

**REQUEST FOR PERSONNEL ACTION**

**PART A - Requesting Office (Also complete Part B, Items 1, 7-22, 32, 33, 36, and 39.)**

1. Action Requested RTD - Susp. NTE		2. Request Number (b)(6)
3. For Additional Information Call (Name and Telephone Number) (b)(6)		4. Proposed Effective Date 04/05/2014
5. Action Requested By (Typed Name, Title, Signature, and Request Date) Clarence Cotton 04/07/2014		6. Action Authorized by (Typed Name, Title, Signature, and Concurrence Date) (b)(6) 04/07/2014

**PART B - For Preparation of SF 50 (Use only codes in FPM Supplement 202-7. Show all dates in month-day-year order.)**

1. Name (Last, First, Middle) (b)(6)	2. Social Security Number (b)(6)	3. Date of Birth (b)(6)	4. Effective Date 04/05/2014
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FIRST ACTION		SECOND ACTION	
5-A. Code 292	5-B. Nature of Action RTD - Susp. NTE	5-A. Code	5-B. Nature of Action
5-C. Code ZVC	5-D. Legal Authority P.L. 107-71. Transportation Security Adm	5-C. Code	5-D. Legal Authority
5-E. Code	5-F. Legal Authority	5-E. Code	5-F. Legal Authority

7. FROM: Position Title and Number EXP TRANSPORT SECURITY OFFICER (BDO) (b)(6)	16. TO: Position Title and Number
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9. Pay Plan SV	9. Occ. Code 1802	10. Grade or Level G	11. Step or Rate 0	12. Total Salary \$51,953.00	13. Pay Basis	16. Pay Plan SV	17. Occ. Code	18. Grade or Level	19. Step or Rate	20. Total Salary/Award	21. Pay Basis
12A. Basic Pay \$43,054.00	12B. Locality Adj. \$8,899.00	12C. Adj. Basic Pay \$51,953.00	12D. Other Pay	20A. Basic Pay	20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay				

14. Name and Location of Position's Organization SECURITY OPERATIONS CENTRAL AREA DFW - DALLAS/FORT WORTH INTERN  TA5905204200000000	22. Name and Location of Position's Organization
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23. Veterans Preference 1 - None 3 - 10 Points/Disability 5 - 10 Points/Other 2 - 5 Point 4 - 10 Points/Compensable 6 - 10 Points/Compensable/30%		24. Tenure 0 - None 2 - Conditional 1 - Permanent 3 - Indefinite	25. Agency Use	26. Veterans Pref for RIF YES NO
27. FEGLI	28. Annuity Indicator	29. Pay Rate Determinant		
30. Retirement Plan	31. Service Comp. Date (Leave)	32. Work Schedule F	33. Part-Time Hours Per Week Pay Period	

34. Position Occupied 1 - Competitive Service 3 - SES General 2 - Excepted Service 4 - SES Career		35. FLSA Category E - Exempt N - Nonexempt	36. Appropriation Code PACSCR	37. Bargaining Unit Status		
38. Duty Station Code 482450439		39. Duty Station (City - County - State or Overseas Location) FORT WORTH - TARRANT - TX				
40. Agency Date	41.	42.	43.	44.		
45. Educational Level	46. Year Degree Attained	47. Academic Discipline	48. Functional Class	49. Citizenship 1 - USA 8 - Other	50. Veterans Status	51. Supervisory Status

**PART C - Reviews and Approvals (Not to be used by requesting office.)**

1. Office/Function	Initials/Signature	Date	Office/Function	Initials/Signature	Date
A.			D.		
B.			E.		
C.			F.		

2. Approval: I certify that the information entered on this form is accurate and that the proposed action is in compliance with statutory and regulatory requirements.

Signature \_\_\_\_\_ Approval Date \_\_\_\_\_

### REQUEST FOR PERSONNEL ACTION

**PART A - Requesting Office (Also complete Part B, Items 1, 7-22, 32, 33, 36, and 39.)**

1. Actions Requested Suspension NTE 4/4/2014		2. Request Number (b)(6)
3. For Additional Information Call (Name and Telephone Number) (b)(6)		4. Proposed Effective Date 03/31/2014
5. Action Requested By (Typed Name, Title, Signature, and Request Date) (b)(6) 04/07/2014		6. Action Authorized by (Typed Name, Title, Signature, and Concurrence Date) 469-948-(b)(6)

**PART B - For Preparation of SF 50 (Use only codes in FPM Supplement 292-1. Show all dates in month-day-year order.)**

1. Name (Last, First, Middle) (b)(6)		2. Social Security Number (b)(6)	3. Date of Birth (b)(6)	4. Effective Date 03/31/2014
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FIRST ACTION					SECOND ACTION				
5-A. Code 450	5-B. Nature of Action Suspension NTE				5-A. Code	5-B. Nature of Action			
5-C. Code	5-D. Legal Authority				5-C. Code	5-D. Legal Authority			
5-E. Code	5-F. Legal Authority				5-E. Code	5-F. Legal Authority			

7. FROM: Position Title and Number EXP TRANSPORT SECURITY OFFICER (BDO) 030871 90352702												15. TO: Position Title and Number																							
8. Pay Plan SV			9. Occ. Code 1802			10. Grade or Level G			11. Step or Rate 0			12. Total Salary \$51,953.00			13. Pay Basis SV			16. Pay Plan SV			17. Occ. Code			18. Grade or Level			19. Step or Rate			20. Total Salary/Award			21. Pay Basis		
12A. Basic Pay \$43,054.00				12B. Locality Adj. \$8,899.00				12C. Adj. Basic Pay \$51,953.00				12D. Other Pay				20A. Basic Pay				20B. Locality Adj.				20C. Adj. Basic Pay				20D. Other Pay							
14. Name and Location of Position's Organization SECURITY OPERATIONS CENTRAL AREA DPW - DALLAS/FORT WORTH INTERN TA5905204200000000												22. Name and Location of Position's Organization																							

23. Veterans Preference 1 - None 3 - 10-Point/Disability 6 - 10-Point/Other 2 - 5-Point 4 - 10-Point/Compensable 8 - 10-Point/Compensable/30%												24. Tenure 0 - None 2 - Conditional 1 - Permanent 3 - Indefinite			25. Agency Use			26. Veterans Prof for RIF YES NO									
27. FEGLI												28. Annuity Indicator			29. Pay Rate Determinant												
30. Retirement Plan						31. Service Comp. Date (leave)						32. Work Schedule P			33. Part-Time Hours Per Biweekly Pay Period												
34. Position Occupied 1 - Competitive Service 3 - SES General 2 - Excepted Service 4 - SES Career												35. FLSA Category E - Exempt N - Nonexempt			36. Appropriation Code			37. Bargaining Unit Status									
38. Duty Station Code 482450439						39. Duty Station (City - County - State or Overseas Location) FORT WORTH - TARRANT - TX																					
40. Agency Data			41.			42.			43.			44.															
46. Educational Level				48. Year Degree Attained				47. Academic Discipline				48. Functional Class				49. Citizenship 1 - USA 3 - Other				50. Veterans Status				51. Supervisory Status			

