

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: October 16, 1992

FAA Order No. 92-58

In the Matter of:

KENNETH F. HOEDL

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)
) Docket No. CP91WP0542
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)

DECISION AND ORDER

Respondent Kenneth F. Hoedl has appealed from the oral initial decision rendered by Chief Administrative Law Judge John J. Mathias at the conclusion of the hearing held on January 31, 1992.^{1/} The law judge held that Respondent violated Section 107.20 of the Federal Aviation Regulations (FAR), 14 C.F.R. § 107.20 (1991),^{2/} by entering a sterile area without submitting to the screening of his person and property in accordance with established procedures. The law judge affirmed the \$1,000 civil penalty sought by Complainant.

^{1/} A copy of the law judge's oral initial decision is attached.

^{2/} 14 C.F.R. § 107.20 (1991) provides:

No person may enter a sterile area without submitting to the screening of his or her person and property in accordance with the procedures being applied to control access to that area under § 108.9 or § 129.25 of this chapter.

On March 23, 1991, Respondent was travelling with his wife from Phoenix, Arizona, to Chicago, Illinois. When the couple arrived at the Phoenix Sky Harbor International Airport, they went through the security checkpoint to the gate. Respondent's wife returned to the terminal to shop because they were early. The airline tickets were in her purse.

After Respondent's wife had been gone for some time, boarding began. When the final boarding call was announced, she had still not returned. In a self-described "panic," Respondent left their belongings at the gate and raced back to the terminal to search for his wife. He was unable to find her. Suspecting that their paths had crossed, he then decided to return to the gate. At the security checkpoint, however, Respondent was informed that he could not enter the sterile area because he did not have a ticket.^{3/} Respondent nevertheless forced his way past other passengers into the metal detector.

There is no dispute that Respondent set off the metal detector when he passed through it. There is a dispute, however, about what happened next. Respondent testified that he went back and forth through the metal detector at least four times. He claimed that he finally took off his hat, the item

^{3/} At the time, "Level 4" security was in effect at all airports in the United States. Under Level 4 security, only persons with tickets showing that they are airline passengers are permitted into the sterile area.

later determined to be activating the metal detector, and passed through the metal detector without causing it to sound. Only then, says Respondent, did he proceed to the gate. In contrast, the security agent who testified on Complainant's behalf said that Respondent never did remove his hat or "clear security."

Respondent was told that he would need to return to the ticket counter to have his wife paged. Uttering an obscenity, Respondent raced to the gate despite warnings from the security agents that the police would be alerted.

Respondent's wife was waiting for him at the gate. Shortly after the couple boarded the aircraft, a police officer and one of the security screeners arrived at the gate in pursuit of Respondent. The police boarded the aircraft and escorted Respondent and his wife back to the security checkpoint. Respondent's carry-on bags were searched and Respondent was asked to pass through the metal detector again. After Respondent passed through the metal detector two or three times, it was finally determined that it was Respondent's hat--a straw Stetson with a metal rim--that was triggering the alarm.

The law judge found that Respondent violated Section 107.20 because he did not properly submit to airport screening. In

light of Respondent's correspondence and testimony, said the law judge, there seemed to be no question that Respondent did not pass through the metal detector to the satisfaction of the security agents. The law judge stated that while he understood Respondent's panic at the thought of missing his flight, this did not excuse his actions. This same type of demeanour, observed the law judge, could be used by terrorists to escape the close surveillance of the screening process. After noting the serious nature of the offense and that Respondent had introduced no evidence of inability to pay, the law judge affirmed the \$1,000 civil penalty.

The law judge did not err in finding a violation of Section 107.20, which provides in relevant part as follows:

No person may enter a sterile area without submitting to the screening of his or her person and property in accordance with the procedures being applied to control access to that area

14 C.F.R. § 107.20 (emphasis added). The issue under this regulation is whether Respondent followed the screening procedures that were in effect at the time.^{4/} Respondent's own admissions show that he did not. Respondent admitted that he knew at the time that the security agents were not satisfied that he had successfully completed the metal detector portion

^{4/} See In the Matter of Bayer, FAA Order No. 90-24 at 5 (September 14, 1990) (remanding because the law judge failed to make critical factual findings concerning whether the respondent followed the screening procedures).

of the screening process.^{5/} Respondent does not deny that he was never given permission to enter the sterile area. He admitted on cross-examination that he substituted his judgment for that of the security agents.

Respondent argues that the law judge's decision should be reversed or modified because the security procedures in effect at the time were redundant and unnecessary. Respondent claims that the requirement that one show a ticket before entering the metal detector was unnecessary because the Gulf War had ended, and terrorists could easily buy a ticket or force their way through security at gunpoint. Respondent also argues that he was placed in a "Catch-22" situation because he could not be screened until he showed a ticket, and he could not show his ticket until he had passed through the security checkpoint. These arguments are unavailing. The law judge did not base his decision on Respondent's failure to display a ticket, but on

^{5/} Assuming for the sake of argument that Respondent did pass through the metal detector without the alarm going off, he may still have violated the regulation. As the security agent testified at the hearing, individuals who pass too quickly through the metal detector will be instructed to pass through it again, even if the alarm has not activated. The machine may not be able to register the metal in a gun or other device if a person goes through it too quickly. Thus, even if a person does not activate the alarm, he or she may not have successfully completed the security screening process.

Respondent's failure to pass through the metal detector to the satisfaction of the security agents.^{6/}

Respondent is correct that no weapon or explosive device was found in his possession. Nonetheless, he still failed to submit to security screening in accordance with the security procedures then in effect in violation of Section 107.20. Had he been carrying a weapon or explosive, he might have been subject to a more severe penalty under 49 U.S.C. § 1471(d).

Finally, Respondent claims favoritism, stating that he suspects that none of the family members of the Desert Storm veterans who arrived home later that evening were required to display a ticket before proceeding through security. This claim is speculative. Respondent's suspicions do not constitute evidence. In addition, this claim is irrelevant. The issue here is not whether someone other than Respondent

^{6/} As the law judge noted at the hearing, the complaint did not allege that Respondent entered the sterile area without a ticket. Tr. at 21. But even if this allegation were properly pled, Respondent's arguments concerning the ticket requirement would still be rejected. It is not for Respondent to decide which security procedures are necessary and which are not. Respondent had other options besides forcing his way through the security screening checkpoint. For example, he could have had his wife paged, as the security agents instructed him to do, even if this meant missing his flight. The threat of terrorist attacks is real. Indeed, the regulation Respondent was found to have violated was enacted in response to a continuing series of terrorist attacks in which people were kidnapped, tortured, and even murdered. See 51 Fed. Reg. 1350 (1986). The risk of missing a flight can never justify violating important security regulations.

violated Section 107.20, but whether Respondent violated this regulation. A preponderance of the evidence shows that he did.^{7/}

Based on the foregoing, the law judge's decision is affirmed and a civil penalty of \$1,000 is assessed.^{8/}



THOMAS C. RICHARDS, ADMINISTRATOR
Federal Aviation Administration

Issued this 15th day of October , 1992.

^{7/} Respondent also states that his wife wants to register a complaint about:

the brutal, demeaning manner I was treated by the police, searched, photographed, thrown into a cell like a criminal, harrassed by an officer with a confiscated hand grenade, and detained all afternoon.

Respondent's Appeal Brief at 1. The FAA is not the proper authority with whom to lodge this complaint. This matter involves the City of Phoenix police department rather than the FAA. This decision should not be construed to reflect in any way on the merits of this claim.

^{8/} Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. App. § 1486), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1992).