



1. **PURPOSE:** This directive establishes the Transportation Security Administration (TSA) Disciplinary Review Board (DRB or Board) to provide transportation security screeners (screeners) a procedure for obtaining review of certain disciplinary actions.
2. **SCOPE:** This directive applies to all screeners in permanent positions, including lead screeners and supervisory screeners, who are not serving a TSA trial or probationary period; and screeners in temporary positions who have completed two years or more of current continuous service in a time-limited appointment of more than two years.
3. **AUTHORITIES:** Section 111(d) of the Aviation and Transportation Security Act; Sections 403(2) and 423 of the Homeland Security Act of 2002; applicable TSA and U.S. Department of Homeland Security delegations of authority.
4. **DEFINITIONS:** Not Applicable
5. **RESPONSIBILITIES:**
 - A. The Assistant Administrator for Aviation Operations, the Assistant Administrator for Human Resources (HR), and the Assistant Administrator for Workforce Performance and Training shall each designate one member to serve on the DRB. DRB members must hold managerial positions at the K level or above.
 - B. DRB members are responsible for determining how the DRB will proceed with appeals within the Board's jurisdiction and for reaching a decision on appeals consistent with this directive.
 - C. The DRB Member designated by the Assistant Administrator for HR shall serve as the Board Chair.
 - D. The Office of HR will provide administrative support to the DRB.
 - E. The Office of Chief Counsel will provide legal support to the DRB.
6. **POLICIES & PROCEDURES:**
 - A. Jurisdiction:
 1. Actions Covered:
 - a. Suspension of more than 14 days, including indefinite suspension;
 - b. Reduction in pay band or rate of basic pay; and
 - c. Removal.

2. Actions Not Covered:

- a. Letter of counseling or instruction;
- b. Letter of warning;
- c. Suspension of 14 days or less;
- d. Reduction in force (including furlough of any length);
- e. Reduction in pay band of a supervisor or manager serving a supervisory or managerial trial period as provided for in TSA MD No. 1100.31-1 if the reduction is to a pay band or basic pay level no lower than the pay band or basic pay level held before entering the supervisory or managerial position;
- f. Termination of a time-limited promotion at any time and return of the employee to a position at a pay band or pay level no lower than the one from which promoted;
- g. Placement of an employee serving on an intermittent or seasonal basis in non-duty and non-pay status in accordance with the conditions of the appointment;
- h. Termination of appointment of a reemployed annuitant;
- i. Termination during a basic trial period;
- j. Termination at any time of a time-limited appointment of two years or less;
- k. Expiration of a time-limited appointment of more than two years;
- l. Correction of an erroneous personnel action, including correction of a pay band or rate of pay that is contrary to law, regulation, or TSA policy;
- m. Action directed by a court or other competent authority;
- n. Voluntary action initiated by the employee;
- o. Appeal alleging discrimination for which the discrimination complaints procedure would be the appropriate forum, unless the issues can be separately adjudicated, as determined by the DRB in consultation with the Office of Civil Rights; and
- p. An action that has been or is being raised in any other forum.

B. Filing of Appeal:

1. Place of Filing. Appeals to the DRB must be filed with:

Assistant Administrator for Human Resources
Transportation Security Administration – TSA-21
Attention: Disciplinary Review Board Coordinator
601 S. 12th Street
Arlington, VA 22202-4204

2. Method of Filing. Filing must be made by U.S. mail, by facsimile to (571) 227-2318, by personal delivery or by commercial overnight delivery.
3. Time of Filing. An appeal must be filed following receipt of the notice of decision, but no later than 30 calendar days after the action is effected. Failure to file within 30 calendar days without good cause will result in denial of the appeal as untimely.

C. Computation of Time:

1. In computing the time period for filing an appeal, the first day after the effective date of the action is day 1 of the 30-day filing period.

2. If the filing period ends on a Saturday, Sunday, or Federal holiday, the end of the period is extended to the next business day.

D. Contents of Appeal. The appeal must contain:

1. A copy of the proposal notice, employee's reply, if any, and decision notice;
2. The date the decision was received;
3. A description of the factual, legal or policy issues in dispute, i.e., why the appellant believes the action is improper;
4. Any documentary evidence available to the appellant relative to the action being appealed;
5. Whether any informal attempts, including mediation, have been made to resolve issues raised in the appeal; and
6. The relief requested.

