

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: June 15, 1992

FAA Order No. 92-38

In the Matter of:)
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)
MONICA CRONBERG)
)
)
_____)

Docket No. CP91WP0266

DECISION AND ORDER

Respondent Monica Cronberg has appealed from the oral initial decision issued by Chief Administrative Law Judge John J. Mathias at the conclusion of the hearing held in this matter on January 27, 1992, in Phoenix, Arizona.^{1/} In his initial decision, the law judge held that Respondent's attempt to enter a sterile area at an airport with a loaded handgun in her accessible property violated Section 107.21(a)(1)^{2/} of

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

^{2/} 14 C.F.R. § 107.21(a)(1) provides:

(a) Except as provided in paragraph (b) of this section, no person may have an explosive, incendiary, or deadly or dangerous weapon on or about the individual's person or accessible property -

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area.

the Federal Aviation Regulations (FAR), 14 C.F.R. § 107.21(a)(1). The law judge, however, reduced the \$1,000 civil penalty sought by Complainant to \$650.00 because he found Respondent unable to pay the higher civil penalty. Respondent has appealed the law judge's decision, requesting further reduction of the civil penalty. For the reasons that follow, the law judge's decision is affirmed.

The facts of this case are not in dispute. On June 8, 1990, Respondent presented herself and her briefcase for inspection at a security screening checkpoint at Phoenix Sky Harbor International Airport, Phoenix, Arizona. The security inspection revealed that Respondent's briefcase contained a loaded .22 caliber handgun. At the time of the inspection, Respondent, an airline marketing employee, was delivering information to her employer's operations tower at the airport.

At the hearing Respondent claimed inability to pay the \$1,000 civil penalty sought by Complainant. She testified that her net monthly individual income was \$1192, and that her monthly expenses, other than miscellaneous daily ones, were between \$730 to \$830 per month.^{3/} Respondent testified that

^{3/} On appeal Respondent submitted substantially revised expense figures, not under oath, which show a reduced individual net monthly balance \$163.00 after payment of expenses. Respondent does not explain her reasons for revising her expense figures. Under these circumstances Respondent's revised figures merit little weight. Furthermore, in his initial decision the law judge found that Respondent could pay the reduced \$650 sanction if she had a net monthly balance of less than \$100 after payment of expenses. Respondent's revised expense figures would not, therefore, affect the law judge's reduced sanction.

she did not know her husband's annual income. She argued that only her income should be considered by the law judge because she paid half of the household expenses and maintained a separate bank account. The law judge concluded that Respondent had not established extreme financial hardship and that she could absorb a reduced civil penalty of \$650.

Respondent argues on appeal that the law judge denied her equal treatment in arriving at the \$650 sanction. According to Respondent, the law judge found that the two other respondents at her consolidated hearing committed similar weapons violations at airport security screening checkpoints, but they received reduced sanctions of \$50.00.^{4/} Respondent claims that she was discriminated against by the law judge because she is married, her husband is gainfully employed, and they pay their taxes when due.^{5/} Respondent argues further, as she did before the law judge, that her husband's income and assets should not be considered when determining her ability to pay the civil penalty.

^{4/} The law judge, at Complainant's request, consolidated Respondent's case for hearing with those of two other respondents with admitted weapons violations at airport security screening checkpoints. In each of these cases, the \$1,000 civil penalty sought by Complainant was reduced by the law judge to \$50 due to respondents' inability to pay.

^{5/} One of the other respondents at the consolidated hearing was recently divorced, and had, according to the law judge, a net annual income of \$14,500, which did not meet her expenses. Those expenses included joint taxes due from the time of her marriage. The law judge found that the other respondent and her spouse had a joint gross monthly income of less than \$800.00 which did not cover their monthly expenses.

A respondent's inability to pay a civil penalty may mitigate the amount of sanction assessed when financial hardship is established by a preponderance of the evidence. In the Matter of Lewis, FAA Order No. 91-3, at 8 (February 4, 1991). A respondent's inability to pay, however, depends on the particular facts of her case. Respondent's comparison of her reduced sanction amount with the reduced sanction amounts of the other respondents is not valid because each case involves different financial situations. In the cases of the other two respondents at the consolidated hearing, the law judge found that neither had income sufficient to meet their expenses. Respondent, however, had sufficient individual income to meet her individual expenses, with income remaining after payment of her expenses. Furthermore, the initial decisions of the administrative law judge in those other cases are not binding precedent in an appeal before the Administrator.

Although the law judge found Respondent's individual income sufficient to pay the reduced civil penalty, he could have considered Respondent's joint marital income and assets. Respondent has presented no valid reason why her husband's income should not be considered when determining her ability to pay the civil penalty. The fact that Respondent pays her share of the household expenses and maintains a separate bank

account is not controlling. At the hearing Respondent testified in reference to herself and her husband that "[w]ell we still have debts to deal with" (Tr. 21) (emphasis added). In her letter of July 2, 1990, to the FAA, which is in the record, Respondent stated: "[m]y husband and I own a private aircraft which is hangared at Sky Harbor." These statements by Respondent indicate joint indebtedness and joint ownership of a valuable asset.

Respondent's remaining arguments on appeal are not persuasive. She has not presented any compelling reason to further reduce her sanction. The law judge did not err in not continuing the hearing so that Respondent could provide additional financial information, as she alleges. The record contains no such request by Respondent or denial by the law judge. Respondent has not established that she was adversely affected by Complainant's alleged failure to advise her to bring proof of her financial situation to the hearing.^{6/} Respondent testified and presented evidence about her financial situation at the hearing, and the law judge reduced the civil penalty from \$1,000 to \$650.

^{6/} Respondent alleges that Complainant advised the other two respondents to bring proof of their financial situations to the hearing. Respondent, however, did not file an answer to the complaint and did not respond to Complainant's pre-hearing motion. It is possible that the other two respondents raised inability to pay prior to the hearing and exchanged information with Complainant during discovery.

For these reasons Respondent's appeal is denied, and the law judge's decision is affirmed. A civil penalty in the amount of \$650 is assessed.^{7/}



BARRY LAMBERT HARRIS
Acting Administrator
Federal Aviation Administration

Issued this 12th day of June, 1992.

^{7/} 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).