



Transportation
Security
Administration

PENALTY FACTORS WORKSHEET

Employee's Name: (b)(6) Case Number: (b)(6)

INSTRUCTIONS: Deciding officials must consider all relevant factors in determining the appropriate penalty and provide a concise statement documenting what was considered. If the offense is one for which removal is mandatory pursuant to TSA Management Directive 1100.75-3, do not complete this worksheet.

1. The nature & seriousness of the offense and its relationship to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated. What consideration was given to this factor?

On July 24, 2012, Expert Behavior Detection (EBDO) (b)(6) was assigned the duties of the Spot-Certified Designee Point of Contact (Spot-POC). One of the responsibilities of the Spot-POC is to complete all BDO paperwork to include completing Playbook submissions forms by entering the information into the PMIS database. EBDO (b)(6) failed to complete the required Playbook submissions for the morning shift on July 24, 2012.

SPOT Standard Operating Procedures (SOP) states the STSM must assign a SPOT-certified designee to assume the STSM responsibilities when the STSM is not on duty. One of the responsibilities in this role as designee POC is to complete all BDO paperwork to include completing playbook submission forms. SPOT- SOP requires Playbook and VIPR reporting to be entered into the PMIS database. EBDO Ross has a history of this offense.

On September 24, 2012, at approximately 7:45 a.m., (EBDO) (b)(6) and a co-worker were observed by Spot Transportation Security Manager (STSM) Deborah Gonzales, sitting down and smoking a cigarette in the Albuquerque International Sunport parking garage. This was not during their designated lunchtime or breaks. They were assigned to perform (b)(3) 49 U.S.C. § 114(f) from 7:00am to 8:00am. (b)(3) 49 U.S.C. § 114(f)

(b)(3) 49 U.S.C. § 114(f) This action resulted in both officers' focus being taken away from their current duties and an additional layer of security not being performed during the time they were sitting and smoking a cigarette.

This is very serious offense in relation to EBDO (b)(6) duties due to the fact that the whole essence of screening passengers by observational techniques is to allow BDOs to observe any suspicious activity or passengers, undistracted, through the mobile method of observations and engaging. When a BDO is immobile and smoking a cigarette, this essentially takes away a layer of security and creates vulnerability. EBDO (b)(6) himself admitted in his statement that MBDO (b)(6) asked him for a cigarette and he sat on the bench to get the cigarettes out to hand to MBDO (b)(6) and took one out for himself and they both inadvertently lit the cigarettes and at that time noticed a car with someone waving at them. In her statement, MBDO (b)(6) substantiates this. There is no disputing this. Both BDOs may have continued to sit and smoke longer but they saw STSM Gonzales and put out their cigarettes and continued the Playbook.

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position. For example, certain employees such as supervisors or law enforcement officers may be held to higher standards than other employees. What consideration was given to this factor?

I have considered that (b)(6) is an Expert Behavioral Detection Officer (EBDO) who maintains a security clearance at a Secret Level. EBDO (b)(6) is relied upon to provide an additional layer of security that is vital to TSA Security Operations. EBDO has been assigned designated Point of Contact the majority of the time because he is a G Band. EBDO (b)(6) is relied upon to conduct SPOT- certified designee responsibilities in the absence of the SPOT-TSM; therefore, EBDO (b)(6) is held to a higher standard. All TSA employees are expected to comply with all TSA directives, policies and procedures.

As a Behavior Detection Officer, EBDO (b)(6) is required to be in constant contact with the traveling public either by having discussions with them or observing their behavior. Any deviation from this, as was the case with EBDO (b)(6), creates vulnerability in security. Moreover, this behavior is not in keeping with the professional standards expected of members of TSA.

3. The employee's past adverse or disciplinary action record. If past discipline is used, it must be mentioned in the notice of proposed action. What consideration was given to this factor?

EBDO (b)(6) past disciplinary action record is as follows:

06/17/2011: Letter of Reprimand for failing to follow SOP and submit the required reports after the shift

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability. What consideration was given to this factor?