NOTE: The attached Appeal Form may be used to meet the requirements of this paragraph.

F. Right to Representation:

1. An appellant has a right to have a representative of his or her choosing to assist in preparing and presenting an appeal to the DRB. An appellant who elects to be represented must file a written designation with the DRB identifying the representative and must notify the DRB in writing of any change in representation. The appellant and the representative, if TSA employee(s), will be allowed a reasonable amount of official time to prepare and present the appeal. Costs associated with the representation, including any travel expenses, will be the responsibility of the appellant.
2. The DRB may disallow an appellant's chosen representative if the representation creates a conflict of interest or position or the representative, if a TSA employee, cannot be spared because of critical TSA work. If the appellant's representative is disallowed, the appellant will be given a reasonable amount of time to obtain a new representative.

G. Procedures of the DRB:

1. Upon receipt of an appeal, the DRB coordinator in the Office of HR will:
 - a. Determine whether the appeal is timely filed;
 - b. Determine whether the appeal package is complete or further documentation is needed from the appellant;
 - c. Refer the case to the DRB Chair; and
 - d. assist with facilitating the review and appeal process.
2. The DRB Chair will convene the DRB to determine how the DRB will proceed with the appeal. If the DRB cannot make a determination on the documentation already submitted, the Board may take additional action, including:

- a. Requesting the appellant to submit further information;
- b. Requesting information and/or documentation from agency officials;
- c. Ordering fact-finding;
- d. Requesting the appellant and involved management officials to engage in mediation;
- e. Convening a conference with the appellant and involved management officials;
- f. Scheduling a hearing; or
- g. Dismissing the appeal for untimely filing, failure to meet jurisdictional requirements, or failure of the appellant to provide necessary information after being requested to do so.

3. Conferences:

- a. The DRB may convene a conference when the DRB believes it will materially advance the appeal process. The primary purpose of a conference is to exchange views about the appeal.
- b. Conferences may be conducted in person, by phone, or other appropriate methods, as determined by the DRB.
- c. The DRB will determine who may participate in the conference.
- d. Conference participants may present their views of the issues involved in the appeal. Documentary evidence, also, may be presented and will be treated as submitted in the regular course of the appeal process.
- e. There will be no transcript of the conference, but notes may be taken.
- f. The DRB may render a final decision following the conference or take other appropriate action to process the appeal.

4. Hearings:

- a. The DRB may schedule a hearing when the DRB determines that a hearing is likely to materially advance the appeal. The determination to schedule a hearing may be upon the Board's own initiative or upon request of the appellant.
- b. Hearings may be conducted in person, by phone, or other appropriate methods, as determined by the DRB.
- c. The appellant may request permission to present witnesses. The request for witnesses must include a description of the relevant testimony each witness will provide.
- d. The DRB may call additional witnesses, if the DRB determines the testimony will be helpful to the decision-making process.
- e. The Chair of the DRB will preside at the hearing.
- f. Hearings will not be open to the public.
- g. The DRB may limit testimony and the introduction of documentary evidence if it deems such submissions to be repetitious or not material. The DRB has the sole authority to determine the admissibility of any evidence offered. Adherence to the Rules of Evidence shall not be required.
- h. Witnesses will be required to affirm that they will tell the truth.
- i. Witnesses may be subject to cross-examination.

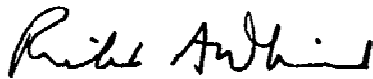
- j. The DRB may have the hearing recorded and may have such recording transcribed.
- k. All determinations with regard to conduct of the hearing, including but not limited to those stated in a. through j., above, are within the discretion of the DRB.

G. Decisions:

- 1. Each DRB member will have a vote. Two votes for the same action are required to take that action. The DRB must resolve any impasse in voting among its members.
- 2. The DRB will issue a written decision that:
 - a. Sustains the action;
 - b. Reverses the action; or
 - c. Mitigates the penalty.
- 3. The DRB has the authority to order back pay and other remedial action necessary to implement its decision.
- 4. The decision of the DRB is final.

7. EFFECTIVE DATE & IMPLEMENTATION:

This policy is effective immediately upon signature.



Richard A. Whitford
Assistant Administrator for Human Resources

02-04-04
Date

Filing Instructions: File with OHR Management Directives
(Note: HRM Letter No. 752-1 dated July 29, 2002, which previously included DRB policy, was canceled by MD No. 1100.75-1, dated February 4, 2004.)