**PART C - Reviews and Approvals (Not to be used by requesting office.)**

1. Office/Function	Initials/Signature	Date	Office/Function	Initials/Signature	Date	
A.			D.			
B.			E.			
C.			F.			
2. Approval: I certify that the information entered on this form is accurate and that the proposed action is in compliance with statutory and regulatory requirements.					Signature	Approval Date

U.S. Department of Homeland Security  
DFW International Airport  
510 Airline Drive  
Coppell TX 75019



Transportation  
Security  
Administration

DFW Employee Relations Action Cover Sheet

Employee: (b)(6)

Local Case# 14046

..... LOR      X   Suspension (5 Days)    ..... Indefinite Suspension    ..... Removal  
..... Trial Period Termination    ..... Reduction in Grade and Pay

Offense: Failure to Follow SOP, Failure to Follow Policy

(b)(6)

*copy*

Concurrence from Counsel - Proposal: (b)(6)

Date: 2-28-14

(b)(6)

Concurrence from Counsel - Decision: (b)(6)

Date: 3-27-14

U.S. Department of Homeland Security  
DFW International Airport  
510 AirHue Drive  
Coppell TX 75019



Transportation  
Security  
Administration

Date: March 28, 2014  
To: (b)(6)  
Expert Transportation Security Officer (BDO)  
Dallas/Fort Worth International Airport  
From: Juan Ovalle  
Deputy Assistant Federal Security Director  
Dallas/Fort Worth International Airport  
Subject: Notice of Decision on Proposed Five (5) Day Suspension  
Reference: (b)(6)

This is notice that I have decided to suspend you from employment at TSA without pay for five (5) calendar days on the following dates March 31, 2014, through April 4, 2014. You are to return to duty on April 7, 2014, at your scheduled shift. This decision is made to promote the efficiency of the service and is based on the following:

Charge 1: Failure to Follow Policy

Specification: On January 24, 2014, you were assigned to perform Walk The Line (WTL) procedures at the Managed Inclusion II (MI-2) lane at Checkpoint A-35. You conducted an unauthorized covert test by requesting two passengers to switch identification and boarding passes in an attempt to see if the TSO performing Travel Document Check (TDC) procedures would notice. You were not authorized to perform this self-initiated testing. You were made aware of the proper procedures through your recurrent training and briefings. Your actions constitute of a violation of this policy.

Charge 2: Failure to Follow Standard Operating Procedures (SOP)

Specification: On January 24, 2014, you were assigned to perform Walk The Line (WTL) procedures at the Managed Inclusion II (MI-2) lane at Checkpoint A-35. You failed to perform WTL procedures as described in the BDO SOP. You were made aware of the proper procedures through your recurrent training and briefings. Your actions constitute of a violation of this policy.

As background, on January 24, 2014, you were assigned to perform Walk The Line (WTL) procedures at the Managed Inclusion II (MI-2) lane at Checkpoint A-35. You observed TSO (b)(6) performing TDC duties for the same lane. In your opinion, TSO (b)(6) was not being thorough enough in his duties. You spoke with BDO (b)(6) (b)(6) regarding your concerns and BDO (b)(6) agreed he had the same concerns. BDO (b)(6) stated that you should get two passengers to switch identification and see if it was noticed by TSO (b)(6). You then approached two female passengers waiting in the queue and requested for them to switch identification and boarding passes. You did not inform the supervisor of the checkpoint of your request to the passengers nor did you have the authority to make such a request.

Both passengers entered the MI-2 lane with the incorrect identification and were checked by TSO (b)(6). TSO (b)(6) did not detect the switch and allowed both passengers to enter into the checkpoint. After their entry into the checkpoint you brought both passengers to a different TDC station and checked each one's proper identification and boarding pass before either passenger proceeded through the checkpoint. You then notified BDO management and Checkpoint STSO (b)(6) of the incident.

On February 28, 2014, you received a written notice of a proposed suspension from Transportation Security Manager (TSM BDO (b)(6)). That written notice advised you of your right to make an oral and/or written reply. You provided a written statement dated March 13, 2014, in which you challenged the facts of the incident, stated you felt the charges were too severe and questioned why you had been allowed to remain in screening functions if your reliability and judgment were cause for concern. You also questioned why Charge 2 was not included in your pre-decisional meeting. Finally, you asserted that AFSD Timothy Joseph had requested all BDOs to observe TDC procedures to prevent potential security breaches.

The decision to keep an employee in a duty status is made on a case-by-case basis, taking into account all facts and circumstances of a particular matter. I understand your actions may not have been pre-planned, but that does not negate the fact you are not authorized to initiate testing of a perceived security vulnerability. I also understand that your intentions may have been to address problems with the TDC process; however, your methods to do so were unacceptable. You could have spoken with the checkpoint supervisor or the TSO himself without initiating testing or involving passengers. While it is true that Mr. Joseph did have a meeting with all BDO employees at which he asked the BDOs to observe the TDC process, at no time did he indicate that it was acceptable to initiate testing or involve passengers or take any action towards a TSO you believed was not conducting TDC procedures correctly.

Regarding Charge 1, you stated that at no point did you request any passengers to switch identification or boarding passes. You stated that you made a comment to two passengers who then switched their information. You then questioned what evidence supported you embarrassed the agency or caused negativity towards TSA. You also questioned what evidence supported that your actions caused any impact on the ability for TSA to discharge its mission. Next, you questioned what evidence supported that

your reliability, judgment or trustworthiness caused concern with TSA or the public. You stated that you had seen no media reports regarding the incident and that the two passengers involved did not file complaints.

You then asserted that you did not make the statement to TSM BDO (b) that your actions were all a part of aviation security, to the test the system and make sure it was working the way it should. You stated you believed Mr. (b)(6) recollection was inflammatory and untruthful. You also stated that you believed the reference of TSA MD 1100.73-5, Section 5.A.7, was too broad and wide, as well as inflammatory and insulting.

I find your statements regarding your actions to be disingenuous. It is unreasonable to believe that two unknown passengers would take it upon themselves to switch identification and boarding passes based solely on a comment. In addition, in your response you state that "at the end of the day I did what I did for the sake of aviation security" which I find to be an incongruous statement if your only action, as you now claim, was to make a comment to two passengers. Further, even if that were to be believed, as a tenured employee, you are well aware of the inherent influence of your position with the traveling public and knew or should have known that your comments would have resulted in action on the part of the passenger. It is beyond the scope and authority of your position to either directly or indirectly act in a manner that will cause covert testing on other TSA employees.

Although I understand you may not have seen media reports or passenger complaints regarding your behavior that does not mean that the potential for negative notoriety does not exist. The two passengers that participated were fully aware of the incident as well as the fact that a TSA employee requested their participation. The mere fact that you stepped beyond the authority and responsibility of your position, along with the fact that you involved the traveling public and your actions directly affected another TSA employee, are the evidence that you conducted yourself in a manner that adversely reflected on TSA and caused both management and the traveling public to question your reliability, judgment and trustworthiness. Finally, there is no evidence other than your mere assertion the statement from TSM BDO (b)(6) is inaccurate.

Regarding Charge 2, you also stated that the chapter of the BDO SOP referenced in the proposal letter did not address WTL procedures and therefore you did not understand the charge.

