

[DATE]

[Name of Deciding Official]
Transportation Security Administration
[Airport]
[Airport Address Line 1]
[Airport Address Line 2]

Subject: Ed Thomas, Transportation Security Officer (Code)
One Day Suspension, First-Step Grievance

Dear [insert name of Deciding Official]:

On behalf of Transportation Security Officer (TSO) Ed Thomas, please accept this letter as a first-step grievance pursuant to TSA Management Directive (MD) No. 1100.77-2. TSO Thomas received a Notice of Decision on Proposed Suspension (“Decision”) prepared by [Deciding Official and title], on [date]. The Decision alleges one charge: failure to report an arrest.

This grievance is timely pursuant to MD 1100.77-2 because it has been filed within 15 days of TSO Thomas’s receipt of the Decision. TSO Thomas has designated the American Federation of Government Employees (“AFGE”) to pursue this appeal on his behalf. TSO Thomas respectfully requests rescission of his suspension and payment of all back pay and benefits. He further asks that all references to this disciplinary action be eliminated from his personnel records.

LTSO Thomas should not be suspended because: 1) Management failed to adhere to TSA’s policy of progressive discipline; and 2) Management improperly considered the aggravating and mitigating factors surrounding this suspension.

I. STATEMENT OF FACTS

LTSO Thomas has been a successful TSA employee for over nine years and has received numerous awards for his service. On November 2, 2019, LTSO Thomas was involved in an altercation on Hudson Street. The altercation was the result of a fight that had broken out between the patrons of a bar on the street. LTSO Thomas, in an attempt to prevent anyone from getting hurt, restrained one of the individuals involved in the fight. As a result of the altercation, a police officer arrived on the scene and arrested multiple participants, including LTSO Thomas, for disorderly conduct. LTSO Thomas was placed in a holding cell for the night and released the next morning. After being released, LTSO Thomas was informed that all charges against him would be dropped.

On November 22, 2019, two days after the altercation, a fellow officer informed LTSO Thomas' supervisor that LTSO Thomas had been arrested for disorderly conduct. When approached by his supervisor regarding the charges, LTSO Thomas apologized for not informing him of them earlier, but stated he believed that since the charges were dropped, he was not required to report them.

LTSO Thomas received a Notice of Proposed One Day Suspension on December 10, 2019. On January 1, 2020, he received the Decision that is the subject of this evincence.

II. MANAGEMENT FAILED TO FOLLOW PROGRESSIVE SUSPENDING LTSO THOMAS AND THEREBY VIOLATED TSA POLICY.

Management's disciplinary action is unjustified because it is not consistent with progressive discipline.

TSA MD No. 1100.75-3 defines progressive discipline as "the process of using the least severe form of action that may be used to correct a deficiency." In the instant matter, Management chose to suspend LTSO Thomas for one day rather than take progressively more severe action to correct his misconduct. Aside from the present matter, LTSO Thomas has a flawless disciplinary and performance record with TSA. Consequently, progressive discipline supports a penalty less than a one-day suspension.

A lesser punishment than a suspension will be more than adequate to impress upon LTSO Thomas the seriousness of his alleged misconduct. Therefore, LTSO Thomas respectfully requests that the proposed suspension be mitigated.

III. MANAGEMENT INCORRECTLY ANALYZED THE MITIGATING FACTORS IN SUSPENDING LTSO THOMAS.

TSA Handbook to MD 1100.75-3 § G directs TSA managers to consider the following twelve mitigating factors in determining the appropriateness of an agency's penalty: 1) the nature and seriousness of the offense; 2) the employee's job level and type of employment; 3) the employee's past disciplinary history; 4) the employee's past work record; 5) the effect of the offense on the employee's ability to perform at a satisfactory level; 6) the consistency of the penalty with those imposed upon other employees; 7) the consistency of the penalty with those imposed upon similarly situated employees; 8) the notoriety of the offense on the agency's reputation; 9) the clarity of the employee's notice of performance expectations; 10) the potential for the employee's rehabilitation; 11) the mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, etc.; and 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others. When these factors are applied to LTSO Thomas's case, it becomes clear that a 1-day suspension is an excessive penalty.

First, the nature and seriousness of the alleged offenses do not justify a a suspension. LTSO Thomas admits to failing to report the arrest within 24 hours. However, because the charges were dropped, he believed that he was under no obligation to do so. LTSO Thomas was only arrested due to a misunderstanding of his role in the altercation, and his name was cleared without the imposition of any formal charges. He was in police custody for less than five hours, and he never misrepresented the circumstances of his arrest. Upon being questioned about it, LTSO Thomas was forthright and candid, and even apologized for his failure to report the arrest earlier.

Second, LTSO Thomas has earned an excellent performance record during his nine years of service to TSA. In addition, LTSO Thomas has no history of disciplinary actions. LTSO Thomas has been a loyal and dedicated TSA employee for nearly a decade. These factors weigh heavily in favor of mitigation.

IV. CONCLUSION

LTSO Thomas respectfully requests that you rescind the Decision. He further asks that any reference to this disciplinary action be removed from his personnel records. Management's disciplinary action is legally insufficient because it does not comport with progressive discipline, and it is not consistent with the mitigating factors. LTSO Thomas looks forward to a favorable resolution to this matter. Please do not hesitate to contact me to discuss the issues contained herein.

Respectfully submitted,