

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

In the Matter of:)	
)	
ROBERT MEYERDIERKS,)	TSA Docket No. 06-TSA-0022
)	
Respondent)	

ORDER

Introduction

Pursuant to 49 C.F.R. §§1503.16(h) and 1503.233, Robert Meyerdierks (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 \$1,950.00 for violation of 49 C.F.R. §§ 1540.105(a)(1) and (2).³ For the reasons stated below, the case is remanded to the ALJ for a hearing.

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. The title of Deputy Administrator was changed to Deputy Assistant Secretary.

³ The ALJ apportioned the \$1,950 civil penalty as follows: one half of the total amount or \$975.00 for the violation of 49 C.F.R. § 1540.105(a)(1) and the other half or \$975.00 for the violation of 49 C.F.R. § 1540.105(a)(2).

Synopsis of the Facts and Procedural History

On April 3, 2005, Respondent was a ticketed passenger at Wilmington International Airport. Without authorization, Respondent entered the restricted air operations area (AOA) through a restricted door that was marked with a warning sign. In his response to the Notice of Proposed Civil Penalty, Respondent explained that he was alone at the U.S. Airways waiting area. He waited 15 minutes to present his ticket and ID. He noticed aircraft operator personnel talking at the steps to the aircraft. He heard a buzzer that he thought was a signal that he could open the door. The door was not locked. He opened the door and proceeded to the aircraft. He presented his ticket and ID to the aircraft operator personnel who directed him up the stairs onto the aircraft and assigned him a seat.

Respondent refused a settlement offer and TSA filed a Complaint alleging that Respondent violated 49 C.F.R. § 1540.105(a)(1) and (2). Section (a)(1) provides that 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.” Section (a)(2) provides that no person may “enter, or be present within, a secured area, AOA, SIDA or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.” Respondent requested a formal hearing before an ALJ.

On April 17, 2007 TSA filed a Motion for Decision stating that in his response to the Notice of Proposed Civil Penalty, Respondent admitted opening the restricted door and proceeding through the AOA to the aircraft and that these actions constitute a violation of 49 C.F.R. § 1540.105(a)(1) and (2). TSA’s Rules of Practice provide that the ALJ must grant a party’s motion for decision if the pleadings, depositions, answers to interrogatories, admissions,

matters that the ALJ has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. 49 C.F.R. § 1503.218(f)(5). The ALJ granted TSA's motion on April 19, 2006, finding that by Respondent's admissions, the facts necessary to demonstrate a violation of 49 C.F.R. § 1540.105(a)(1) and (2) are proved and thus there is no genuine issue of material fact.

Discussion

Pursuant to TSA's rules of practice, I am remanding the case to the ALJ for a hearing. It is not clear that Respondent's response constitutes an admission to a violation of either 49 C.F.R. 1540.105(a)(1) or (2) in order to support a finding as a matter of law that there are no genuine issues of material fact. Respondent stated that he believed aircraft operator personnel signaled him to enter the AOA and sounded a buzzer to permit him to open the restricted door. The restricted door was not locked. In order to grant a motion for decision, the moving party has the burden of proving that a genuine issue of material fact does not exist and all inferences from the facts must be considered in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). It appears that in this case, there is a dispute as to whether the Respondent was signaled to enter the AOA by aircraft operator personnel that must be resolved.

Conclusion

Therefore, it is ordered that this matter is remanded to the ALJ for a hearing on the merits.

Dated: 7/2/2007

_____/s/_____
Gale Rossides
Acting Deputy Assistant Secretary