



Transportation
Security
Administration

Date: October 24, 2013

To:

(b)(5)

Master Transportation Security Officer – Behavior Detection Officer
Chattanooga Metropolitan Airport

From:

Wesley Henderson
Transportation Security Manager
Knoxville, TN

Subject: Notice of Decision

Ref:

(b)(5)

This is notice that I have decided to suspend you from duty without pay for seven (7) calendar days on the following dates: Wednesday, October 30, 2013 through Tuesday, November 5, 2013. You are to return to duty on Thursday, November 6, 2013, at 4:30 AM EDT. This decision is made to promote the efficiency of the service and is based on the following.

Charge 1: Failure to Follow Leave Procedures -- Charge Dismissed

Based on the circumstances and the fact that you notified the Coordination Center that you would not be at work as soon as you determined that your car would not start I am dropping this charge.

Charge 2: Excessive Unscheduled Absences

Specification 1: You were scheduled to work from 0430 to 1300 on August 18, 2013. You called out sick that morning. Your RDOs were the prior two days, August 16-17, 2013.

Specification 2: You were scheduled to work from 0430 to 1300 on August 19, 2013. You called out sick that morning. On the prior three days, August 16-18, 2013, you had your RDOs and another sick day.

Charge 3: Failure to Follow SOP

Specification 1: On September 4, 2013 I conducted a Behavior Detection and Analysis Program Airport Self-Assessment assigned from the BDA office. While conducting the

audit I asked to see your BDO designated notebook and you didn't have it as required by the Screening Passengers by Observation Techniques (SPOT) SOP.

Your actions violated:

TSA MD 1100.73-5, Section 5.A.(2) Responding promptly to and fully complying with directions and instructions received from their supervisor or other management officials.

TSA MD 1100.73-5, Section 5.A.(7) Observing and abiding by all laws, rules, regulations and other authoritative policies and guidance, written and unwritten.

TSA MD 1100.73-5, Section 6.C., 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. (emphasis added)

Handbook to TSA MD 1100.73-5, Section BB. Unauthorized Absences and Tardiness: (1) Employees are expected to schedule and use earned leave in accordance with established procedures. Whenever possible, employees must obtain prior approval for all absences including leave without pay (LWOP). Employees are required to contact their supervisor as far in advance of their scheduled tour of duty as possible, or by the time established in the call-in procedures for their organization, to request and explain the need for unscheduled leave. Exceptions to this requirement include when the employee is incapacitated or when there are other exigent circumstances. In such instances, the employee, a family member or other individual should, as soon as is reasonably practical, notify the employee's supervisor of the unplanned leave. **Repeated unscheduled absences may negatively reflect on the employee's dependability and reliability, and may adversely affect TSA's mission.** Unapproved absences will be charged as absent without leave (AWOL). AWOL may form the basis for administrative action, including discipline, up to and including removal from TSA. (emphasis added)

SPOT SOP, (revision 2, release date March 11, 2011), Chapter 2, section 2.5 D. (page 2-3); Chapter 3, section 3.2 A. (2) (page 3-1) Chapter 3, 3.2 (2) (page 3-1).¹

On Thursday, September 12, 2013, you received a written notice of a proposed suspension from SPOT Transportation Security Manager (STSM) Mark Moser, based on the charges and specifications noted above. In that letter, STSM Moser proposed an 8-day suspension. That written notice also advised you of your right to make an oral and/or written reply.

I have reviewed and considered the Notice of Proposed 8-day Suspension and all information of record including your written reply. I have determined that Charge 1 should be dropped due to

¹ As the procedures are SSI, they are not set forth herein but are specifically cited and available for you to review upon request.

mitigation you provided. However, I sustain Charges 2-3 and the applicable Specifications. The reduced suspension reflects this.

I considered and fully concur with the Proposing Official's analysis of matters in aggravation and mitigation.

In your response to the Notice of Proposed Suspension you argue that the suspension does not comport with the agency's guidance on use of progressive discipline. I disagree. Pursuant MD 1100.75-3, Section 6. J. Progressive Discipline: "(1) Progressive discipline is the process of using the least severe form of action that may be used to correct a deficiency. When appropriate, TSA will take progressively more severe action until the unacceptable performance or conduct is corrected, or the employee is demoted or removed, as appropriate. Management officials should consider applicable aggravating and mitigating factors when making a determination. Refer to the Table of Offenses and Penalties for additional information."