The pre-decisional discussion is to cover charges being considered by the proposing official and is not considered the final decision on charges cited because further review and investigation occurs before the proposal is ultimately issued. A disciplinary proposal is the vehicle for notifying employee of charges and providing the opportunity to respond before any action is determined. Per TSA Management Directive 1100.75-3, *Addressing Unacceptable Performance and Behavior*, Handbook, Section B.5, states that management officials are not required to meet with employees before proposing discipline. Although management attempts to cover all topics with employees at the pre-

decisional discussion, the fact remains that you were still give the opportunity to respond to charge.

Finally, you stated that you found it insulting after your years of dedicated service to have your integrity questioned. You reiterated that you had never conducted yourself in a way that would jeopardize your integrity, honesty or trustworthiness. You also questioned at point throughout your briefings and trainings never specifically dealt with covert testing that you were or were not allowed to perform. You stated that you conducted your duties with pride and commitment and that you take your responsibilities seriously. You then stated that you found these allegations slanderous and without merit.

I reviewed your statement that you were given the incorrect section of the BDO SOP and the chapter mentioned in the suspension proposal did not address the WTL procedures. I determined that you were not given the updated citation of the BDO SOP at the time of proposal. I then issued you a letter on March 19, 2014, at which time I gave you an additional seven days to review the correct chapter of the BDO SOP and provide an additional written and/or oral reply.

On March 26, 2014, you provided a written statement in which you asserted there was still no specific reference to the section you allegedly violated. You stated you could not find any text that described authorized activities while completing WTL procedures and therefore you still did not understand the charge.

You were in fact given Section 3.5 of the BDO SOP, which was revised and implemented on November 22, 2013, which describes the procedures for performing WTL. At no point in this chapter or in any previous versions, does it describe a situation of employee-initiated covert testing of another TSA employee. Nor does this section provide direction to engage with the traveling public regarding the performance of the TDC employee.

Your behavior as described in Charge 1 violates TSA Management Directive 1100.73-5, Employee Responsibilities and Code of Conduct, paragraph 5(A)(7) which states that, employees are responsible for "observing and abiding by all laws, rules, regulations and other authoritative policies and guidance."

Your behavior as described in Charge 2 violates Chapter 3.5 of the BDO SOP which describes the authorized activities for a BDO performing WTL.

Additionally, your behavior violates TSA MD 1100.73-5, paragraph 6(E) which states "While on or off-duty, employees are expected to conduct themselves in a manner that does not adversely reflect on TSA, or negatively impact its ability to discharge its mission, cause embarrassment to the agency, or cause the public and/or TSA to question the employee's reliability, judgment or trustworthiness."

In determining the appropriateness of the penalty, I have considered a number of factors. First and foremost, I considered the seriousness of the offenses and the relation to your position. As an Expert TSO (BDO), you are held to a higher standard of conduct because you are looked upon by the public as a trusted public servant as you carry out the security

functions of your position. Your failure to follow standardized protocol and creating your covert testing, could have led to a serious security breach. The potential negative notoriety which you could bring to the agency adversely affected the agency's mission by calling into question the integrity of not only yourself but all TSA DFW employees. Additionally, we cannot tolerate employee's picking and choosing which portions of the SOP they will chose to follow. Your conduct causes me great concern and has seriously diminished my confidence in your ability to carry out the wide range of responsibilities required of your position. It is important that both TSA and the public have complete trust and confidence that you will perform your duties with honesty and integrity. I further considered your failure to take responsibility for your actions. Your continued attempt to obfuscate your involvement in self-initiated testing that was beyond your authority and responsibilities, leads me to believe that you fail to grasp the gravity of your actions and therefore have a low likelihood for rehabilitation without disciplinary action.

As mitigating factors, I considered that you are a long-term employee and your overall performance has been satisfactory and you have had no disciplinary actions, since your hire date of August 25, 2002. You are technically proficient in all of your screening duties and have consistently supported the model workplace. I also gave weight to the fact that the passengers' correct identification and boarding passes were checked before they proceeded into the sterile area. However, I find that the nature and seriousness of your conduct in these instances outweigh the mitigating factors and warrants this suspension.

In accordance with TSA policy, the penalty selected is in accordance with TSA's Table of Offenses and Penalties (Table), section D (4) Failure to Follow Policy, in which the recommended penalty range is a Letter of Reprimand to a 14-day suspension and the aggravated penalty range is 15-day suspension to removal. The penalty selected is also in accordance with the Table, section M (1) Failure to Follow Standard Operating Procedures, in which the recommended penalty range is a 5-day suspension to removal, and the aggravated penalty range is removal. TSA policy states when an employee commits more than one offense, the aggravated penalty range of the more serious offense may be considered; however I determined that a 5 day suspension is appropriate due to your lack of disciplinary record and your tenure with TSA. Therefore this proposed suspension is consistent with the Table and thus with actions taken against other employees who have engaged in the same or similar offenses. Additionally, I determined that this is the least severe action to be used to correct this issue.

If you choose to grieve this action under the grievance procedures in TSA HCM 771-4, Handbook, your grievance must be submitted in writing to the National Resolution Center (NRC) within fifteen (15) calendar days of receipt of this letter. The written grievance can be filed by email at [resolutioncenter@tsa.dhs.gov](mailto:resolutioncenter@tsa.dhs.gov), or facsimile at (703) 603-4057 using TSA form 1115-1, Grievance Request. A copy of HCM 771-4 National Resolution Center is attached.

If you are interested in participating in mediation of this action, you can initiate the mediation process by calling the National Resolution Center at (571)227-5097 or emailing [Resolutioncenter@tsa.dhs.gov](mailto:Resolutioncenter@tsa.dhs.gov) to discuss whether your case is eligible for mediation. You



should not file a written request for mediation with the NRC until after this discussion has occurred.

If you need assistance in dealing with any personal matters, the Employee Assistance Program (EAP) is available to provide confidential counseling services. EAP can be reached by calling 1-800-222-0364.

(b)(6)

3/28/14  
Date

Please sign the acknowledgement of receipt below. Your signature does not indicate agreement with this action; it only represents receipt of this notice on the date signed.

(b)(6)

03/28/14  
Date

(b)(6)

3-28-14  
Date

-Or-

Hand Delivered By \_\_\_\_\_

\_\_\_\_\_ Date

Charge 2: Failure to Follow Standard Operating Procedures (SOP)  
MANAGEMENT FAILED TO FOLLOW THE STEPS OF PROGRESSIVE DISCIPLINE IN PROPOSING A 5 DAY  
SUSPENSION THEREBY THEMSELVES VIOLATING MD 1100-73-3. MANAGEMENT ALSO FAILED TO  
PROVIDE THIS CHARGE IN THE INITIAL PRE-DECISIONAL MEETING.

Management's disciplinary proposal is unjustified because it failed to follow progressive disciplinary guidelines set forth in The Handbook to TSA Management Directive 1100.75-3 which states that all adverse actions must undergo a legal sufficiency review. To be legally sufficient, the proposing official must establish that: 1) The alleged misconduct is supported by a preponderance of evidence 2) a nexus exists between a legitimate government interest and the alleged misconduct and 3) the penalty is reasonable. In this particular case, TSA management has failed to sustain the third qualifying statute.

