

U.S. DEPARTMENT OF HOMELAND SECURITY  
TRANSPORTATION SECURITY ADMINISTRATION

In the Matter of:	)	
	)	
JOHN U. LEWIS,	)	Docket No. 07-TSA-0157
	)	
Respondent.	)	

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**FINAL DECISION AND ORDER**

Respondent, John U. Lewis, appeals an Order of the Administrative Law Judge (ALJ) granting a Motion for Decision filed by the Transportation Security Administration (TSA) issued on November 29, 2007. The ALJ found that Respondent violated 49 C.F.R. § 1540.111 and imposed a civil penalty of \$3,000.00. As discussed below, the Order is upheld and the appeal is denied.

The material facts of this case are not in dispute. In its Complaint, TSA alleged that Respondent was a ticketed passenger on July 15, 2005 when he presented himself and his accessible property for screening at Miami International Airport. During the screening process, an unloaded revolver and one round of ammunition were discovered inside his carry-on baggage. In his Answer to the Complaint, Respondent admitted that he had a revolver and a round of ammunition in his backpack, although he disputed the type of revolver and noted that the ammunition was for cleaning purposes only. TSA's regulations state that an individual may not have a weapon, explosive, or incendiary, on or about the individual's person or property when performance has begun of the inspection of the individual or the accessible property before entering a sterile area or before boarding an aircraft. 49 C.F.R. § 1540.111(a)(1).

TSA filed a Motion for Decision since Respondent did not deny the allegations contained in the Complaint. TSA's rules of practice provide that the ALJ must grant a party's motion for

decision if the record shows 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. The ALJ granted TSA's motion.

Respondent then filed a request for reconsideration of the ALJ decision. TSA's rules of practice do not permit reconsideration of an ALJ Initial Decision. TSA's rules of practice direct parties to file an appeal of the initial decision to the TSA Decision Maker. 49 C.F.R. § 1503.233(a). Nevertheless, the ALJ denied Respondent's request for reconsideration.

In his appeal, Respondent argues that he did not receive the Complaint. He also states that he did not know the firearm was in the backpack since the backpack was given to him by another person. Respondent contends that the firearm was small. Respondent notes that he has a permit to carry a concealed weapon and that the firearm was not illegal. Respondent claims that TSA failed to prove its case by a preponderance of the evidence.

TSA's rules of practice provide that only the following issues may be appealed to the TSA Decision Maker: 1) 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 ALJ committed any prejudicial errors during the hearing that support the appeal. 49 C.F.R. § 1503.233(b).

The ALJ properly granted TSA's motion for decision. Since Respondent admitted to having the weapon and the ammunition in his accessible property when he presented himself for screening, there are no genuine issues of material fact in this case and there was no need for a hearing. Respondent's statements regarding the type and size of revolver, the purpose of the ammunition, his ability to carry a concealed weapon, and the legality of the firearm are immaterial. Respondent's claim that he did not know the firearm was in his carry-on baggage are also immaterial. TSA's regulations do not require that an individual exhibit intent to carry a

prohibited item into the sterile area or onboard an aircraft or have knowledge that the prohibited item is on his person or in his accessible property. Respondent is responsible for the items that are contained in the accessible property he attempted to bring into the sterile area.

Although Respondent claims not to have received the Complaint, the record shows that the Complaint was properly served and Respondent did file an Answer to the Complaint in which he admitted having a firearm and a round of ammunition in his carryon baggage.

The civil penalty imposed by the ALJ in this matter is appropriate, justified, and within statutory limits. 49 U.S.C. § 46301. It is also consistent with TSA's Sanction Guidelines published on TSA's web site at [www.tsa.gov](http://www.tsa.gov). Attempting to bring a firearm and ammunition into the sterile area of the airport and on board an aircraft is a serious offense that presents an immediate threat to the security of the airport.

A party may petition the TSA Decision maker to reconsider or modify a Final Decision and Order. A party must file the petition with the TSA Enforcement Docket clerk not later than 30 days after service of the Final Decision and Order and must serve a copy of the petition on all parties. The address of the Enforcement Docket Clerk is:

ALJ Docketing Center, U.S. Coast Guard  
U.S. Custom House, Room 412  
40 South Gay Street  
Baltimore, MD 21202-4022  
ATTENTION: Enforcement Docket Clerk

The rules of practice for filing a petition for reconsideration are described in 49 C.F.R. § 1503.234. A party may seek judicial review of the Final Decision and Order as provided for by 49 U.S.C. § 46110.

For the reasons stated above, Respondent's appeal is denied and the order of the ALJ is upheld.

Dated: October 30, 2009

  
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Keith G. Kauffman  
Acting Deputy Administrator