

THE TSO VOICE

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TSA ANNOUNCES NEW RESTRUCTURING OF BDO PROGRAM

In a series of calls and conference calls on Thursday, TSA management informed AFGE representatives of new plans for changes to the Behavior Detection Officers (BDO) program. The bottom line of the new restructuring is that management has decided to eliminate full-time BDO positions at 35 airports in addition to the previous round of cuts to BDOs.

AFGE Council 100 President **Hydrick Thomas** and Vice President **Alan Jackimowicz**, along with AFGE General Counsel **David Borer**, were informed of the announcement prior to release of information to the FSDs. Following the FSDs' briefing, a conference call was held in which Thomas, Jackimowicz, and Borer were able to ask questions and receive additional, although still limited details. FSDs have been directed to immediately contact AFGE Local Presidents at the affected airports to go over the changes and to lay out management's plans for presenting the information to the affected employees.

Of the 35 airports affected, four are Category 1 airports and the remaining 31 are Category 2 airports. The changes will result in the elimination of 246 BDO positions. After these changes are fully implemented, the BDO program will remain in 87 airports, down from the current 122.

AFGE once again argued its position that, particularly in light of the LAX shooting incident, the union believes there is a need for more BDOs, not less. The agency indicated the cuts are based on budget and Risk Based Security considerations. Nevertheless, AFGE continues to advocate that the BDO program is an important layer in the overall security operation.

AFGE representatives on the conference call pressed for protections for the BDOs who will bear the brunt of these latest changes. We have been given assurances that protections offered last time re: 2-year pay protection, reassignment/relocation rights, etc. will be honored again for this round. Exact details will be provided to the affected employees by mid-September and the changes are expected to be fully implemented by mid-November.

In the meantime, there will be ongoing meetings and conference calls with TSA management to stay on top of the restructuring. While the impact of the changes will again be devastating to many of the BDOs in these airports, communication about the restructuring seems to be improving over the last time.

As always, AFGE will fight to make sure our BDOs are treated fairly, and we will continue to advocate to have the BDO program expanded. More details will be passed along as soon as we have them available.

AIRPORTS AFFECTED BY 2014 BDO PROGRAM CUTS

BGR Bangor International Airport (Bangor, ME)
BIL Billings Logan International Airport (Billings, MT)
BTV Burlington International Airport (Burlington, VT)
CAE Columbia Metropolitan Airport (Columbia, SC)
CAK Akron-Canton Airport (North Canton, OH)
CRW Yeager Airport (Charleston, WV)
DAY Dayton International Airport (Dayton, OH)
DSM Des Moines International Airport (Des Moines, IA)

FAI	Fairbanks International Airport (Fairbanks, AK)
FAT	Fresno Yosemite International Airport (Fresno, CA)
GPT	Gulfport-Biloxi International Airport (Gulfport, MS)
GRB	Austin Straubel International Airport (Green Bay, WI)
GRR	Gerald R. Ford International Airport (Grand Rapids, MI)
GSO	Piedmont Triad International Airport (Greensboro, NC)
GSP	Greenville-Spartanburg International Airport (Greer, SC)
HPN	Westchester County Airport (White Plains, NY)
HSV	Huntsville International Airport (Huntsville, AL)
ICT	Wichita Mid-Continent Airport (Wichita, KS)
ISP	Long Island MacArthur Airport (Ronkonkoma, NY)
JAN	Jackson-Evers International Airport (Jackson, MS)
KOA	Kona International Airport (Kailua-Kona, HI)
LGB	Long Beach Airport (Long Beach, CA)
LIH	Lihue Airport (Lihue, HI)
MAF	Midland International Airport (Midland, TX)
MLI	Quad City International Airport (Moline, IL)
MYR	Myrtle Beach International Airport (Myrtle Beach, SC)
PNS	Pensacola International Airport (Pensacola, FL)
PSP	Palm Springs International Airport (Palm Springs, CA)
SAV	Savannah/Hilton Head International Airport (Savannah, GA)
SFB	Orlando Sanford International Airport (Sanford, FL)
SHV	Shreveport Regional Airport (Shreveport, LA)
SRQ	Sarasota-Bradenton International Airport (Sarasota, FL)
SWF	Stewart International Airport (New Windsor, NY)
TYS	McGhee Tyson Airport (Alcoa, TN)
XNA	Northwest Arkansas Regional Airport (Bentonville, AR)

HUGE AFGE WIN IN PRECEDENT-SETTING CASE: JUDGE RULES TSA MUST OFFER REASSIGNMENT TO MEDICALLY DISQUALIFIED TSO

TSA violated the Rehabilitation Act when the agency terminated a medically disqualified TSO without seeking to reassign her to a vacant position she was qualified for, an administrative judge ruled. The judge recently ordered TSA to pay the TSO over \$100,000 for nearly three years of back pay, plus \$30,000 in compensatory damages, reassign her to a new position, and post at JFK airport copies of the notice indicating that TSA was found to have discriminated against a TSO on the basis of disability.