**\*\*Response to Updated/Corrected Reference\*\***

In the Proposed Disciplinary Action letter, along with the updated Corrected Reference Information I received on March 19, 2014, I still do not understand what I am specifically being accused of and/or charged with in regards to violating the WTL procedures in the BDO SOP. On March 14, 2014 I submitted my response to the Proposed Disciplinary Actions in which I stated, "In addition to your allegation of violating the SPOT SOP you stated I violated Chapter 3.6 describing the WTL procedures. SPOT SOP Chapter 3.6 does not address WTL procedures and therefore I do not understand the charge you are accusing me of." On March 19, 2014 I was notified by phone by STSM David Garcia who stated I am scheduled to meet with Mr. Ovalle at 1615 hours in the Terminal D office. In that meeting I was given an updated letter regarding the corrected reference to Charge 2. After receiving that updated letter, and having reviewed it along with the SSI documents I was given that were specific to that updated letter, there is still no specific or exact reference to the violation I have allegedly violated. At this point I'm not sure if I'm being accused of violating BDO SOP Chapter 3.2.C&D, the BDO SOP Chapter 3.6 rev 2 with an implementation date of April 11, 2011, or the BDO SOP Chapter 3.5 rev 3 with an implementation date of November 22, 2013? Or did I violate any portion of the RBS MI II Assessment SOP? The SSI material I was given covers all the SOP areas I am referring to in my previous sentence, to which contains no highlighted, or specified, areas that suggests what I'm being accused of violating. In the original Proposed Disciplinary Action letter STSM Flint stated "Your behavior as described in Charge 2 violates Chapter 3.6 (which was incorrect) of the BDO SOP which describes the authorized activities for a BDO performing WTL". In the BDO SOP, Chapter 3.5, the WTL procedures are stated however there is no text that stipulates "authorized activities" as STSM Flint as stated. I have read and re-read the updated SPOT SOP, even conducted a search on "authorized activities" as stated in the allegation, and cannot locate any text in Chapter 3.5 of the BDO SOP. Furthermore I cannot locate any text regarding "authorized activities" in any portion of the SPOT SOP. STSM Flint was very specific with Charge 1, where he stated I violated TSA MD 1100.73-5, however there are no specifics with Charge 2. Therefore my question remains, what exact part of the BDO WTL SOP am I being accused of violating? I do not see how I could provide any adequate response or defense to the entire BDO WTL SOP.

**\*\*\*Additional Response to the Updated/Corrected Reference\*\*\***

Roughly 2 years ago, if not slightly longer, all BDO's were called to the CMF by SPOT Management per TSA Senior Leadership here at DFW. In that meeting Mr. Tim Joseph had asked all BDO's for assistance,

which was to observe the TDC position due to TDC Officers (b)(3):49 U.S.C. § 114(r) In addition to that Management wanted BDO's (b)(3):49 U.S.C. § 114(r) while performing walk the line procedures. The guidance BDO's received was that (b)(3):49 U.S.C. § 114(r) located in the queue the BDO (b)(3):49 U.S.C. § 114(r) That in itself singled out persons and could have appeared TSA was profiling. Regardless, that type of activity was a direct violation of the SPOT SOP however it was permitted. I do not recall any BDO receiving disciplinary action, being suspended, or being terminated by violating the SPOT SOP while directed to perform the above actions. Now I'm being accused of violating some unknown area of the SPOT WTL SOP. With that accusation I now face a proposed 5 day suspension, which concerns me at this point because I cannot provide an adequate response or defense due to not having any specific reference to what portion of the SPOT WTL SOP I am being accused of violating.

Respectfully Submitted,

(b)(6)

U.S. Department of Homeland Security  
Coppell, TX 76019



Transportation  
Security  
Administration

Date: March 19, 2014

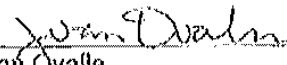
To: (b)(6)  
Expert Transportation Security Officer (BDO)

From: Juan Ovalle  
Deputy Assistant Federal Security Director

Subject: Corrected Reference Information

You were issued a Notice of Proposed Five (5) Day Suspension, from Transportation Security Manger (BDO) (b)(6) on February 28, 2014. In your reply to this proposal, you stated that the BDO SOP chapter referenced in the proposal did not apply to Walk The Line (WTL) procedures and therefore you did not understand the charge. After review of all documentation, I determined that you were not given the appropriate reference information to fully understand your charge.

I have attached the correct BDO SOP chapters, including dates of revision, which I will consider when making my decision regarding your suspension. Since I will be using this corrected material in making my decision, you have the right to review and reply to this updated information. If a decision is made to suspend you, it will not be made or effected earlier than your reply. If you do not reply, a decision will be made no earlier than seven (7) calendar days from the date you receive this letter.

  
Juan Ovalle

3/19/14  
Date

Please sign the acknowledgement of receipt below. Your signature does not indicate agreement with this action; it only represents receipt of this notice on the date signed.

(b)(6)

3/19/2014  
Date

(b)(6)

Witness

3/19/14  
Date

Date: March 13, 2014

To: (b)(6)  
Transportation Security Manager (BDO)  
Dallas/Fort Worth International Airport

Subject: Proposed Five (5) Day Suspension

Reference: (b)(6)

I'd like to begin my response by stating my actions on January 24, 2014 were not of one to cause embarrassment upon anyone, cause embarrassment on TSA, or to bring my credibility and trustworthiness into question. My actions on that day were not rehearsed or preplanned. As Mr. (b)(6) stated to me afterwards behind the A35 checkpoint, as I briefed him over what had just occurred, that at the end of the day I did what I did for the sake of aviation security. In my written reply on February 10, 2014, after the PDD meeting that took place in the BDO office where I was present along with you, Mr. (b)(6) and Mr. (b)(6) I asked in writing what evidence existed to support I violated TSA Management Directive 1100.73-5? After providing my statement on February 10, 2014 it was 18 days later until I heard from you, in which you added a second charge of violation of the SPOT SOP. I don't understand how such a serious charge was not included in the PDD on February 10, 2014? Facing the first charge of violating the TSA MD was serious enough but to have another very serious second charge added, after submitting my reply in the PDD meeting on February 10, 2014. As I stated, in my reply I asked for the evidence to support the accusation but there was no answers to my questions and 18 days later I'm facing another charge of violating the SPOT SOP.

This event occurred on January 24, 2014 and up until February 10, 2014 I had not heard a word about any "investigation" or possible "outcome" regarding the incident that took place at A35. During this time I continued to perform my BDO duties daily. After our February 10<sup>th</sup> meeting, where I was accused of violating the MD you quoted, I continued to perform as an EBDO and Point of Contact for the BDO team(s) as I have done for the past many years as an EBDO. On February 28, 2014 you added a second charge, a very serious charge, and I was allowed to continue to perform my duties as an EBDO. How could any employee, who is facing two very serious charges, be allowed to continue to perform any duties in any position? Yet in your letter you stated your confidence in my ability to perform my EBDO duties have been diminished.

