

~~SENSITIVE SECURITY INFORMATION~~U.S. Department of Homeland Security
George Bush Intercontinental AirportTransportation
Security
Administration

Date: December 13, 2012

To: (b)(6)
Expert Behavior Detection Officer (EBDO)
George Bush Intercontinental Airport (IAH)

From: Olusheyi Ogunloye
Assistant Federal Security Director for Screening (AFSD-S)
George Bush Intercontinental Airport (IAH)

Subject: Notice of Decision on Proposed Five (5) Day Suspension

Re: (b)(6)

This is notice that I have decided to suspend you from duty, without pay, for one (1) day. This action is being taken to promote the efficiency of the Federal Service and is based on the following:

On October 18, 2012, you received a written Notice of a Proposed Five Day Suspension from Juan Sanchez, Deputy Assistant Federal Security Director for Screening, based on the following charge and specification.

Charge 1: Failure to Follow Standard Operating Procedures (SOP)

Specification: On July 2, 2012, at approximately 0730 hours, you encountered an individual in the non-sterile area of C Bridge Terminal that met the threshold for a Screening of Passengers with Observation Techniques (SPOT) Law Enforcement Officer (LEO) Notification; however, you lost contact/sight with the individual. You searched the Terminal, but were unable to locate the individual. You informed some TSOs and Air-Serv employees to notify you if they come in view of the individual. You then decided to go to break instead of making appropriate notifications and following through with the SPOT LEO referral. The individual was found and you were notified by a Transportation Security Officer (TSO) that the individual was in the C Baggage claim area. Supervisory Transportation Security Manager (STSM) Candice Villaforte responded to C baggage claim area and initiated the notifications to the Security Operations Center (SOC) and LEO.

Charge 2: Failure to Follow Instructions

~~This document contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "FOIA exemption" as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. sections 49 CFR parts 15 and 1520.~~

~~SENSITIVE SECURITY INFORMATION~~

Page 2

Specification: On July 2, 2012, during an incident in which you encountered an individual that met the threshold for SPOT and LEO notification, you were instructed by STSM Villaforte to document a time line of events in your BDO notebook for the AIMS Incident Report (IR). You did not document a timeline of events as instructed; therefore, all timelines had to be approximated for the IR.

Charge 3: Inappropriate Conduct

Specification: On July 25, 2012, during a meeting with STSM Anthony Martinez and STSM Candice Villaforte you were questioned about your whereabouts earlier that morning; as you were seen at another work location by Federal Security Director Ann Testa. You stood up from your chair and stated, "If Ann wants to know what I am doing, why didn't she come ask me, I want to talk to her myself." STSM Martinez asked you to sit down and you then stated, "No, I am pissed off right now, this is bullshit." STSM Villaforte stated, "(b)(6) please do not use that kind of language." You then throw your hands in the air and stated, "I am fucking sick of this shit, I am going through a lot right now and I do not need this shit!" These statements and conduct were inappropriate for the workplace.

The notice indicated that your actions violated the SPOT SOP, Section 3.5, and 3.8. Your failure to comply with the SOP violated TSA MD 1100.73-5, *Employee Responsibilities and Conduct*, which requires employees to observe and abide by all laws, rules, regulations, and other authoritative policies and guidance, written and unwritten. Additionally, TSA MD 1100.73-5 requires employees to respond promptly to and fully comply with directions and instructions received from their supervisors or other management officials, as well as exercise courtesy and tact in dealing with fellow workers, supervisors, contract personnel (whether on or off-duty) and the public.

In your written response to me dated November 7, 2012, you cited that the alleged misconduct is not supported by a preponderance of the evidence, suspension for the alleged misconduct fails to adhere to TSA's policy of progressive discipline, and that management improperly considered the aggravating and mitigating factors when proposing the suspension.