Effective Date: February 4, 2004

Review Date: February 4, 2005

Distribution: TSA Affiliated HR Offices, Associate Administrators, Assistant Administrators, and Office Directors

Point Of Contact: PG&S/OHR. Paul H. Sheldon, 571-227-2828

Attachment

**Disciplinary Review Board
APPEAL FORM**

Part 1: Appellant Identification

Name: (Last, First, Middle Initial): _____

Social Security Number: _____

Mailing Address: _____

IMPORTANT: YOU MUST NOTIFY THE DISCIPLINARY REVIEW BOARD OF ANY CHANGE OF YOUR ADDRESS. FAILURE TO DO SO MAY RESULT IN THE DISMISSAL OF YOUR APPEAL.

Telephone Number(s): (home)_____ **(work)**_____

Signature of Appellant: _____ **Date:** _____

Part 2: Designation of Representative (if applicable)

I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act in my behalf. In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. I understand that any change in the status of my representative or limitation on this settlement authority must be filed in writing with the Disciplinary Review Board.

Name of Representative: _____ **Telephone Number:** _____

Address of Representative: _____

If a TSA Employee, Duty Station & Supervisor's Name: _____

Signature of Appellant: _____ **Date:** _____

Signature of Representative: _____ **Date:** _____

Part 3: Appealed Action

Briefly describe the agency action you are appealing. Attach the proposal and decision letters regarding the action being appealed, and any documentation or argument you submitted to the deciding official regarding the action being appealed.

Name and location of the official taking the action (if not on the notice of decision):

Date you received the decision notice: _____

Date action was effected: _____

Part 4: Information About the Appellant

Position title and duty station: _____

Pay band at the time the action was effected: _____

Salary at the time the action was effected: _____

Employment status at time of action being appealed:

Permanent Employee _____ Reemployed annuitant _____

Temporary (Time limited) _____ Term _____ Seasonal _____

Length of Government Service: _____ Length of TSA Service: _____

Were you serving a trial or probationary period at the time the action was effected? Yes _____
No _____

If available, attach a copy of your most recent SF-50, Notice of Personnel Action.

Part 5: Attempts at Resolution

Have there been any attempts at informal resolution of the issues related to the action being appealed, including mediation? Yes _____ No _____

If yes, were any agreements reached? _____ If so, provide a copy of the agreement(s).

Part 6: Appellant's Position and Defenses

Describe why you believe the action taken in your case was improper. (The written material, if any, that you submitted to the deciding official may be sufficient.)

What action do you want the Disciplinary Review Board to take?

Have you raised the issues in your appeal with any other agency or in any other complaint procedure? Yes ____ No ____

If yes, name of agency or office: _____

Address: _____

Phone number of agency or office: _____

Date filed: _____

What additional documentary evidence, if any, do you believe the Disciplinary Review Board needs to consider regarding your appeal? Specifically, identify such evidence to which you do not have access, but that is in the possession of the Transportation Security Administration.

Part 7: Additional Information

Describe any other information you believe the Disciplinary Review Board should take into account in its consideration of your appeal:

Part 8: Address To Be Used In Filing An Appeal

Appeals to the Disciplinary Review Board should be addressed to:

Assistant Administrator for Human Resources
Transportation Security Administration – TSA-21
Attention: Disciplinary Review Board
601 South 12th Street
Arlington, VA 22202-4204

NOTE: AN APPEAL MUST BE FILED AFTER THE APPELLANT RECEIVES THE DECISION NOTICE ON THE ACTION BEING APPEALED, BUT NO LATER THAN 30 CALENDAR DAYS AFTER THE EFFECTIVE DATE OF THE ACTION. FILING MAY BE ACCOMPLISHED BY U.S. MAIL, BY FACSIMILE TO (571) 227-2318, BY PERSONAL DELIVERY, OR BY COMMERCIAL OVERNIGHT DELIVERY.

If you believe you were discriminated against by the agency, in connection with the matter being appealed, because of your race, color, gender, religion, national origin, disability, age, or sexual orientation you may contact an EEO counselor within 45 days of the effective date of the action being appealed. The Disciplinary Review Board will not process appeals in which allegations of discrimination are raised. However, if the discrimination allegations can be clearly separated from other issues being raised, the Disciplinary Review Board has the discretion to process those issues.