

DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION

In the Matter of)
)
 CLEMENT O. DENNIS, JR.,) Docket No. 09-TSA-0022
)
 Respondent.)

FINAL DECISION AND ORDER

Respondent, Clement O. Dennis, Jr., appeals an Order of the Administrative Law Judge (ALJ) issued on August 13, 2009 granting a Motion to Deem the Allegations in the Complaint Admitted and a Motion for Decision filed by the Transportation Security Administration (TSA). The ALJ found that Respondent violated 49 C.F.R. §1540.111(a)(1) which states, "...a person 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 of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted..." The ALJ imposed a civil penalty of \$3,000.00. As discussed below, Respondent's appeal is denied and the Order is affirmed.

Upon receipt of Respondent's request for a formal hearing, TSA served Respondent with a Complaint. The Complaint was sent to the address Respondent provided in his request for a hearing. TSA's rules of practice require that an Answer to the Complaint must be filed within 30 days after service of the Complaint. 49 C.F.R. §1503.209(a). The Complaint was returned as unclaimed and Respondent did not file an Answer. The rules also state that failure to file an Answer without good cause will be deemed an admission of the truth of each allegation contained in the Complaint. 49 C.F.R. §1503.209(f).

TSA's rules of practice for civil penalty actions specify that a party may appeal only the following issues: 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). In his appeal, Respondent requests that the Order be reversed and a hearing be held. Respondent explains that he did not receive the Notice of Hearing because it was sent to the wrong address and did not participate in a telephone conference with the ALJ because he did not check his voice mail messages. Respondent also explains that he did not intend to board a plane with a loaded weapon and was unaware that a loaded weapon was in his accessible property.

I find that the ALJ's Order is consistent with TSA's rules of practice. The service of the Notice was proper. As stated in the Order, TSA's rules provide that when a party fails to claim a letter, service will be considered valid on the date the document was mailed. 49 C.F.R. § 1503.211(g). While Respondent notes in his appeal brief that the address was not correct, it was the address that was provided by Respondent in his correspondence requesting a hearing. Thus, it was reasonable for the ALJ to use the same address when sending the Notice of Hearing. Respondent was also given ample opportunity to participate in a telephone conference with the ALJ to address why he had failed to file an Answer. The ALJ properly granted TSA's Motion to Deem the Allegations in the Complaint Admitted since the rules of practice require that failure to file an answer without good cause will be deemed an admission of the truth of each allegation contained in the complaint. 49 C.F.R. §1503.209(f).

Likewise, TSA's Motion for Decision was properly granted. The rules of practice require that if there is no genuine issue of material fact, the party making the motion is entitled to a decision as a matter of law. 49 C.F.R. §1503.218(f)(5). This determination is supported by Respondent's appeal in which he admits that a loaded weapon was in his accessible property.

Respondent claims that he did not intend to board the plane with the loaded weapon and that he did not know the loaded weapon was in his accessible property. Respondent's claims are not relevant. 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 was in his accessible property. See, *In the Matter of Marlon Matthews*, 2006 WL 3892309 (Docket No. 05-TSA-0004, Feb. 28, 2006) and *In the Matter of Stephen Pietrzak*, 2006 WL 3892311 (Docket No. 05-TSA-0022, Feb. 28, 2006). Respondent is responsible for the items contained in the accessible property he carries with him. This is consistent with substantial and long standing precedent.¹ Bringing a loaded weapon 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 and the traveling public.

The civil penalty imposed by the ALJ 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.

A party may petition the TSA Decision Maker to reconsider or modify a Final Decision and Order. The rules of practice for filing a petition are described in 49 C.F.R. § 1503.234. The petition must be filed with the TSA Enforcement Docket clerk not later than 30 days after service

¹ *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 carryon 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).

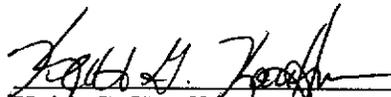
of the Final Decision and Order and must serve a copy on all parties. The address of the Enforcement Docket Clerk is:

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

A party may also 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: March 22, 2010



Keith G. Kauffman
Acting Deputy Administrator