



Transportation Security Administration
Office of Human Capital

TSA MD 1100.77-1, Handbook

OPR Appellate Board

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APPROVAL

Signed

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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 Until such time as TSA MD 1100.77-1 is rescinded, the Management Directive, Handbook, and any Attachments or Appendices are considered TSA policy, and must be applied accordingly.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 Disciplinary Review Board (DRB) has been renamed the OPR Appellate Board (OAB) and is now under the purview of the Office of Professional Responsibility (OPR). The Handbook has been substantially revised to reflect the new makeup and operation of the OPR Appellate Board.

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A. DEFINITIONS:

- (1) Adverse Action: An official action consisting of a suspension of 15 days or more, 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) Conference: An informal proceeding used to clarify issues and gather information.
- (4) Day: Calendar day.
- (5) 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.
- (6) 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, or protected genetic information; and retaliation.
- (7) Field Employee Relations File: A file containing documents relied upon in support of the adverse action, a proposal letter, employee's response, a decision letter, and other documentary or physical evidence.
- (8) Hearing: A structured proceeding in which both parties are invited to participate. It is more formal than a conference and is presided over by the Chair of the OPR Appellate Board (OAB).
- (9) Interest-based resolution: A resolution agreed to by the parties, arrived at through an alternative dispute resolution process, including the Integrated Conflict Management System (ICMS).
- (10) Management Official: Any TSA employee who is a higher-level official in the employee's chain of supervision such as a supervisor or manager.
- (11) OAB Coordinator: Administrative Assistant to the Board Chair, responsible for docketing and tracking appeals from receipt to issuance of final decision.
- (12) 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.

- (13) 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.
- (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, Disciplinary Review 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 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-30)
Attention: OAB Coordinator
601 South 12th Street
Arlington, VA 20598-6030

- (2) Appeals also may be filed by facsimile at 571-227-1389 or by e-mail: OPRAB.AB@dhs.gov.

C. FILING DEADLINES:

- (1) An appeal may be filed following notification of an appealable action as described in TSA MD 1100.77-1, 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 fourteen 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, at the address provided on the appeal.
- (4) Appellant's Reply to Management Response. 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.

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 address¹ for the appellant, and the appellant's representative, if any. At a minimum, the appeal should also include:

¹ 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.

- (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 unduly harsh and unreasonable; and
- (5) Relief requested with justification.

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

F. EEO COMPLAINTS:

The Board is not an authorized forum to resolve Equal Employment Opportunity (EEO) complaints. If an appellant believes that the motivation for the adverse action was due to prohibited discrimination, then the complaint may be pursued in the EEO administrative forum, through the TSA Office of Civil Rights and Liberties (OCRL), which is authorized to handle complaints of prohibited discrimination. The appellant is responsible for electing the appropriate forum.

- (1) Notice of Appeal. The Board will forward to OCRL a list of appeals to be considered at each OAB decision meeting.
- (2) Inquires to OCRL. If it is determined that an appellant may have an EEO complaint regarding the same adverse action that is the subject of a Board appeal, the Board will hold the appeal in abeyance pending receipt of further information, as indicated below.
- (3) Informal EEO complaints. If the appellant has an informal EEO complaint, the Board will notify the appellant that it will defer consideration of and action on his or her Board appeal pending notification of the outcome of the informal EEO process.
 - (a) If the informal complaint is resolved, the Board will order the appeal dismissed for lack of jurisdiction.
 - (b) If the informal complaint is not resolved, and the appellant does not file a formal complaint with the OCRL, the Board will decide the appeal. However, it will not address any allegations of prohibited discrimination or retaliation in its decision.

- (4) Formal EEO complaints. If the appellant files or has filed a formal EEO complaint with OCRL, the Board will dismiss the appeal for lack of jurisdiction.

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, send a copy of the acknowledgement letter and the appeal to the appropriate Federal Security Director (FSD), and refer the case to a designated Employee Relations (ER) specialist.
- (2) Preparation of OAB case file. The designated ER specialist will prepare the case file, including the field ER file, and return it to the OAB coordinator.
- (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. The opportunity for interest-based resolution will end upon OAB issuance of a notification of decision to the parties.

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 fact-finding.

I. SUPPLEMENTAL FACT-FINDING:

Generally, appeals can be decided based on the evidence in the file. However, in some cases the Board members may determine that additional evidence or clarification of existing evidence would assist in deciding an appeal. In such cases, the Board may promulgate procedural rules and guidance for the conduct of supplemental fact-finding, including conferences and hearings.