“This is the kind of win that demonstrates just how important it is to have AFGE representation,” said **Hydrick Thomas**, AFGE Council 100 President and the union’s Local President at JFK. “If it were not for the excellent representation provided by AFGE attorneys, this employee would be on the street today. Instead she is back at JFK and she is extremely pleased with the expert representation that won her case.”

The precedent-setting case involved a JFK officer who in November 2009 asked to be reassigned to a position that didn’t require lifting duties due to her back injury. Even though the TSO was eligible for reassignment within TSA according to the law, TSA refused to accommodate her and told her that she needed to produce a medical documentation stating that she would be able to lift 70 pounds, which is one of the duties of screeners. If she couldn’t produce the documentation then she would be placed in leave without pay status (LWOP). If she refused to request LWOP, she would be marked Absent without Leave (AWOL). Due to her back injury, the officer wasn’t able to produce the medical documentation as she wasn’t able to lift more than 30 pounds. She was put on LWOP from February to March 2011 and was eventually terminated in July that year.

AFGE filed an equal employment opportunity (EEO) complaint on behalf of the officer alleging discrimination based on disability and violation of the Rehabilitation Act, which prohibits discrimination on the basis of disability in federal employment and federal programs. At the hearing, TSA claimed that the Aviation and Transportation Security Act (ATSA), which created TSA, provided a blanket exemption to the Rehabilitation Act, and the agency therefore was not obligated to offer reassignment to the TSO. The judge disagreed, saying the agency indeed had a legal obligation under the Rehabilitation Act to reassign the employee as doing so doesn't conflict with the ATSA. She wrote:

“ATSA’s critical purpose is to ensure that screeners are fully capable of doing their job to help ensure safe flying in light of the tragedy of September 11, 2001. Reassignment of a person, who was once employed as a screener, to a non-screener position, necessarily removes the employee from the screener position. The employee, if reassigned, is now moved to a position that does not entail screening of persons or luggage. In this case, Complainant was seeking a secretarial-type position. Thus, the employee’s duties are now outside the realm of being a national security concern. Thus, no satisfactory reason exists to excuse the Agency from the obligation under the Rehabilitation Act to seek a reassignment as a reasonable accommodation of last resort.”

This is a major victory for AFGE, which has argued since the inception of TSA that the Rehab Act applies to the agency and that ATSA doesn't give the agency authority to discriminate against employees. It's equally important to note that the union won this case because we were able to demonstrate that there were five vacant non-screening positions that the employee was qualified for during the time of the officer's removal.

“It is not enough to say that TSA violated the Rehabilitation Act because it failed to reassign a TSO after medically disqualifying him/her from the TSO position. In order to prevail on such a claim the TSO must demonstrate that there was a vacant, funded position that existed during the time of TSA's medical disqualification of a TSO and the TSO's removal,” said AFGE Attorney **Mark Vinson**, who, along with AFGE Attorney **Jenny Celestin-Pratt**, represented the officer. Vinson suggested that before filing a complaint, TSOs facing the same situation should visit USAjobs.com to find out if there are other vacant positions they might be qualified for.

The judge also ordered TSA to change its national policy to reflect that it is obligated to offer reassignments when appropriate to screeners. The agency is appealing this part of the decision. TSA said the Department of Homeland Security's Office of Civil Rights and Liberties has reviewed the case and agreed with the judge's decision regarding the finding of discrimination but authorized TSA to appeal the judge's order requiring change in policy.

LTSO REINSTATED, THANKS TO AFGE'S OUTSTANDING REPRESENTATION

The recent case of an LTSO from Indianapolis sheds light on harsh tactics employed by TSA. AFGE attorney Julie Yeagle represented the LTSO before TSA's appeals board, which ruled the employee should be reinstated after being removed for failure to cooperate with an agency investigation. The LTSO has tinnitus, a condition he developed during his 20-year career in the Army. He disclosed this condition when he was hired by TSA in 2002 and it never once interfered with his job. Naturally, these facts did not stop TSA from questioning the employee's fitness for duty. After 11 years of employment, management suddenly became “concerned” about the employee's condition and instructed him to undergo two fitness for duty evaluations. He complied. However, TSA was not satisfied with the results of the tests and therefore insisted that the employee intentionally gave unreliable responses on his hearing test. TSA charged the employee with failure to cooperate with an investigation. The Board disagreed, finding that the employee participated in the exams as directed, that TSA provided no evidence that the employee's “unreliable responses” were deliberate, that an independent medical examination does not meet the criteria of an official agency investigation. The employee was reinstated.