



Transportation Security Administration
Office of Human Capital

TSA MD 1100.77-1, Handbook

OPR Appellate Board

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APPROVAL

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**Transportation
Security
Administration**

This Handbook and all related Attachments and/or Appendices contain stipulations to implement the provisions of [TSA MD 1100.77-1, OPR Appellate Board](#). Until such time as TSA MD 1100.77-1 is rescinded, the Management Directive, Handbook, and any Attachments or Appendices are considered TSA policy, and must be applied accordingly.

SUMMARY OF CHANGES: The Handbook has been substantially revised to reflect the current makeup and operation of the OPR Appellate Board. This includes, but is not limited to, changes to procedures regarding appeals involving allegations of discrimination, harassment, and whistleblower reprisal; changes regarding the handling of supplemental submissions; the elimination of hearings; and changes to the processing of requests for reconsideration.

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A. DEFINITIONS:

- (1) Adverse Action: A suspension of more than 14 days, including an indefinite suspension, an involuntary demotion for performance/conduct, or a removal.
- (2) Appellant: A TSA employee, within the scope of this directive, appealing an adverse action to the Board.
- (3) Day: Calendar day.
- (4) Decision: The Board's Decision is a written document containing factual findings, analysis, and conclusions. The Chair will prepare the decision and send it to the appellant, with a copy provided to management. The Board also publishes redacted copies of its Decisions on the TSA Intranet at the OPR iShare site under the heading OAB Decisions or at the [OAB homepage](#).
- (5) Equal Employment Opportunity (EEO) complaint: For purposes of this directive, a formal or informal complaint of discrimination and harassment as defined in 29 Code of Federal Regulations (CFR) §1614. These complaints specifically allege discrimination based upon race, color, religion, sex, national origin, age, disability, sexual orientation, parental status, or protected genetic information; and retaliation.
- (6) Integrated Database: The TSA database where Employee Relations cases are uploaded and provided with a tracking number.
- (7) Interest-based resolution: A resolution agreed to by the parties, arrived at through an alternative dispute resolution process, including those processes available through the National Resolution Center.
- (8) Management Official: Any TSA employee who is a higher-level official in the employee's chain of supervision such as a supervisor or manager.
- (9) OAB Coordinator: Program Assistant to the Board Chair, responsible for docketing and tracking appeals from receipt to issuance of final decision.
- (10) OPR Appellate Board (OAB or Board): An impartial body within the Office of Professional Responsibility (OPR) that reviews and decides appeals by Transportation Security Officers (TSOs) of specified adverse employment actions.
- (11) Preponderance of the Evidence: That degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a purported fact is more likely to be true than untrue.

- (12) Subject Matter Expert (SME): An individual possessing specialized knowledge or expertise selected to assist the Board in analyzing the facts of an appeal. SMEs include, but are not limited to, TSA experts on workers' compensation, suitability, and drug and alcohol testing.
- (13) Substantial Evidence: The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. It is a lower standard than preponderance of the evidence.
- (14) Transportation Security Officer (TSO): The title TSO is used in this policy to include all positions within the 1802 occupational series: TSO, Lead TSO, Supervisory TSO, Master TSO (MTSO), and Expert TSO (ETSO), including all Behavior Detection Officers, Coordination Center Officers, and Security Training Instructors.

B. MANNER OF FILING OF APPEAL:

Appeals should be submitted using [TSA Form 1177-1, OPR Appellate Board Appeal](#), to ensure all required information is provided to the Board. If the form is not available, a copy can be provided to the appellant by the Board. Appeals and related correspondence must be in writing and filed with the Board.