During this time I had a conversation with Mr. Tim Joseph on two occasions, prior to the February 10<sup>th</sup> meeting, where Mr. Joseph asked if I had sat down with anyone with BDO management to discuss what had occurred on January 24, 2014 at the A35 checkpoint. I explained to Mr. Joseph that I had not heard a word from anyone with BDO management, only what Mr. (b)(6) had stated which was he was waiting to hear from (b)(6). Mr. Joseph seemed lost for words then stated/asked what (b)(6) had to do with it. I simply shrugged my shoulders and didn't have an answer for him.

From the date of the incident until February 10<sup>th</sup>, 16 days, I had not heard anything from SPOT management in regards to the incident. When I spoke with you prior, asking if you had heard anything in regards to the incident, you stated you were waiting to hear back from (b)(6). When I spoke with Mr. Joseph I had explained that to him as well, to which Mr. Joseph was shocked and stated (b)(6) (b)(6) had nothing to do with it. From the date of the incident until the date I received the proposal of disciplinary action 28 days have elapsed. On February 10, 2014 you advised me of my charge I was facing, violating the TSA MD and 18 days later you added a very serious charge that I violated the SPOT

SOP. I guess that I simply cannot understand why it took so long to come to this conclusion in regards to the charges, the very serious charges, I face?

On January 24, 2014 my actions were to simply point out, not to overtly or covertly test anyone or anything, that TSO (b)(6) was not performing his duties in accordance with the TSA Travel Documentation Checker Standard Operating Procedures. This violation of the TDC SOP was not only witnessed by me, it was also witnessed by EBDO (b)(6) who was standing very close to TSO (b)(6). TSO (b)(6) only interests were to continue his social interaction with another TSO near him, in which TSO (b)(6) stated to the other TSO "I hate doing TDC." I have also expressed that to Mr. Joseph when we spoke in Coppell. I did so due to the fact that Mr. Joseph had a meeting with all BDO's to address issues with TDC some while back. In that meeting Mr. Joseph made it clear that he wanted BDO's to observe TDC officers, due to TDC officers not paying attention to their TDC duties which were leading to very serious security breaches. Those same security breaches could already exist with TSO (b)(6) actions that day, and could continue to occur when/if TSO (b)(6) performs TDC duties. But yet I'm being accused of embarrassing this agency and violating the SPOT SOP, which in my opinion is completely unfounded. You stated my actions could have led to a serious security breach, which I find incomprehensible considering my actions were the total opposite, are very insulting and demeaning. My actions were based on the inactions of TSO (b)(6) to perform his duties, by which he was not following the TDC SOP. What do the actions of TSO (b)(6) say? Do you, or TSA as an agency, think that TSO (b)(6) had not already caused a serious security breach by not following the TDC SOP? I'm guessing not because many others have informed me that TSO (b)(6) continues to perform TDC duties.

**Background:** Response to Background Statement/Paragraph

In your "background" summary you stated that it was based on my "opinion", regarding TSO (b)(6) not being thorough enough while performing his duty at the TDC position. My opinion had nothing to do with it, it's what I observed. Again, it wasn't only my observation it was the same observation of another BDO who witnessed TSO (b)(6) violating the TDC SOP by not lifting his head up to look at the passengers. My "opinion" of TSO (b)(6) as a person or employee, has no bearing on the fact that TSO (b)(6) was not performing TDC per the SOP. If TSO (b)(6) had made any effort to perform his job duties, within the scope of the TDC SOP, then he would not have drawn the attention of two BDO's. Furthermore he would have realized that the passenger in front of him wasn't the same passenger in the identification he was looking over. And again, in a meeting with DAFSD Tim Joseph, it had been made clear that BDO's were needed to observe TDC functions to ensure security breaches did not exist. At one point Mr. Joseph made it clear that he wanted BDO's out walking the line (b)(3) 49 U.S.C. § (b)(3) 49 U.S.C. § 114(f). That is not part of walk the line procedures in the SPOT SOP but we were being asked to perform those duties. Did that put every BDO in DFW in violation of the SPOT SOP? And Mr. Joseph didn't want our "opinions" of how the TSO's were performing TDC functions, he wanted us to observe what TDC was doing in regards to performing TDC correctly. Therefore once again, it isn't my "opinion" TSO (b)(6) was not being thorough enough in his duties, it was my observation that TSO Hadzic was not following the TDC SOP.

Furthermore, concerning your "background" summary, I again want to clarify what is in my official statement. At no point did I request any passengers to switch their identification and boarding passes. At no point did I order, facilitate, or instruct the passengers to do anything. And at no point did I ever inform the passengers about performing any type of testing. I made a comment to two passengers who then switched their information and continued on with their conversation and continued past TSO (b)(6) TSO (b)(6) never lifted his head to look at the two female passengers because if he would have he would have seen the person on the identification was not the person in front of him. After the two passengers made it past TDC, with the incorrect documents and identification, I followed them inside the divesting area and verified their passports and boarding passes in accordance with TDC SOP and allowed them to continue. At no time did I inform anyone I had just conducted any type of test because I had not done such test.

You go on to state that both passengers entered the MI-2 lane with incorrect identification however the two female passengers were already in the MI-2 lane prior to TSO (b)(6) performing his TDC functions. In my official statement it was pointed out that the checkpoint was already in violation of the MI-2 SOP by allowing MI-2 to become operational, due to the TSA Pre lane being full and backed up. The two females were already in the MI-2 lane, which should have not been operational in the first place, therefore they were in the queue already about 4-6 people from TSO (b)(6). I had already performed my walk the line procedures but due all queues not moving, due to the high number of passengers in the queues, I had already ended my WTL procedure. I did so because many passengers were upset it was taking so long to get through and many passengers did not want to engage in brief conversations, therefore I didn't want to seem as if I was harassing or engaging individuals who already expressed interests in not speaking. That was just in the MI-2 lane. The TSA Pre lane, which was overflowing and parallel with the MI-2 lane, was full and the passengers in that lane were expressing their discontent verbally as well. But the difference was that the passengers in the TSA Pre lane were expressing their discontent with more enthusiasm and volume.

List of Charges:

Charge 1: Failure to Follow Policy

TSA SHOULD MITIGATE THE PROPOSED SUSPENSION BECAUSE MITIGATING FACTORS WARRANT A REDUCTION IN THE PENALTY.