You also cite that while performing your duties you encountered a male (b)(3) 49 U.S.C. § 114(f) (b)(3) 49 U.S.C. § 114(f). After approaching the male and engaging him you and MBDO (b)(6) felt that you (b)(3) 49 U.S.C. § 114(f). You claim that you and MBDO (b)(6) decided that (b)(3) 49 U.S.C. § 114(f) and while MBDO (b)(6) contacted BDOC (b)(3) 49 U.S.C. § 114(f). You claim that you were unable to locate him. You inquired with several TSOs and Air-Serv personnel to see if they had seen the male. You and MBDO (b)(6) contacted the BDOC again to notify them that you were unable to locate the male. You then contact BDOC to inform them you were going on break. You claim that you were not told by BDOC to continue searching or to not go on break, which you claim BDOC has the authority to do. You wrote that the protocol for contacting the LEO's has always

~~This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without the express written consent of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.~~

~~SENSITIVE SECURITY INFORMATION~~

Page 3

been the same, you, the BDO, contacts BDOC with your assessment and they in turn contact the SOC who contacts the LEO's.

A review of all of the evidence pertaining to the charge of failure to follow SOP indicates that you did in fact fail to follow SOP. In your original statement dated July 4, 2012, you wrote that you did not call for a LEO to arrive because you could not locate the individual, you thought if you and BDO (b)(6) could locate the individual and if he had not left the premises, you and BDO (b)(6) would then contact the LEO or have BDOC contact the LEO. Also, in an additional statement provided on July 7, 2012, you write that upon engaging the individual his behaviors escalated to a LEO call. Once it was determined that LEO notification was warranted, at no point did you notify a LEO or notify BDOC that the individual met the threshold for a SPOT LEO referral to contact a LEO although you knew it was your responsibility to contact the LEO or instruct BDOC to contact a LEO. I also find the fact that you went on break during the search for the individual aggravating. Thus, I am sustaining the charge of failure to follow SOP.

After a review of all of the evidence in reference to the charge of failing to follow instructions including your response to me, you provided a copy of your note pad that captured annotations from the incident, although arguably not entirely complete. It is also documented that while you and your partner were transcribing notes after the event was concluded, you received news that members of your family had been involved in a serious accident. This required you to leave right away, with the knowledge of the manager who had asked you to complete the notes. In addition, your partner, who was present when the call came in, also assured you he would complete the reporting for you. While you were gone, you would have no way of knowing if this task was in fact accomplished as expected. Upon your return to work a few days later, you were able to provide the timeline requested in the detail expected. Thus, I am not sustaining the charge of failure to follow instructions.

Also, in your response you submitted on November 7, 2012, for consideration, you wrote that earlier the same day, you had received news about your father had been diagnosed with terminal cancer, and that this in addition to still dealing with the accident involving your husband and son put you under significant emotional stress which caused you to respond out of character. While I empathize with you for the personal challenges you had at this time, you are still expected to conduct yourself professionally, and as noted in MD 1100.73-5, you are expected to conduct yourself in a manner that does not adversely reflect on TSA, negatively impact the agency's ability to discharge its mission, cause embarrassment to the agency, or cause the public and/or TSA to question your reliability, judgment, and trustworthiness. An employee with your length of service and experience is expected to know better and act accordingly. If you believe management's action is unwarranted, improper, or inappropriate, you have well established avenues to voice your concerns without acting inappropriately. Your actions, as described fall far short of the agency's and my expectations of you. Thus, I am sustaining the charge of inappropriate conduct.

~~WARNING: This document contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this report may be released to persons without "need to know", as defined in 49 CFR part 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by E.O. 13526 and 49 CFR parts 15 and 1520.~~

~~SENSITIVE SECURITY INFORMATION~~

Page 4

After considering the evidence I have determined that the evidence of record reflects that you did fail to follow SOP and that your conduct was inappropriate described in the charge and specifications above and in the Notice of Proposed Suspension.

As such I find that the Charges of Failure to Follow SOP and Inappropriate Conduct are supported by a preponderance of the evidence, and the actions described in those specifications violated TSA policies cited above. Thus, I am sustaining the charges and specifications. In reference to the charge of failure to follow instructions, I find that the charge was not supported by a preponderance of the evidence. Thus, I am not sustaining charge of failure to follow instructions.

Having determined that you committed the offense with which you are charged, I have analyzed your case to determine whether the penalty is appropriate and will serve to promote the efficiency of the service. In determining the appropriateness of the penalty, I considered the following factors.