- (1) Appeals should be filed electronically by e-mail: OPRAB.AB@tsa.dhs.gov.
- (2) Appeals may also be filed by facsimile at 703-603-4046.
- (3) If necessary, appeals may be hand delivered to the Board, or sent by U.S. Postal Service or commercial delivery service at the following address:

Transportation Security Administration
OPR Appellate Board (TSA-7)
Attention: OAB Coordinator
701 South 12th Street
Arlington, VA 20598-6030

C. FILING DEADLINES:

- (1) An appeal may be filed following notification of an appealable action as described in [TSA MD 1100.77-1, OPR Appellate Board](#), but must be filed no later than 30 days after the action is effected. Failure to file within 30 days, without a demonstration of good cause, will result in dismissal of the appeal as untimely. The Chair has the discretion to determine whether good cause has been established.

- (2) The basis for continuing an indefinite suspension may be appealed to the Board at any time during the action and no later than 30 days after its termination. The basis for the decision imposing an indefinite suspension may not be appealed after 30 days from its effective date.
- (3) Management Response to the Appeal. Management shall submit any response within 14 days of the receipt of the appeal from the Board. Management must, at the time it submits its response, provide a copy of its response to the appellant and his/her representative, if applicable, either electronically or at the address provided on the appeal.
- (4) Appellant's Reply. The appellant may submit to the Board a reply to any management response. The appellant shall submit the reply to the Board within seven days of receipt of the management response, and provide a copy to management.
- (5) No other submissions by management or the appellant will be accepted unless specifically authorized by the Chair.
- (6) Requests for Extension of Time. Requests for extension of time to file an appeal or management response must be received by the Board within the time allowed for filing. Requests must demonstrate good cause for the extension; the Chair does not grant automatic extensions. Untimely requests for extension may be granted at the Chair's discretion.
- (7) Computation of Time. In computing the time period for filing an appeal, the first calendar day after the effective date of the action is the first day of the 30-day filing period. If the filing period ends on a Saturday, Sunday, or Federal holiday, the end of the period is extended to the next business day. The appeal is filed the date it is received by the OAB Coordinator, if delivered in person. If delivery is by mail or commercial carrier, the date the appeal is postmarked or accepted for delivery by the carrier shall be considered the date the appeal is filed. If delivery is by facsimile or e-mail, the date the appeal was sent by facsimile or e-mail shall be considered the date the appeal is filed.
- (8) Deciding the Appeal. The Board will, in general, decide all appeals within 30 days of receipt of the appeal by the OAB.

D. PREPARATION TIME:

If they are current TSA employees, the appellant, and the appellant's representative, if any, may request a reasonable amount of official time to prepare and present the appeal. Official time requests will be handled in accordance with [TSA MD 1100.63-3, *Employee Representation*](#).

E. CONTENTS OF APPEAL:

The appeal must contain sufficient information for the Board to understand the nature of the management action and the reason for the appeal. The appeal must include a current mailing address for the appellant, and the appellant's representative, if any. The appellant must notify the Board of any address change. Delivery attempts to the last address supplied by the appellant will constitute sufficient notice to the appellant. At a minimum, the appeal should also include:

- (1) Date the decision was received by the appellant;
- (2) Description of the issue(s) in dispute;
- (3) Any supporting documentation;
- (4) Reason the appellant believes the decision is improper or the penalty is unreasonable; and
- (5) Relief requested with justification.

NOTE: Using TSA Form 1177-1 will help ensure that the appeal contains the essential information.

F. ALLEGATIONS OF PROHIBITED DISCRIMINATION, HARASSMENT, AND WHISTLEBLOWER REPRISAL:

The Board is not an authorized forum to resolve Equal Employment Opportunity (EEO) complaints or whistleblower retaliation complaints. If an appellant believes that the motivation for the adverse action was due to prohibited discrimination, the appellant may file a complaint with the TSA Office of Civil Rights and Liberties, Ombudsman, and Traveler Engagement (CRL/OTE). If the appellant believes the adverse action was in retaliation for protected whistleblower disclosures, the appellant may file a complaint with the Office of Special Counsel.

G. OAB PROCESSING OF APPEALS:

- (1) Receipt of Appeal. Upon receipt of an appeal, the OAB Coordinator will issue an acknowledgement letter to the appellant, and send a copy of the acknowledgement letter and the appeal to the appropriate Federal Security Director (FSD).
- (2) Once notified of the appeal, it is management's responsibility to ensure that the proposal, decision, and any supporting documentation are uploaded to the TSA Integrated Database.