EBDO (b)(6) has been employed with TSA since September 8, 2002. He was a Lead Transportation Security Officer (LTSO) prior to becoming an Expert Transportation Security Officer (EBDO). Both positions require a higher level of conduct. EBDO (b)(6) generally gets along with fellow workers; however, EBDO (b)(6) has a reoccurring issue with one particular EBDO. EBDO (b)(6) dependability has become an issue considering this would be the second time EBDO (b)(6) has failed to complete assigned paperwork and the fact he was observed sitting and smoking instead of conducting Playbook.

5. The effect of the offense upon the employee's ability to perform at a satisfactory level, and its effect upon the supervisors' confidence in the employee's ability to perform assigned duties. What consideration was given to this factor?

The conflict EBDO (b)(6) had with EBDO (b)(6) on July 24, 2012 appears to have caused EBDO (b)(6) to be distracted which resulted in him not finishing his duties as the designated Spot-POC. This incident and the fact he was observed sitting and smoking instead of conducting Playbook on September 24, 2012, has caused the STSM to lose confidence in EBDO (b)(6) ability to perform at a satisfactory level.

6. Consistency of penalty with those imposed upon similarly situated employees for the same or similar offenses. What consideration was given to this factor?

The recommended penalty range for failure to follow Standard Operating Procedures is a five (5) day suspension to removal. The recommended penalty range for inappropriate conduct is a fourteen (14) day suspension to removal. Therefore, a fourteen (14) day suspension is consistent with the table of penalties and with other employees who have engaged in the same or similar offenses.

7. The notoriety of the offense or its impact on the reputation of the agency. What consideration was given to this factor?

No known notoriety.

8. The clarity with which the employee was on notice of any rules violated in committing the offense or had been warned about the conduct in question. What consideration was given to this factor?

EBDO (b)(5) reviews TSA MD 1100.73-5, Employees Responsibilities and Conduct annually in OLC and has signed the MD acknowledging the expectations. This MD states employees are responsible for complying with directions and instructions received from their supervisor or other management official. Additionally, the STSM placed the BDOs, including EBDO (b)(5), on notice on February 28, 2012, regarding the expectations and regulations on how to conduct themselves while conducting Playbook. I was present during this conversation. EBDO (b)(5) signed the Conduct Responsibilities Memorandum acknowledging the expectations during Playbook. He is also well aware of the importance of performing BDO duties as an additional layer of security. When MBDO (b)(5) was issued a Letter of Reprimand in June 2011, he was placed on notice that any future misconduct could result in more severe disciplinary action up to and including removal.

9. The clarity with which the employee was on notice of performance expectations and problems with his or her performance. What consideration was given to this factor?

On June 17, 2011, EBDO (b)(5) received a Letter of Reprimand for failing to follow Standard Operating Procedures when he failed to ensure SPOT After Action Reports were completed and submitted as instructed by his Supervisor.

To ensure all BDOs were informed, on February 28, 2012 the STSM and I explained how imperative it is for BDOs to conduct themselves professionally, especially when in public view during Playbooks.

10. Potential for the employee's rehabilitation. What consideration was given to this factor?

The potential for EBDO (b)(5) rehabilitation is limited.

11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter. What consideration was given to this factor?

EBDO (b)(5) stated the following as mitigating factors: a personality conflict between him and one of his peers, computer issues, and health issues. I gave minimal consideration to these factors, since EBDO (b)(5) stated he purposely avoided to communicate operational related information to his peer. Regarding computer issues, EBDO (b)(5) stated he recalled completing the information and assumes there were computer issues, since the information was not in the system. Regarding the EBDO's health issues, TSA Management Directive TSA MD 1100.73-5, Employees Responsibilities and Conduct states TSA employees are responsible to report to work able to perform the duties of their position ... physically capable of performing his job requirements.

12. The adequacy and effectiveness of alternative actions to deter such conduct or improve performance in the future by the employee or others. What consideration was given to this factor?

No alternative actions would be effective in deterring EBDO Ross' misconduct in the future. Accordingly, a fourteen (14) day suspension is appropriate and reasonable.

M. Westphal
Margarita Westphal

10.30.12
Date