First, you stated that at the time of the two unscheduled absences in Charge 2 that you were not on leave restriction and requested that progressive discipline be considered in making a decision about this charge. You further stated that on May 28, 2013 STSM Moser informed you the next step in progressive discipline was a suspension of 1-5 days. In response to Charge 3 you stated that there has been no form of progressive discipline for failing to follow the SOP. You referred to the proposal issued by STSM Moser where he stated that he considered mitigating factors, and you requested the mitigated penalty range be considered. You further stated that this charge was not in the same category as the other two and recommended it be considered separately. I have determined that these charges are however related as both represent failure to report for and be fully prepared to perform your duties during your assigned shift as a BDO.

The Proposed Suspension Action contained clear documentation of management's repeated attempts to correct your behavior via lesser means, "[w]e have spoken about your attendance regularly on a monthly basis, and you have been on leave restriction twice in the past year. The first letter of guidance I provided to you on September 13, 2011 seemed to have a positive effect on your attendance. You called out on October 23, 2011 and sent me an email stating your plans to improve your leave attendance.-In January, 2012, you had two unscheduled leave days. I provided you with a copy of the Local Attendance and Guidance Letter when we met on February 9, 2012. (This guidance has now been replaced by Article 3 of the Compilation of Agreed Upon Terms). After two more unscheduled absences, I issued you a Letter of Leave Restriction on April 17, 2012. However, your attendance again became a problem, and I issued you a Letter of Leave Restriction on January 08, 2013. This again had a positive effect on your leave attendance for five months, so I removed you from leave restriction on May 07, 2013. On May 28, 2013 you called out sick in conjunction with an annual leave day, a holiday, and two RDOs. On May 29, 2013 I had an Interested Based Conversation (IBC) with you at which time I put you on notice that you could face more severe action if you continued to violate the attendance policies." Additionally, on September 20, 2012, you were issued a Letter of

Reprimand for not complying with your leave restriction. It is quite obvious that lesser methods of correcting your attendance issues were not successful.

Additionally, despite management's repeated attempts to ensure you followed the instruction regarding use of notebooks, you failed to follow that very clear requirement. "I provided daily guidance to ensure all BDOs have your required BDO notebooks and your communication device with you at all times while conducting SPOT per TSA SPOT SOP. This is accomplished through STSM Daily BDO Briefings sent out by email to all BDOs in the ETR. During our TOPS mid-year performance review on July 30, 2013, I discussed with you having your required SPOT notebook with you before starting work. On May 29, 2013, I conducted an Interest Based Conversation (IBC) with you concerning always having your required SPOT designated notebook with you before beginning SPOT. I gave you specific instructions to ensure you have your notebook with you at all times and write your daily activities in the notebook. This is a requirement from our SPOT SOP."

The misconduct in Charges 2 and 3 centers around your repeated failure to follow rules, guidance and directions. Your misconduct is serious, and repeated. Given the matters in mitigation and aggravation (incorporated from the Notice of Proposed Suspension) this action promotes the efficiency of the service, it comports both with the agency's progressive discipline policies and the TSA Table of Penalties.

I am hopeful that this action will cause you to correct your conduct. Further misconduct will subject you to the possibility of more severe action to include your removal from federal service.

This is a final decision. You may seek review of this suspension under the TSA Grievance procedures.

If you elect to grieve this matter 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, or facsimile at (703) 603-4057 by using TSA form 1115-1, Grievance Request. A copy of HCM 771-4 Grievance Procedures is attached. The Designated Grievance Official (DGO) is Toby Punchard, Assistant Federal Security Director – Law Enforcement, East Tennessee Region, TSA Mountain View Office, 3401 Russ Circle Suite G, Alcoa, TN 37701. (865) 474-(b)(6)

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 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.

The Employee Assistance Program (EAP) is available to you to provide counseling and/or assistance and may be contacted at 1-800-222-0364. The EAP is a confidential resource designed to help employees address a wide range of personal or family issues.

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.

Attachments:

1. Written response to the Proposal Letter.
2. IICM 771-4 Grievance Procedures
3. TSA Form 1115-1 Grievance Request

(b)(6)

10/24/2013
Date

Acknowledgement of Receipt:

(b)(6)

10-24-13
Date

Delivery Info

(b)(6)

10-24-13
Date

(b)(6)

10-24-13
Date

Witnessed By
Printed Name:

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