- (3) At any point during the OAB process, the parties may engage in interest-based resolution, and submit a written and signed settlement agreement to the Board. The Board will then dismiss the appeal.

H. DECISION PROCESS:

Board panel members will meet to discuss and deliberate on each appeal assigned to the panel. The Chair will initiate discussion on a case, or invite an overview of the case by another OPR staff member or by an invited subject-matter expert. Most appeals can be decided based upon the information contained in the case file, in accordance with Section J, *Decision*. If, as a result of its discussion, the Board requires further information, it may order supplemental submissions.

I. SUPPLEMENTAL SUBMISSIONS:

The OAB may ask either party to provide additional information to assist it in deciding the appeal. The party submitting the additional information must provide a copy of the requested information to the other party. If the other party wishes to respond to the additional information, it must submit the response in writing to the Board and to the party that filed the requested information. The Board will inform the parties of any applicable timeframes.

J. DECISION:

- (1) The Board will issue a written Decision based upon the Board's findings of fact, and in accordance with TSA policy, generally within 14 days of the date it decides the appeal.
- (2) The Board's Decision shall be promptly implemented by management.

K. NOTIFICATION OF DECISIONS:

In all cases, the Board will issue a formal Board Decision, signed by the Chair. In those cases where the decision results in reinstatement of a removed appellant, the Board will also notify the appropriate Office of Human Capital personnel for implementation of the decision.

L. RECONSIDERATION:

The Board may, on its own, decide to reconsider any decision. The Board may also reconsider a decision at the request of management or the appellant. A Request for Reconsideration must be filed with the Board within 14 days of receipt of the Decision.

- (1) **Standard for Reconsideration.** A decision will be reconsidered only if it appears that the Board misinterpreted the facts or misapplied TSA policy. Pending action on a request for reconsideration, the OAB may direct that

any action ordered in an issued decision be held in abeyance.

- (2) Reconsideration Procedures. If management or the appellant requests reconsideration, a copy of the Request must be sent to the other party. If the other party wishes to respond to the Request, they must do so within seven

days of receipt of the Request. The Chair will forward the Request and any response to the Assistant Administrator for OPR (AA/OPR) and/or Deputy Assistant Administrator for OPR (DAA/OPR) for reconsideration.

- (a) If, upon reconsideration, the AA/OPR or DAA/OPR arrives at the same decision, the original Decision will remain in effect and the Board will issue a Decision on Reconsideration.
- (b) If, upon reconsideration, the AA/OPR or DAA/OPR changes or modifies the Board's original Decision, the AA/OPR or DAA/OPR will issue a Decision on Reconsideration.
- (c) A Decision on Reconsideration will be issued generally within 14 days of receipt of the Request for Reconsideration or the response to the Request for Reconsideration, if one is submitted.

M. IMPLEMENTATION OF DECISIONS:

The Board's decisions shall, insofar as possible, be complete and self-executing. If a question arises as to the adequacy of compliance with the Board's decision, either party may petition the Board for a clarification of a decision or for a declaration that the decision has been fully implemented. If a Board decision is not fully implemented by management (after any appropriate clarification and adequate opportunity to comply), the AA/OPR may report the facts to the TSA Administrator or designee.

N. PUBLICATION OF DECISIONS:

The Board may publish all decisions and dismissal orders except those withdrawn or withheld, as determined by the Chair. In its published decisions, the appellant's name and the name of any individuals, other than the appellant's representative, will be redacted. Decisions may be found by visiting the [OAB homepage](https://ishare.tsa.dhs.gov/Offices/OPR/Documents/Forms/AllItems.aspx) on iShare at <https://ishare.tsa.dhs.gov/Offices/OPR/Documents/Forms/AllItems.aspx>.

O. RECORDS:

The Board will maintain records for its decisions in accordance with applicable laws and regulations.