I considered that when employees fail to follow SOP, it adversely affects our ability to provide efficient and effective security at our airport. In your position as an EBDO, you are responsible for screening people, property, and documentation to help ensure the security of the airport, passengers, and the public. Consequently, it is critical that management be able to trust that you will perform your duties in accordance with established procedures. I also considered that as an EBDO, you are expected to meet high standards of performance, conduct, and professionalism, and to lead by example. As noted in MD 1100.73-5, you are expected to conduct yourself in a manner that does not adversely reflect on TSA, negatively impact the agency's ability to discharge its mission, cause embarrassment to the agency, or cause the public and/or TSA to question your reliability, judgment, and trustworthiness. Your actions demonstrate poor judgment, set a poor example for your co-workers, and reflect a failure to meet the standards expected of an EBDO. I also considered that as an EBDO, you have been fully trained on the requirements of all SOPs and advised of the responsibilities cited above.

I note that on January 4, 2012, you received a Letter of Counseling for attendance as a result of unscheduled sick leave.

I also considered as mitigating factors that you have been with the agency since November 3, 2002, and your performance ratings have been satisfactory. Your PASS level for 2011 was a Level 4, and for 2010 was a Level 5. You have also received several awards as well as certificates of appreciation. I found this to be mitigating and in your favor.

Finally, I considered that a one (1) day suspension is consistent with the agency's penalty guidelines, which provides that the mitigated penalty range for failing to follow SOP is a LOR to a fourteen-day suspension. The mitigated penalty range for inappropriate conduct is a LOR to a five-day suspension. Although the penalty guidelines provide that in cases where an employee

WARNING: This record contains Sensitive Security Information that is controlled under 49 C.F.R. parts 15 and 1620. No part of this record may be disclosed to persons without a "need to know", as defined in 49 C.F.R. parts 15 and 1620, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 C.F.R. parts 15 and 1620.

SENSITIVE SECURITY INFORMATION

Page 5

commits more than one offense, the appropriate penalty generally should be in the aggravated penalty range corresponding to the most serious offense being charged. I determined that the mitigated penalty range for failure to follow SOP procedures and inappropriate conduct is appropriate in this case due to your lack of prior disciplinary and adverse actions.

Therefore, it is my decision that the reason for this action is supported by a preponderance of the evidence, and a one (1) day suspension from duty and pay is the appropriate level of discipline, is warranted, and promotes the efficiency of the service. A Standard Form 50, Notification of Personnel Action, documenting your suspension will be placed in your Official Personnel Folder and a copy forwarded to you for your records. As mentioned above, the date of your suspension will be December 14, 2012. You will report for your regularly scheduled shift on December 15, 2012, at 1230 hours.

During your suspension, you will not be authorized to access any TSA facilities without an appointment, or allowed to work overtime during pay period 2012-25.

You are cautioned that any repetition of this offense or any other act of misconduct could result in more severe disciplinary action, up to and including removal from the Federal service.

This is a final decision. You may seek review of this decision under either the TSA Grievance procedures or Peer Review procedures, but not both.

If you elect to grieve this matter under the grievance procedures in TSA MD 1100.77-2, *Grievance Procedures*, your grievance must be submitted in writing to me within fifteen (15) calendar days of receipt of this letter. A copy of MD 1100.77-2 is attached.

If you elect Peer Review under the procedures in the HCM 771-3 and attached Handbook, your request for Peer Review must be filed within fifteen (15) calendar days of receipt of this letter. Your request must be in writing and must include a copy of this letter. You may submit your request via facsimile to 571-227-2591. If you would like to file your request electronically or by mail, please contact the Peer Review Support Office at 571-227-5065 for additional filing information. A copy of the HCM 771-3 and Handbook are attached.

If you would like to explore the possibility of engaging in mediation with management, you should contact the Peer Review Support Office at 571-227-5065 within seven (7) calendar days of receipt of this letter.

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

WARNING: This record contains Sensitive Security Information that is restricted under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons who are not authorized to receive it under 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

14.12.2008 14:13

(b)(6)

2812888189

PAGE. 7 / 7

SENSITIVE SECURITY INFORMATION

Page 6

Olusheyi Ogunleye
AFSD-S

Date

Attachments: TSA MD 1100.77-2, *Grievance Procedures*
TSA HCM 771-3, *Peer Review*, and *Handbook*

~~WARNING: This record contains sensitive security information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know", as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.~~

Page 056 of 224

Withheld pursuant to exemption

(b)(6)

of the Freedom of Information and Privacy Act

Page 058 of 224

Withheld pursuant to exemption

(b)(6)

of the Freedom of Information and Privacy Act