Management should rescind the proposed disciplinary action of a 5 day suspension because of the mitigating factors in my case. (i.e. self-reporting, intent to preserve the integrity of standard operating procedures of both checkpoint and SPOT). TSA Handbook to MD 1100.73-3 (6)(G)(1) directs TSA managers to consider the following twelve factors in determining the appropriateness of an agency's penalty: 1) the nature and seriousness of the offense; 2) the employee's job level and type of employment; 3) the employee's past disciplinary history; 4) the employee's past work record; 5) the effect of the offense on the employee's ability to perform at a satisfactory level; 6) the consistency of the penalty with those imposed upon other employees; 7) the consistency of the penalty with those imposed upon similarly situated employees; 8) the notoriety of the offense on the agency's reputation; 9) the clarity of the employee's notice of performance expectations; 10) the potential for the employee's rehabilitation; 11) the mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, etc.; and 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

In the pre-decision meeting that took place on February 10, 2014 you accused me of only one charge, that I was in violation of TSA Management Directive 1100.73-5 under paragraph 6(E) which states *"While on or off-duty, employees are expected to conduct themselves in a manner that does not adversely reflect on TSA, or negatively impact its ability to discharge its mission, cause embarrassment to the agency, or cause the public and/or TSA to question the employee's reliability, judgment or trustworthiness."* In my response dated February 10, 2014 I responded by asking, specifically regarding your accusation, to which where the evidence is to support I violated the Management Directive you quoted. Where is the evidence to support I embarrassed this agency? Where is the evidence to support the allegations regarding my alleged conduct causing any negativity upon TSA? Where is the evidence to support that I caused any impact upon TSA to discharge its mission? And finally, in regards to any Management Directive violation, where is the evidence to support that my reliability, judgment or trustworthiness is of any issue or concern with TSA or the public?

From January 24, 2014 to present I have seen no media reports regarding the incident that took place that could cause any embarrassment upon TSA or negatively impact its ability to discharge its mission. The two passengers involved did not file complaints, make statements, or conduct any interviews with the media that could cause any embarrassment upon TSA or negatively impact TSA's ability to discharge its mission. And at no time, from January 24, 2014 to present, has this incident brought my reliability, judgment or trustworthiness to be questioned.

Furthermore, in your proposed disciplinary action letter it appears I am also being accused of violation Management Directive 1100.73-5, paragraph 5(A)(7), which stated that employees are responsible for *"observing and abiding by all laws, rules, regulations and other authoritative policies and guidance."* Although this charge does not appear in any pre-decision paperwork, just as the second charge was not listed either accusing me of violating the SPOT SOP, it does appear you have included the above portion of the TSA MD to guide your decision in regards to any disciplinary actions directed towards me. Therefore in response to your reference of the above TSA MD I find that accusation to be so broad and wide as well as inflammatory and insulting. I follow the laws, the rules, and regulations to an exact. I do



not, as you have accused me of doing, make up my own rules and/or apply certain parts of the rules and regulations as I see fit. In your official statement dated on January 24, 2014 you state "I also asked him why he decided to have the passengers swap IDs and passes, and he stated that it's all a part of aviation security, to test the system to make sure it's working the way it should." I never said that to you or made any statement of such to anyone. When the incident occurred I immediately called you and explained to you what all had happened. If you were unable to pay attention to what I had stated then that is something for you to explain. Shortly after the incident Mr. (b)(6) approached the back of the checkpoint, unaware of what had just taken place. I, along with MBDO (b)(6) advised Mr. (b)(6) what had occurred. Mr. (b)(6) responded and stated, that at the end of the day I did what I did for the sake of aviation security. In my official statement I had stipulated the same sentiment that Mr. (b)(6) had just stated to both me and MBDO (b)(6). But at no time did I ever state to you that I did what I did as part of aviation security and to test the system to make sure it's working the way it should. To make such an inflammatory and untruthful official statement is beyond any thoughts I have.

**Charge 2: Failure to Follow Standard Operating Procedures (SOP)**

MANAGEMENT FAILED TO FOLLOW THE STEPS OF PROGRESSIVE DISCIPLINE IN PROPOSING A 5 DAY SUSPENSION THEREBY THEMSELVES VIOLATING MD 1100-73-3. MANAGEMENT ALSO FAILED TO PROVIDE THIS CHARGE IN THE INTIAL PRE-DECISIONAL MEETING.

Management's disciplinary proposal is unjustified because it failed to follow progressive disciplinary guidelines set forth in The Handbook to TSA Management Directive 1100.75-3 states that all adverse actions must undergo a legal sufficiency review. To be legally sufficient, the proposing official must establish that: 1) The alleged misconduct is supported by a preponderance of evidence and 2) a nexus exists between a legitimate government interest and the alleged misconduct 3) the penalty is reasonable. In this particular case, TSA management has failed to sustain the third qualifying statute.

Why was this not included in the pre-decision meeting? In your Proposed Disciplinary Action letter you stated that, "Your behavior as described in Charge 2 violates Chapter 3.6 of the BDO SOP which describes the authorized activities for a BDO performing WTL. Why was this not addressed on January 24, 2014 after the incident occurred? This charge appears 18 days after the first meeting on February 10, 2014, a total of 28 days after the incident on January 24, 2014. What I don't understand is that how am I being charged with violating the SPOT SOP. After making my inquiry for evidence to support the allegation the next thing I receive is another charge, a very serious charge. Yet I have yet received any answers to my inquiries and find myself facing the second charge.

In addition to your allegation of violating the SPOT SOP you stated I violated Chapter 3.6 describing the WTL procedures. SPOT SOP Chapter 3.6 does not address WTL procedures and therefore I do not understand the charge you are accusing me of.

In the interests of not violating the SPOT SOP in this response I will not go into details of the SPOT procedures I was conducting concerning WTL, or any other SPOT function within the SOP. In regards to your accusation to your second charge I find your accusation false due to the nature of your charge you outline, as to what BDO's are not allowed to do. I also fail to see where management has provided any evidence what so ever to support the charge of "Violating Chapter 3.6 of the BDO SOP" that you provided to me on February 28, 2014.

As I stated, the MI-2 lane was not moving nor were any other queuing areas due to high passenger traffic at the time. And as I pointed out prior, the MI-2 lane should not have been operational to begin with due to the TSA Pre queue being full and passengers standing outside the queuing area. The checkpoint was, once again, in violation of the MI SOP due to the TSA Pre queue being past capacity. So as I stated, I had already performed my walk the line procedures prior to the passengers exchanging their own documents on their own. I had remained in the MI-2 line specifically dealing with irate passengers from the TSA Pre queue and other irate passengers in the MI-2 queue and those in the general boarding lane. As a few passengers made it past TDC that is when I noticed TSO (b)(6) not performing his duties correctly, which was violating the TDC SOP. Again, that was my observation and the observation of EBDO (b)(6)

**In regards to statements of the events:**

In your statement you state that I did not tell you that I had two passengers swap their identification and boarding passes, to which I recall telling you exactly what had just occurred prior to speaking with STSO (b)(6). Furthermore, your statement goes on to say I made a decision to "test the system to make sure it's working the way it should." At NO point did I ever make that statement to you or to anyone else, regarding this event or any other event. After the incident took place I notified you immediately then went to speak with the supervisor, STSO (b)(6). Within a few minutes, if that, myself and MBDO (b)(6) exited the checkpoint and as we did so we ran into STSM (b)(6) who approached the back of the A35 checkpoint. STSM (b)(6) came over to us both, BDO (b)(6) and myself, and I briefing Mr. (b)(6) about what just had occurred with the TDC issue. Mr. (b)(6) stated, "At the end of the day you did what you did for the sake of aviation security." BDO (b)(6) was standing right there when Mr. (b)(6) made the statement, to which we both agreed. At NO time did I ever tell you that I based my actions to "test the system to make sure it's working the way it should."

