

Before the
TRANSPORTATION SECURITY ADMINISTRATION

In the Matter of)	
)	
Michael T. Davis,)	Docket No. 12-TSA-0052
)	
Respondent.)	

FINAL DECISION AND ORDER

Respondent Michael T. Davis appeals the October 25, 2012 Initial Decision and Order of the Administrative Law Judge (ALJ) in the above-referenced matter. In the Initial Decision and Order, the ALJ found that Respondent violated 49 C.F.R. §1540.109 by demonstrating aggressive behavior and using profanity while undergoing screening at Columbus International Airport on or about June 13, 2012. For the reasons stated below, the Initial Decision and Order is upheld and the appeal is denied.

Initial Decision and Order

Respondent was served with a Complaint on June 21, 2012. The Complaint alleged that while a Transportation Security Officer (TSO) was conducting a pat down of Respondent, Respondent used profanity to refer to the TSO. A Lead TSO was called to assist. While the Lead TSO attempted to continue the screening procedure, Respondent continued to use loud profanity. Respondent's aggressive behavior and use of profanity interfered with the Lead TSO's ability to conduct his screening duties. Law enforcement officers were called to the checkpoint and escorted Respondent out of the checkpoint.

TSA's rules of practice require that a written Answer 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 will be deemed an admission of the allegations contained in the Complaint. 49 C.F.R. § 1503.611(d). Respondent failed to file an Answer. On October 4,

2012, the ALJ issued an Order to Show Cause as to Respondent's failure to file an Answer and gave Respondent until October 19, 2012 to respond. Respondent failed to respond to the Order to Show Cause. In accordance with TSA's rules, the ALJ found that the allegations of the Complaint were admitted. As a result, the ALJ found no genuine issue of material fact in the case and held that Respondent demonstrated aggressive behavior and loud use of profanity and that his behavior interfered with screening personnel's ability to perform their duties. The ALJ held that Respondent violated 49 C.F.R. § 1540.109. Respondent was assessed a civil penalty in the amount of \$500.00.

Respondent's Appeal

In his appeal, Respondent disputes the ALJ's findings that Respondent engaged in aggressive behavior and loud use of profanity and that he interfered with screening personnel in the performance of their screening duties. Respondent argues that using profanity is not by itself sufficient for a finding of interference with screening. Respondent states that he cooperated with screening personnel and allowed the Lead TSO to complete the pat down. Respondent states that his behavior did not prevent other passengers from proceeding through the checkpoint and that he did not physically touch the TSOs or threaten them. Respondent also states that he was not loud. Finally, Respondent notes that he was allowed to proceed through the checkpoint.

TSA Motion to Dismiss Appeal

TSA requests that the appeal be dismissed. TSA argues that Respondent failed to file an Answer to the Complaint as required by 49 C.F.R. § 1503.629(f) and also failed to respond to the ALJ Order to show cause why an Answer was not filed. TSA notes that the rules of practice state "a person's failure to file an answer without good cause, as determined by the ALJ, will be deemed an admission of the truth of each allegation contained in the complaint." 49 C.F.R.

§1503.611(d). Respondent's appeal does not explain why he did not file an Answer or respond to the Order to Show Cause. TSA also points out that the notice of appeal was not timely filed and was not served on TSA as required by 49 C.F.R. § 1503.657(a).

Respondent's Appeal Regarding Findings of Fact

According to the Transportation Security Administration's (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). Respondent's appeal challenges whether the findings of fact are supported by a preponderance of the evidence.

In accordance with TSA's regulations and as discussed in the Initial Decision and Order, Respondent is required to file a written Answer to the Complaint. Respondent's failure to file an Answer and to show cause why an Answer was not filed, is deemed an admission as to the truth of the allegations contained in the Complaint. Therefore, Respondent has admitted to interfering with the ability of TSA screening personnel to conduct screening duties by demonstrating aggressive behavior and loud use of profanity. The ALJ properly applied the applicable regulations in making that determination.

Respondent had notice of the requirement to file an Answer and the consequences of failing to do so. The Complaint included instructions for filing an Answer which states that a written Answer must be filed within thirty days of service of the Complaint and that failure to file an Answer may be deemed an admission to any and all allegations set forth in the Complaint and may result in a monetary penalty. The Complaint also contained an optional Answer form

that could be used to file an Answer. In the Order to Show Cause, the ALJ states that the Respondent was required to file an Answer within thirty days of filing the Complaint and states that failure to file an Answer without good cause will be deemed an admission of the truth of each allegation contained in the Complaint. Based on the forgoing, the Initial Decision and Order 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 30 days after service of the Final Decision and Order and must comply with the requirements described in 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.

Dated: 5/10/2013

J.W. Halinski
Deputy Administrator