



**Transportation
Security
Administration**

Date: September 12, 2013

To: (b)(6)
Master TSO Behavior Detection Officer (MTSO BDO)
Chattanooga Metropolitan Airport (CHA)

From: Mark Moser
SPOT Transportation Security Manager (STSM)
East TN Region (ETR)

Subject: Notice of Proposed 8-day Suspension

Ref: 13-10323

This is notice that I am proposing to suspend you from duty and pay for 8 (eight) calendar days in order to promote the efficiency of the Federal service. This proposal is based on your misconduct as set forth below. If a decision is made to suspend you, it will not be made or affected 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.

Charge 1: Failure to Follow Leave Procedures

Specification 1: Your sick call out on August 19, 2013, was at 0346, just 44 minutes prior to the start of your scheduled work shift of 0430-1300.

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 (SPO/T) SOP.

Your actions violated:

Collective Bargaining Agreement Section 3.B.3:

Employees should notify management 60 minutes prior to the start of the employee's scheduled shift to request unanticipated leave. In the event the employee is presented with circumstances that would reasonably preclude him/her from contacting management, notification should be made as soon as possible. Upon return to duty, the employee will submit a completed OPM 71 and documentation that might be required to substantiate the absence.

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)

Handbook to TSA MD 1100.63-1, Section B. (e) Employees requesting unscheduled leave are required to follow local notification procedures. Generally, employees must notify management 60 minutes prior to the start of the employee's scheduled shift. In the event the employee is presented with circumstances that would reasonably preclude him/her from contacting management, notification should be made as soon as possible. Administratively acceptable documentation may be required. On a case-by-case basis, management determines to approve or deny employee requests for unscheduled leave. Failure to submit a completed OPM Form 71 along with any required documentation upon return to duty or failure to follow

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

With regard to Charges 1-2, I conducted a Pre-Discipline Decision Discussion (PDD) with you on August 20, 2013 with Transportation Security Manager (TSM), John Bell, present as a witness to explain the charges related to your attendance. I also provided you an opportunity to provide a verbal statement or to submit a written statement. You submitted a written statement on August 22, 2013. The misconduct in Charge 3 took place prior to issuance of the proposal on the first two Charges. As this is a two-step action, a PDD is not required by policy. Regardless, you admitted to me while I was conducting the BDO audit at the checkpoint that you forgot to get your SPOT designated notebook before starting work.

I have considered all the evidence of record, including your response to the PDD. I find the evidence supports the charges and specification as stated above.

In determining the appropriateness of the penalty I considered the nature and seriousness of the offenses and their relation to your BDO duties, position, and responsibilities, including whether the offense was intentional. By not being prepared to perform the duties as a BDO, you have shown me that you have little to no regard for following the SPOT SOP. It causes me great concern that you have failed to follow the SPOT SOP, after my repeated direct instructions to do so, in such a short amount of time. Further, dependability is critical to our mission. Your attendance issues and overall failure to following instructions and SOP cause me to question your dependability.

I considered the fact that you were on notice of the policies you violated. We 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 Conversion (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.

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

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 Conversion (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.

I considered your disciplinary history. On September 20, 2012, you were issued a Letter of Reprimand for not complying with your leave restriction.

I also considered mitigating factors such as you have been employed with TSA since August 28, 2002. You were hired as a TSO and promoted to BDO in July, 2008. You have consistently met standards in the TSA PASS performance rating system. Specifically, you had a PASS rating of exceeds standards in 2012.

I considered the effect of the offense upon your ability to perform at a satisfactory level and its effect upon my confidence in your ability to perform the BDO assigned duties. It is critical to our mission that employees are reliable and can be depended upon to report for duty as scheduled. Your repeated failure to report for duty as assigned has hampered the screening operation in Chattanooga. I considered your rehabilitative potential and am very concerned. You have a clearly established attendance issue spanning two years. Despite multiple administrative attempts at correcting your behavior, followed by a LOR, you continue to engage in the same problematic behavior. I am quickly losing faith in your dependability as an employee and seriously question whether you have rehabilitative potential. The position that you hold requires the upmost attention to duty because any mistakes could result in severe consequences. Keep in mind that further misconduct may lead to more severe action to include your removal from Federal service.

I find it troubling that you failed to start your shift without your required SPOT notebook. This is a basic rule of working as a BDO at the checkpoint. You are responsible to be knowledgeable of TSA SPOT BDO policies and procedures.