**In Conclusion:**

In your letter you go on to state that you understand my "motivation" to expose a perceived security vulnerability but the fact remains that it is out of the scope of my authority and responsibilities to conduct covert testing on co-workers. Additionally you replied to my statement in regards to addressing no one in the traveling public knowing what was going on by stating the "two passengers who participated" due to a TSA employee requesting their participation. My response to that is that entire statement is filled with complete inaccuracies. There was no motivation on my part to "expose" any vulnerability. I was not conducting any type of testing on co-workers and at no time did I authorize, encourage, or request the two passengers to switch their boarding passes and identifications. My comment was simply that and not one of which I "enlisted" two passengers to assist in any type of testing. You continue on in your letter accusing me of "covert" testing in many instances. Then you stated that my actions could have led to a serious security breach and go on about the potential negative notoriety I could have brought upon the agency, calling into question the integrity of not only myself but all TSA DFW employees. I find it very insulting that now, after almost 12 years of dedicated service to the TSA, my integrity is being questioned. That now I am looked upon as a risk, as you stated in your comment about the lack of confidence you have in my ability to carry out the wide range of responsibilities required of my position. At no time, now or in the past, with TSA have I ever conducted myself in any manner that would jeopardize my integrity, honesty, and trustworthiness. Whether with the public or within TSA I have always taken pride in knowing that the public, my peers, and those in the TSA leadership staff have one hundred percent confidence in my abilities and trust me beyond one hundred percent. In addition I would like to ask, at what point in the SPOT program were briefings and recurrent training specifically speak about overt or covert testing that I am or am not allowed to perform?

In my twelve years with the Transportation Security Administration I can honestly say, up until this point, there has never been a time where I have been accused by management for not only embarrassing this agency but furthermore violating standard operating procedures. I take my job with the utmost seriousness because I know that I am responsible for literally thousands of lives each and every day. I have been a public servant for almost twenty years and one thing I can say is that when it comes to protecting the public, when it comes to following the rules and regulations, when it comes to following the law, when it comes to following operating procedures, and when it comes to performing my duties I do so with pride and commitment. Each and every day I get dressed to come to work I know that thousands of innocent men, women, and children depend on me to ensure their safety. I take that responsibility to heart because if I falter, if I fail, and if I cannot perform my tasks on any level as a public servant that could cost innocent lives. I am tasked with a responsibility to serve the public and have the public place their trust in me to protect them, their families, and their loved ones as they travel. My duties are not only specific to when I'm on duty at the airport, it's when I'm off-duty as well. I take pride in that fact that there are others out there who are dependent on those who take that oath to serve and protect, to defend and to honor, to ensure public safety. To know that in an instant, where seconds count, I will act in a split-second when it comes to protecting those who place their trust in me to ensure their safety or to protect those who are unaware. Therefore to be accused of not following policy, violating standard operating procedures, and have it stated to me that my creditability and trustworthiness is in question is not only very insulting it's inflammatory and disrespectful. As a front

line officer within a "counter terrorism" agency there are challenges each and every day and I face those challenges knowing that at any moment I could lose my life, that my fellow officers could lose their lives, and that the public that I protect could also be put into harm's way. But I do not hesitate or falter and I go out there and give one hundred and ten percent of myself every day, while on or off-duty, for which I have done for the past twelve years with TSA. I do not look for recognition or praise or reward, regardless of any actions I take on or off-duty. However all I do ask for is respect and at times a sense of understanding.

From the minute I took my oath in August 2002 to this very minute, as I type my response to address my accusations, my resolve has not altered or changed. I stand ready to defend my nation, my government, and carry out the duties I have been charged with performing with the utmost seriousness and respect. In all my years as a public servant I have never been so insulted as to have my reliability, judgment or trustworthiness challenged by a superior or from anyone else. Not only do I find your accusation insulting I find it slanderous and without merit of evidence to support such an accusation.

Respectfully Submitted,

(b)(6)

U.S. Department of Homeland Security  
DFW International Airport  
510 Airline Drive  
Coppell TX 75019



Transportation  
Security  
Administration

Date: February 28, 2014

To: (b)(6)  
Expert Transportation Security Officer (BDO)  
Dallas/Fort Worth International Airport

From: (b)(6)  
Transportation Security Manager (BDO)  
Dallas/Fort Worth International Airport

Subject: Proposed Five (5) Day Suspension

Reference: (b)(6)

You are hereby notified that I am proposing you be suspended from duty without pay for five (5) calendar days in order to promote the efficiency of the Federal service. If a decision is made to suspend you, it will not be made or effected earlier than your reply. If you do not reply, a decision will not be made earlier than seven (7) calendar days from the date you receive this letter. This proposal is based on the following:

Charge 1: Failure to Follow Policy

Specification: On January 24, 2014, you were assigned to perform Walk The Line (WTL) procedures at the Managed Inclusion II (MI-2) lane at Checkpoint A-35. You conducted an unauthorized covert test by requesting two passengers to switch identification and boarding passes in an attempt to see if the TSO performing Travel Document Check (TDC) procedures would notice. You were not authorized to perform this self-initiated testing. You were made aware of the proper procedures through your recurrent training and briefings. Your actions constitute of a violation of this policy.

Charge 2: Failure to Follow Standard Operating Procedures (SOP)

Specification: On January 24, 2014, you were assigned to perform Walk The Line (WTL) procedures at the Managed Inclusion II (MI-2) lane at Checkpoint A-35. You failed to perform WTL procedures as described in the BDO SOP. You were made aware of the proper procedures through your recurrent training and briefings. Your actions constitute of a violation of this policy.

As background, on January 24, 2014, you were assigned to perform Walk The Line (WTL) procedures at the Managed Inclusion II (MI-2) lane at Checkpoint A-35. You observed TSO (b)(6) performing TDC duties for the same lane. In your opinion, TSO (b)(6) was not being thorough enough in his duties. You spoke with BDO (b)(6) (b)(6) regarding your concerns and BDO (b)(6) agreed he had the same concerns. BDO (b)(6) stated that you should get two passengers to switch identification and see if it was noticed by TSO (b)(6). You then approached two female passengers waiting in the queue and requested for them to switch identification and boarding passes. You did not inform the supervisor of the checkpoint of your request to the passengers nor did you have the authority to make such a request.

Both passengers entered the MI-2 lane with the incorrect identification and were checked by TSO (b)(6). TSO (b)(6) did not detect the switch and allowed both passengers to enter into the checkpoint. After their entry into the checkpoint you brought both passengers to a different TDC station and checked each one's proper identification and boarding pass before either passenger proceeded through the checkpoint. You then notified BDO management and Checkpoint STSO (b)(6) of the incident.

On February 10, 2014, I had a pre-decision meeting with you in which you were given the opportunity to reply orally and/or in writing. You provided a written statement in which you asserted that no nexus could be drawn between your activity and public perception. You stated no one in the traveling public was aware of what had occurred other than you and the two other BDOs at the Checkpoint. You stated the two passengers did not have any questions or reactions concerning the event and that they were properly screened. Next, you questioned if complaints had been filed or there had been any media attention to the event.

Finally, you stated in your twelve years of service you had never had any type of disciplinary action, caused embarrassment to the agency or had any negative impact with TSA or the general public. You stated you take what you do very seriously and take pride in the fact that you provided safety and security to the public.

