

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

PETER W. STEVENS

FAA Order No. 98-24¹

Served: December 18, 1998

Docket No. CP97EA0025

DECISION AND ORDER²

Respondent Peter W. Stevens has appealed the written initial decision of Administrative Law Judge Burton S. Kolko finding that Stevens violated 49 U.S.C. § 46302³ by joking about having a bomb in his baggage and assessing Stevens a \$500

¹ Portions of this order have been redacted for security reasons under 14 C.F.R. Part 191.

² The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 63 Fed. Reg. 57,729, 57,743 (October 29, 1998).

³ This statute provides as follows:

§ 46302. False information

(a) CIVIL PENALTY. A person that, knowing the information to be false, gives, or causes to be given, under circumstances in which the information reasonably may be believed, false information about an alleged attempt being made or to be made to do an act that would violate section 46502(a) [aircraft piracy], 46504 [interfering with flight crewmembers and attendants], 46505 [carrying a weapon or explosive on an aircraft], or 46506 [other criminal offenses on aircraft] of this title, is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation.

civil penalty.⁴ This decision denies Stevens's appeal and affirms the law judge's decision.

On October 23, 1996, Peter Stevens went to the Greater Buffalo International Airport to catch a flight for a business trip. (Tr. 107.) His wife at the time, Irene Stevens, drove him to the front of the terminal, stopped the car, and opened the trunk. (*Id.*) A skycap – that is, a person employed to carry hand luggage at an airport -- came over to help Stevens with his bags. Because one of the bags was unusually heavy, the skycap asked Stevens what it contained. (*Id.*) According to the skycap, Stevens replied, "A bomb." When the skycap said, "Excuse me, Sir?" Stevens said, "A hydrogen bomb." (Tr. 17, 31.) Stevens has disputed the skycap's account, claiming he only said it *felt like* a bomb. (Tr. 116.)

The skycap was alarmed by Stevens's words, particularly in light of heightened security resulting from two recent high-profile plane crashes, one involving suspected sabotage.⁵ (Tr. 17.) The skycap checked the bag to get it away from Stevens (Tr. 18), and Stevens headed toward the gate for his flight (Tr. 117). The skycap advised his supervisor of the incident, who immediately contacted airport police. (Tr. 18, 21-22.) The airport police removed Stevens from the aircraft, searched his baggage, and charged him with disorderly conduct (a violation carrying a \$25 fine, which Stevens paid in the weeks following the incident). (Complainant's Exhibits A-2, A-5, A-6.) The police also reported the incident to the Federal Aviation Administration (FAA). (Tr. 75.) After

⁴ A copy of the law judge's written initial decision is attached.

⁵ ValuJet Flight 592 crashed in May 1996, and TWA Flight 800 crashed two months later. Newspaper articles at the time were reporting sabotage as a possible cause of the TWA crash. (Initial Decision at 2.)

conducting its own investigation, Complainant filed the instant civil penalty action against Stevens. (*Id.*)

After a hearing, the law judge found that Stevens violated 49 U.S.C. § 46302, which prohibits knowingly giving false information about an alleged attempt to carry an explosive on board an aircraft, under circumstances in which the information reasonably may be believed.⁶ (Initial Decision at 3, 8.) The law judge emphasized the necessity of considering the context of the statement, because the statute expressly provides that the false information must be given “under circumstances in which the information may reasonably be believed.” (*Id.* at 6.) The law judge explained that claiming that one was only joking is not a valid defense, because Congress designed the statute to prevent the alarm and disruptions that result from false information about a bomb, regardless of whether the false information was intended as a joke. (*Id.* at 4-5.)

The law judge noted that there was a factual dispute regarding the words Stevens uttered, with Stevens claiming that he only said his baggage *felt like* it had a bomb inside, while the skycap claimed Stevens said it *was* a bomb. The law judge resolved this dispute in favor of the skycap. (Initial Decision at 5-6.) The following circumstances indicated to the law judge that the skycap would have noted Stevens’s words carefully:

- The skycap had been specifically trained to flag passengers who made statements regarding a bomb.
- He understood the gravity of the security issue.
- He was a credible witness.
- He had never heard a passenger say anything about a bomb, and the exchange with Stevens somewhat unnerved him.

⁶ For the text of the statute, *see supra* note 3.

- He was aware of the recent airplane disasters.
- He believed that he could lose his job if he failed to follow through properly on a perceived bomb threat.