You have been properly trained and your failure to follow the correct BDO procedures is inexcusable. As a Master BDO you are to be fully attentive while performing your duties. By failing to properly be prepared for duty as a BDO, you have consistently shown a lack of regard for following the correct procedures.

Because you have failed to follow SOP procedures and my instructions the other BDOs may believe that it's alright to not follow SOP and my instructions also. BDOs are held to a high

standard and I want our team to always be a positive example of professionalism. These types of incidents diminish the ETR SPOT program and TSA.

This proposed penalty is consistent with the guidelines set forth in the Table of Penalties.

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, SPOT Coordinator, Transportation Security Manager, Wesley Henderson. You may make arrangements for an oral reply by contacting TSM Henderson at (865) 318- (b)(6)

You have the right to be represented by an individual of your choice in preparing and presenting any reply. As a covered 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 the Deciding Official 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 and your representative, if an agency employee, will be allowed a reasonable amount of official time to assist you in your reply, to review the material relied upon to support the reason for the proposed action, to prepare a written reply, to secure affidavits and other documentary evidence, and to make an oral or written reply. Your representative, if any agency employee, must contact his or her immediate supervisor to make advance arrangements for the use of official time.

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. This material will only be released to you and/or your designated representative

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.

You will be notified in writing of the final decision. You will remain on duty until you are notified of the final decision in this matter.

Attachments:

1. Letter of Counseling issued on September 13, 2011.
2. Letter of Leave Restriction dated April 17, 2012
3. Letter of Reprimand dated September 20, 2012
4. Removal of Leave Restriction dated October 25, 2012
5. Letter of Leave Restriction dated January 08, 2013
6. Removal of Leave Restriction dated May 07, 2013
7. Interested Based Conversion (IBC) regarding leave dated May 29, 2013
8. STSM Monthly Attendance Calendar Reviews
9. Your response to the PDD dated August 22, 2013.
10. Copy of Auto Zone Receipt dated August 19, 2013 @ 12:27
11. Disapproved Sick Leave Request for Leave OPM-71 dated August 20, 2013
12. Approved Annual Leave Request for OPM-71 dated August 20, 2013
13. Time and Attendance record for pay period 16 – August 11-24, 2013
14. Unscheduled Leave Form request for sick leave August 18, 2013 @ 0329
15. Unscheduled Leave Form request for sick leave August 19, 2013 @ 0346
16. Applicable sections of TSA MD 1100.73-5, Employees Responsibilities and Conduct Section 5.A. (2 and 7) and Section 6.A and Handbook Section BB.
17. Applicable section of TSA MD 1100.63-1, Attendance and Leave Handbook Section B. (c)
- (?) 18. Local Attendance and Leave Guidance Letter # TYS-LP-2011-01 (former attendance guidance)
19. Applicable section of Article 3 Attendance Management Process of the Compilation of Agreed Upon Terms
20. MD 1100.63-3 Employee Representation
21. Form 1163-1 Personal Representative Designation
22. Applicable sections from the Table of Penalties dated October 29, 2012, (Pages 1-2, 4-5, 9-10 and 24)
23. OLC reading of MD1100.73-5 dated March 19, 2013
24. SPOT SOP Chapter 2, 2.5. D. Page 2-3 (SSI – Available upon request)
25. SPOT SOP Chapter 3, 3.2 A. Page 3-1 (SSI – Available upon request)
26. SPOT SOP Chapter 3, 3. (1-2) Page 3-1 (SSI – Available upon request)
27. Copy of STSM Daily BDO Briefing email sent by STSM Moser dated September 3, 2013
28. Copy of STSM Daily BDO Briefing email read receipt dated September 3, 2013
29. Copy of STSM Daily BDO Briefing dated September 3, 2013 (SSI -- Available upon request)
30. Interested Based Conversion (IBC) regarding SOP dated May 29, 2013

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)

SPOT Transportation Security Manager

09/12/2013
Date

Acknowledgement of Receipt:

(b)(6)

CHA-Master TSO Behavior Detection Officer

09-12-13
Date

Delivery Information:

[Signature]
Hand Delivered By: Mark Moser

09/12/2013
Date

[Signature]
Witness:
FSM John Bell
CHA-Transportation Security Manager

9-12-13
Date