- (1) Inquiries. The Chair may authorize one or more individuals to elicit specific information from management officials or the appellant in a particular appeal. An inquiry may be conducted by phone, by email, by written inquiry, or in person. The information received via this process will be reported back to the Chair for the Board's consideration.
- (2) Conferences. A conference is an informal proceeding intended to gather additional information to assist the Board in reaching a decision on a particular

appeal. The Board may convene a conference when it believes it will provide information necessary to advance the appeal process or reach a decision.

- (a) The decision to conduct a conference is within the Chair's discretion.
 - (b) Both parties will be afforded the opportunity to participate in any conference.
 - (c) The Chair will determine the conference participants and will conduct the conference.
 - (d) Information received at a conference will be summarized and provided to the Board members selected for the decision panel.
- (3) Hearings. The purpose of a hearing is to conduct a more extensive fact-finding inquiry, assess witness credibility, and obtain additional evidence. The decision to conduct a hearing in any appeal is at the Chair's discretion.
- (a) The Chair will preside in any hearing or other fact-finding inquiry.
 - (b) Board Members may attend a hearing, either in person or electronically.
 - (c) Conduct of Hearings. Hearings may be conducted in person, by phone, or other means, at such times and locations as determined by the Chair. Board hearings will not be open to the public. Requests for observers will be considered by the Chair, who may allow or disallow the requested observers at his or her sole discretion.
 - (d) Procedures. The Chair will conduct the hearing in accordance with procedures promulgated by the Board.
 - (e) Witnesses. The Chair will determine the number and order of witnesses. Witnesses will be required to affirm that they will tell the truth, after being apprised of the applicable provisions of Title 18 U.S.C. §1001. TSA employees will be reminded of the obligation to cooperate in an agency investigation pursuant to [TSA MD 1100.73-5, *Employee Responsibilities and Conduct*](#).
 - (f) Examination. The Chair or other Board members may question witnesses, and the Chair may request documents to be submitted into evidence.
 - (g) Objections to Evidence. If either party requests to submit evidence and the other party objects to submission of documents, or other proposed evidence, the Chair may deny its admission if he or she determines it has little or no relevance to the issues before the Board.

- (h) Transcription. Hearings may be recorded and transcribed. If a hearing is recorded, a copy of the transcript will be made available to all voting Board members.
- (i) OAB File. The transcript of the hearing will become part of the OAB file and may be relied upon by the voting members of the Board when deciding the appeal.

J. DECISION:

- (1) The Board will issue a written Decision based upon the Board's findings of fact, and in accordance with TSA policy.
- (2) Management officials will promptly implement the Board's Decision.

K. NOTIFICATION OF DECISIONS:

The Board will issue a prompt notification of each decision to the parties. In those cases where the decision results in reinstatement of a removed appellant, the Board will also notify the appropriate OHC personnel for implementation of the decision. In all cases, the Board will issue a formal Board Decision, as soon as it is prepared and signed by the Chair.

L. RECONSIDERATION:

The Board may, on its own, decide to reconsider any decision before it is issued to the parties. In rare circumstances, the Board may also reconsider a released decision on its own motion, or at the request of management officials or the appellant. Generally, the Board will not reconsider decisions more than 30 days after the release of the Decision.

- (1) Standard for Reconsideration. The Board will reconsider a decision 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. When management officials or the appellant request reconsideration, the Chair under the supervision of the OPR Deputy Director or the OPR Director, will determine whether to grant reconsideration.
 - (a) If the Board has previously released the Decision, the Chair will afford both parties an opportunity to submit supplemental information, in accordance with the Chair's instructions, to assist the Board in deciding whether to grant reconsideration.

- (b) If the Chair decides not to reconsider the Board's decision, the parties will be advised that the original decision remains in effect.
- (c) If the Chair decides to grant reconsideration, and upon reconsideration the Board arrives at the same decision, the original decision will remain in effect and the parties will be advised accordingly, or the Board may issue a Decision on Reconsideration.
- (d) If upon reconsideration, the Board changes or modifies its original Decision, the Board will issue a Decision on Reconsideration.

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 officials (after any appropriate clarification and adequate opportunity to comply), the Director of OPR will report the facts to the Deputy Administrator or designee, who will take appropriate action to ensure that the decision is implemented.

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](#) on iShare

O. RECORDS:

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