(*Id.*) In contrast, said the law judge, Stevens tossed off the words in a casual manner, and his recollection of the incident had a self-serving element. (*Id.* at 6.) The law judge noted also that Stevens's ex-wife, who testified on his behalf, stated that he had uttered a declarative statement. (*Id.*) In any event, the law judge said it would have been a violation of the statute either way, because with human lives at stake, airport workers cannot afford to make the fine distinction between a declarative and a comparative statement. (*Id.*)

The law judge determined that the \$500 civil penalty sought by Complainant struck the right balance between the factors weighing for Stevens (Stevens's quick realization of his error, his attempt to recant, and his regret) and those against him (the needless vexation and diversion of security personnel from more pressing concerns). (Initial Decision at 8-9.)

On appeal, Stevens argues that the law judge failed to take into account a significant part of the statute – *i.e.*, the limiting clause that reads “under circumstances in which the information reasonably may be believed.” (Appeal Brief at 1, 4-6.) Stevens insists that no one, including the skycap and the airport police officer, truly thought he posed a threat. Otherwise, he argues, the skycap would not have picked up his bag, and the airport police officer would not have searched his bag in the crowded terminal. (*Id.* at 4, 6.)

The law judge, however, specifically addressed the circumstances in the record that led him to conclude that Stevens's words could reasonably be believed. Citing the testimony of Complainant's expert in aviation security, the law judge noted that criminals have been known to * * *. (Initial Decision at 6, citing Tr. 78.) He stated that heightened security measures were in effect following two recent high-profile plane crashes, one involving suspected sabotage; security concerns were also intensified due to the impending 50th anniversary of the United Nations and the Pope's visit in October. (Initial Decision at 7, citing Tr. 78-79.) The law judge pointed out that Stevens was * * *. (Initial Decision at 7, citing Tr. 89.) And finally, the law judge noted that when given an opportunity to explain his initial words ("It's a bomb"), Stevens repeated and elaborated the false claim ("It's a hydrogen bomb"). (Initial Decision at 7, citing Tr. 98.) Not until the skycap said, "We don't take kindly to such remarks," did Stevens recant. The skycap did not know Stevens. Indeed, he had never seen him before. He could not be sure, simply because Stevens retracted his words about a bomb, that Stevens did not pose a threat. Thus, contrary to Stevens's argument, the law judge did take into account the statute's limiting clause "under circumstances under which the information reasonably may be believed," and he correctly applied it to the facts of this case.

Stevens argues that it is unfair to hold him responsible for the heightened security in effect at the time of the incident. He asserts that he was a "victim of a system on guard." (Appeal Brief at 2.) The problem with this argument is that the statutory clause "under circumstances in which the false information reasonably may be believed" requires consideration of the context, which in this case included a high-risk environment. There is nothing unfair about this. Stevens's remarks did not occur in a

vacuum. He should have known that his remarks were inappropriate and could cause alarm and disruption. His attempt to evade responsibility for his actions by casting himself as a victim is unavailing.

Stevens argues that the law judge misconstrued the statute, because Congress intended it to apply only to situations on board an aircraft. (Appeal Brief at 5-6.) Nothing in the statute, however, limits its application to remarks made on board an aircraft.⁷ It would make no sense to limit the application of the statute as Stevens suggests, given Congress' intent to eliminate alarm and disruptions resulting from false information. False information about bombs can trigger alarm and disruptions on the ground as well as on board the aircraft.

Stevens also argues that the law judge's construction of the statute will lead to chaos and abuse of power by airport workers. (Appeal Brief at 5-6.) Stevens, however, fails to explain how and why chaos and abuse of power will necessarily occur, and it is noteworthy that neither occurred in the instant case. Stevens has submitted nothing supporting the projected dire consequences, and they do not logically follow.

Finally, Stevens argues that the skycap did not act reasonably. (Appeal Brief at 3.) According to Stevens, the skycap should have opened and searched Stevens's baggage himself, as Stevens requested at the time (Tr. 118), because then the matter could have been resolved quickly and without the involvement of airport police. It is Stevens's words and actions, however – not those of the skycap – that are at issue in this case. Moreover, skycaps are * * * (Tr. 77-78); * * *. (Tr. 67.) The skycap acted

⁷ See *supra* note 3.

appropriately by following his training and reporting the incident to his supervisor, who in turn contacted airport police.

For all of these reasons, the law judge's decision assessing a \$500 civil penalty is affirmed.⁸

[Original signed by Jane F. Garvey]

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 17th day of December, 1998.

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. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1998).