answer, as required by 49 C.F.R. § 1503.209(a). TSA’s rules provide that a “person’s failure to file an answer without good cause will be deemed an admission of truth of each allegation contained in the complaint.”⁴ TSA filed a Motion to Deem the Allegations of the Complaint Admitted and a Motion for Decision on August 8, 2005, arguing that the Respondent failed to file an Answer and did not show good cause for failing to do so. The ALJ granted TSA’s motion to deem the allegations admitted. Because the allegations were deemed admitted, the ALJ also granted TSA’s motion for decision since there was no longer a genuine issue of material fact. On August 16, 2005, the ALJ issued an initial decision that Respondent be assessed a civil penalty in the amount of \$500.00 for violation of 49 C.F.R. § 1540.111(a)(1).

³ 49 C.F.R. § 1540.111(a)(1) states that “...an individual may not have a weapon, explosive, or incendiary, on or about the individual’s person or accessible property – (1) When performance has begun of the inspection or the individual’s person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted...”

⁴ 49 C.F.R. § 1503.209(f).

By letter of August 19, 2005, Respondent appealed the decision. Respondent perfected his appeal by letter dated September 28, 2005. In his letter, Respondent stated that a knife was found in his accessible property. Respondent contended, however, that the complaint should be dismissed because he did not intend to bring a prohibited item into the sterile area of the airport or on board the aircraft and did not attempt to deceive screeners regarding the presence of the prohibited item. Respondent explained that he took responsibility for the knife, that he had missed it when he cleaned his bag, and had told TSA to take the knife and dispose of it. He further explained that he searched his baggage prior to arriving at the airport and even removed another knife that was in his baggage. Respondent noted that he cooperated fully with TSA and law enforcement officers. Respondent further stated that he flies regularly through Philadelphia and is familiar with security regulations.

TSA filed a Reply Brief on November 10, 2005. TSA argued that Respondent admits violating 49 C.F.R. § 1540.111(a)(1). TSA stated that, as a matter of law, lack of knowledge or intent is not a defense and cites legal precedent in support of its position.⁵ TSA contended that there is no misstatement of law or prejudicial error in the ALJ decision. TSA also noted that the civil penalty of \$500.00 is appropriate because it is consistent with the TSA Sanction Guidance

⁵ *Hayter D. Reynolds*, 1996 FAA LEXIS 1172 (1996) (Respondent admitted having a loaded firearm in his carry-on baggage. ALJ found that lack of knowledge was not a defense); *FAA v. Schultz*, 1989 FAA LEXIS 57 (1989) (Respondent admitted having a loaded firearm in his carry-on baggage. ALJ found that intent is not a required element for violation of Federal Aviation Administration (FAA) rules prohibiting carriage of prohibited items on board an aircraft); *U.S. v. Gutierrez*, 624 F. Supp. 759 (E.D.N.Y. 1985) (Respondent unknowingly brought a firearm and ammunition concealed in a phonograph to the screening checkpoint. Court found that Congress intended that prohibition against carrying prohibited items on board an aircraft imposed strict liability regardless of the absence of fault or wrongdoing), *Corely v. FAA*, 1997 FAA LEXIS 756 (1997) (An off-duty law enforcement officer brought a canister of tear gas to the security checkpoint. ALJ found that lack of knowledge is not an affirmative defense.), *Matter of Koblick*, 1992 FAA LEXIS 276 (1992) (Respondent was not aware that a loaded firearm was in his carry-on baggage because his wife had packed his bag. ALJ found that passengers have a duty to know the contents of their luggage.), *U.S. v. Flum*, 518 F.2d 39, 43-45 (8th Cir.), cert. denied, 423 U.S. 1018 (1975) (Court found that intent to conceal is not a required element to hold a passenger liable for attempting to carry a knife on board an aircraft because Congress intended to keep weapons from being taken on board airplanes).

which provides for a penalty ranging from \$250.00 to \$1,500.00 for sharp objects that may be used as a weapon discovered at the checkpoint.

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 that Respondent violated 49 C.F.R. § 1540.111(a)(1), that the allegations contained in the Complaint were admitted, and that TSA was entitled to a decision as a matter of law were 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.

In his appeal, Respondent has not presented argument on any of these issues.

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

In this case the facts are not disputed by either party. TSA's complaint alleged that during the course of the security inspection at the checkpoint, a butterfly knife was found in Respondent's accessible property. Although Respondent did not file an answer to the complaint, when he filed his appeal brief Respondent admitted that the knife was in his accessible property presented for inspection.

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

The ALJ made the following conclusions of law:

1. Respondent violated 49 C.F.R. § 1540.111(a)(1).
2. The allegations contained in the complaint were admitted.
3. TSA met its burden to show that no genuine issue of material fact exists, given that all inferences must be considered in the light most favorable to the non-moving party and was entitled to a decision as a matter of law.

Respondent does not dispute any of these conclusions and I agree that the ALJ's conclusions are based on applicable law, precedent, and public policy. As the ALJ observes, 49 C.F.R. § 1540.111(a)(1) prohibits the carriage of weapons, explosives, and incendiaries by an individual on or about the individual's person or accessible property when performance has begun of the inspection of the person or accessible property before entering the sterile area of an airport, or before boarding an aircraft. TSA's Interpretive Rule explains that weapons include sharp objects that could be effective in intimidating or harming passengers or crew. The rule specifically lists knives of any length as prohibited items that passengers may not carry "as accessible property or on their person through passenger screening checkpoints or into airport sterile areas and the cabins of a passenger aircraft."⁶

The ALJ correctly points out that TSA's rules specify that failure to file an Answer without good cause will be deemed an admission of the truth of each allegation contained in the complaint. Since the Respondent never answered the complaint, the ALJ deemed the allegations admitted consistent with the regulation. When Respondent did address the allegations in his appeal brief, he admitted that the knife was in his accessible property presented at the checkpoint.

⁶ 68 Fed. Reg. 7444, 7446 (Feb. 14, 2003).

Finally, the ALJ granted TSA's motion for decision based on his conclusion that TSA had met its burden to show that no genuine issue of material fact exists as to the issues presented in this case. TSA's regulations permit a party to make a motion for decision regarding all or any part of the proceedings, at any time before the ALJ has issued an initial decision in the proceedings.⁷ The rules specify that the ALJ must grant a motion for decision if the record and evidence show that there is no genuine issue of material fact. Because Respondent failed to answer the complaint, the allegations in the complaint were deemed admitted. As a result, there was no genuine issue of material fact. Assessing the evidence in the light most favorable to the non-moving party, the ALJ correctly applied the relevant regulation

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.

Finding 4: The assessment of a civil penalty in the amount of \$500.00 is appropriate.

I find that the civil penalty initially assessed by TSA, and upheld by the ALJ in this proceeding is appropriate, justified and within statutory limits.⁸

Finding 5: The Respondent's claim that he lacked intent to violate the regulation is not a defense.

While not raised before the ALJ, Respondent argued in his appeal brief that he lacked intent to violate the regulation. TSA responded that intent is not a required element for enforcement of the regulation and cites considerable legal precedent to support its argument. I agree that 49 C.F.R. § 1540.111(a)(1) does not require that an individual must exhibit intent to

⁷ 49 C.F.R. § 1503.218(f)(5).

⁸ 49 U.S.C. § 46301.

carry a prohibited item into the sterile area of an airport or on board an aircraft or have knowledge that a prohibited item is on his person or in his accessible property.

Conclusion

For the reasons stated above, Respondent's appeal to overturn the decision of the ALJ is denied.

Dated: 2/28/2006

_____/signed/_____

Robert Jamison
Deputy Administrator