Although I understand your motivation may have been to expose a perceived security vulnerability, the fact remains that it is out of scope of your authority and responsibilities to conduct covert testing on co-workers. Additionally, your statement that no one in the traveling public was aware of what occurred is not entirely accurate as the two passengers that participated were fully aware of the incident as well as the fact that a TSA employee requested their participation.

Your behavior as described in Charge 1 violates TSA Management Directive 1100.73-5, Employee Responsibilities and Code of Conduct, paragraph 5(A)(7) which states that, employees are responsible for "observing and abiding by all laws, rules, regulations and other authoritative policies and guidance."

Your behavior as described in Charge 2 violates Chapter 3.6 of the BDO SOP which describes the authorized activities for a BDO performing WTL.

Additionally, your behavior violates TSA MD 1100.73-5, paragraph 6(E) which states "While on or off-duty, employees are expected to conduct themselves in a manner that does not adversely reflect on TSA, or negatively impact its ability to discharge its mission, cause embarrassment to the agency, or cause the public and/or TSA to question the employee's reliability, judgment or trustworthiness."

In determining the appropriateness of the penalty, I have considered a number of factors. First and foremost, I considered the seriousness of the offenses and the relation to your position. As an Expert TSO (BDO), you are held to a higher standard of conduct because you are looked upon by the public as a trusted public servant as you carry out the security functions of your position. Your failure to follow standardized protocol and creating your covert testing, could have led to a serious security breach. The potential negative notoriety which you could bring to the agency adversely affected the agency's mission by calling into question the integrity of not only yourself but all TSA DFW employees. Additionally, we cannot tolerate employee's picking and choosing which portions of the SOP they will chose to follow. Your conduct causes me great concern and has seriously diminished my confidence in your ability to carry out the wide range of responsibilities required of your position. It is important that both TSA and the public have complete trust and confidence that you will perform your duties with honesty and integrity.

As mitigating factors, I considered that you are a long-term employee and your overall performance has been satisfactory and you have had no disciplinary actions, since your hire date of August 25, 2002. You are technically proficient in all of your screening duties and have consistently supported the model workplace. I also gave weight to the fact that the passengers' correct identification and boarding passes were checked before they proceeded into the sterile area. However, I find that the nature and seriousness of your conduct in these instances outweigh the mitigating factors and warrants this proposed suspension.

In accordance with TSA policy, the penalty selected is in accordance with TSA's Table of Offenses and Penalties (Table), section D (4) Failure to Follow Policy, in which the recommended penalty range is a Letter of Reprimand to a 14-day suspension and the aggravated penalty range is 15-day suspension to removal. The penalty selected is also in accordance with the Table, section M (1) Failure to Follow Standard Operating Procedures, in which the recommended penalty range is a 5-day suspension to removal, and the aggravated penalty range is removal. TSA policy states when an employee commits more than one offense, the aggravated penalty range of the more serious offense may be considered; however I determined that a 5 day suspension is appropriate due to your lack of disciplinary record and your tenure with TSA. Therefore this proposed suspension is consistent with the Table and thus with actions taken against other employees who have engaged in the same or similar offenses. Additionally, I determined that this is the least severe action to be used to correct this issue.

This notice is a proposal and not a decision. You have the right to reply to this proposal orally and/or in writing and furnish any evidence in support of your reply within seven (7) calendar days after the date you receive this proposal. Consideration may be given to extending this time limit if you submit a written request stating your reasons for needing more time before the seven days expires. Your written reply and any evidence should be sent to the Deciding Official, Juan Ovalle, Deputy Assistant Federal Security Director. You may make arrangements for an oral reply by contacting Mr. Ovalle at 972-456-(b)(6)

You have the right to be represented by an individual of your choice in preparing and presenting any reply. As a unit employee, you may select a representative from AFGE to serve as your personal representative, but you are not required to do so. Please note that while you may select any individual to serve as your personal representative consistent with TSA policy, you may not select an individual employed by any union other than AFGE to serve as your personal representative. If you choose to have a representative, you must provide your representative's name in writing to Juan Ovalle before the expiration of the reply period and you must provide written notice of any change in representation. Management has the right to disallow your representative if the representation creates a conflict of interest or position or, where the representative is a TSA employee, if he or she cannot be spared because of critical TSA work. You are responsible for all costs associated with your representation, including any travel expenses. You may refer to TSA MD 1100.63-3, Employee Representation, for additional information. The material relied upon is attached and is only released to you and/or your designated representative.

You may request a reasonable amount of official time to prepare and present your reply, if you are in a duty status. Arrangements for the use of official time for these purposes must be made in advance and in writing. Your representative, if a TSA employee, may request a reasonable amount of official time for these purposes, if in a duty status. He or she must make arrangements for the use of official time for such purpose with his or her supervisor. In the situation where a chosen representative has a schedule conflict and cannot represent the employee during the requested time period, an alternative official time period should be identified and should be approved within a reasonable time thereafter.

A final decision will not be made in this matter until your reply has been received and considered, or if no timely reply is received, until after the time specified for the reply has passed. I have attached the material relied on to support this proposed suspension.

If you need assistance in dealing with any personal matters, the Employee Assistance Program (EAP) is available to provide confidential counseling services. EAP can be reached by calling 1-800-222-0364.



(b)(6)

2/28/14  
Date

Please sign the acknowledgement of receipt below. Your signature does not indicate agreement with this action; it only represents receipt of this notice on the date signed.

(b)(6)

2/28/2014  
Date

02/28/2014  
Date

-Or-

Hand Delivered By \_\_\_\_\_

Date \_\_\_\_\_

Material relied on to support proposal:  
Pre-Decision Meeting Discussion and Response dated 02/10/14  
Employee Statement dated 01/24/13

(b)(6) Statement dated 01/24/14

(b)(6) Statement dated 01/24/14

(b)(6) Statement dated 01/24/14

(b)(6) Statement dated 01/24/14

(b)(6) Statement dated 01/24/14

**Summary of Pre-Decision Discussion with Employee**

On 02/10/2013, I met with (b)(6)  
(insert date) (insert employee's name and job title)

to have a Pre-Discipline Decision Discussion. At that time:

(b)(6) I advised the employee of the following allegations and the possible consequences of the following allegation(s):

Allegation #1: Violated TSA MD 1100.73-5 Employee Responsibilities and Code of Conduct Section 6 E by conducting an unsanctioned test of a TSA TDC Officer, utilizing the public, at Checkpoint A35 on January 26, 2014.

(b)(6) I provided the employee an opportunity to respond orally and/or in writing.  
I have advised the employee that if facts support that the allegations occurred and policy was violated, discipline could result up to and including removal from Federal Service.

The employee responded as follows:

Orally on \_\_\_\_\_ and stated as follows: \_\_\_\_\_  
(insert date)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If more space is needed, attach additional pages.)

(b)(6) In writing on (b)(6), I have attached a copy of the written  
(insert date)

response (b)(6)  
Signed \_\_\_\_\_  
Name & Title of Manager or Supervisor

2/16/14  
\_\_\_\_\_  
Date

(b)(6)