

[DATE]

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

Subject: Richard Jackson, Transportation Security Officer (CODE)  
Notice of Removal  
Reference: ALB 11-09-01

Dear Board Member:

On behalf of Transportation Security Officer (TSO) Richard Jackson, please accept this letter as an response to the November 20, 2020, Notice of Proposed Removal (Proposal), prepared by AFSD John Smith, Transportation Security Manager at Airport (CODE). The Proposal is based on the charge of Failure to Maintain Certification.

This response is timely because it has been filed within seven days of the receipt of the Proposal. TSO Jackson has granted the American Federation of Government Employees (AFGE) the right to pursue this appeal on her behalf.<sup>1</sup>

TSO Jackson respectfully requests that you rescind the proposed removal and that you eliminate any reference to this disciplinary action from his personnel records. In the alternative, TSO Jackson requests that you mitigate the removal to a lesser form of discipline.

TSO Jackson should not be removed from federal service because: 1) removing TSO Jackson does not promote the efficiency of service; 2) the removal fails to adhere to TSA's policy of progressive discipline; and 3) Management improperly considered the aggravating and mitigating factors when proposing his removal.

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<sup>1</sup> Power of Attorney attached as Exhibit 1.

## **I. STATEMENT OF FACTS**

TSO Jackson was hired by TSA over six months ago, and has never received any prior discipline. On July 29, 2020, TSO Jackson began on the job training as a screening officer on August 1, 2020. On August 11, 2020, TSO Jackson's supervisor informed him that he was not satisfactorily progressing through the training. On September 06, 2011, TSO Jackson received a notice of proposed removal, proposing his removal for failure to maintain certification due to his unsatisfactory performance during training.

### **I. REMOVING TSO JACKSON DOES NOT PROMOTE THE EFFICIENCY OF SERVICE.**

TSA Management Directive No. 1100.75-3 states that an employee may be suspended, removed, or demoted for such cause as will promote the efficiency of the service. Specifically, an action against an employee must be taken to further a legitimate government interest. Examples of employees' actions that hinder a legitimate government interest are: 1) the employee's failure to accomplish his or her duties or fulfill his employment obligations satisfactorily; 2) the employee's interference with other employees' performance of their duties; or 3) the employee exhibits conduct that adversely affects the agency's ability to accomplish its mission.

Management has failed to establish that TSO Jackson's removal will promote the efficiency of service. In fact, removing TSO Jackson would result in the loss of a valuable employee and a waste of resources and training. Although TSO Jackson had some difficulty during on the job training in early August, he has consequently, displayed the resolve to improve his performance and do whatever it takes to be a successful baggage screener. Instead of removing TSO Jackson, allowing him to complete his training, or assigning him to another post would more likely promote the efficiency of service. TSO Jackson's proposed removal should therefore be rescinded because Management has failed to establish that his removal will promote the efficiency of service.

### **II. MANAGEMENT FAILED TO FOLLOW PROGRESSIVE DISCIPLINE IN ASSESSING TSO JACKSON'S PENALTY AND THEREBY VIOLATED TSA POLICY— MD NUMBER 1100.75-3.**

In addition to failing to establish that her removal would promote the efficiency of service, Management's disciplinary action is unjustified because it failed to follow progressive discipline.

In addressing performance and conduct problems, Management must follow progressive discipline. TSA MD No. 1100.75-3 § (6) (G) states that "TSA will take progressively more severe action until the unacceptable performance or conduct is corrected, or the employee is removed." Furthermore, TSA MD No. 1100.75-3 § (6) (G)

states that progressive discipline utilizes, "the process of using the least severe form of action that may be used to correct a deficiency."

In this instance, Management failed to use the least severe form of action to correct the deficiency and failed to properly consider TSO Jackson's performance record. TSO Jackson has never received formal discipline at TSA during his six months of service. TSO Jackson is ready to be a dedicated and loyal officer, and is committed to TSA's mission. A more appropriate penalty under progressive discipline would be a letter of counseling.

### **III. THE DECIDING OFFICIAL INCORRECTLY ANALYZED THE AGGRAVATING AND MITIGATING FACTORS IN DETERMINING THE APPROPRIATENESS OF TSO JACKSON'S PROPOSED REMOVAL.**

TSA Handbook to MD 1100.75-3 § F (2) directs TSA managers to consider the following twelve aggravating and 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.

An analysis of the aggravating and mitigating factors demonstrates the proposed penalty in the instant case is excessive. TSO Jackson has never had any prior disciplinary or performance problems during his time at TSA. Additionally, he has demonstrated his commitment to improving his performance and be an exemplary TSO.

Because TSO Jackson remains dedicated to the mission of TSA, remedial training and a letter of counseling would effectively enable her to complete his on the job training. It is a waste of training and resources to remove him from federal service.

### **IV. CONCLUSION**

TSO Jackson respectfully requests that you rescind his Removal. He further asks that any reference to this disciplinary action be removed from his personnel records. Management's proposed disciplinary action is legally insufficient because: 1) removing TSO Jackson does not promote the efficiency of service; 2) the removal for fails to

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adhere to TSA's policy of progressive discipline; and 3) Management improperly considered the aggravating and mitigating factors when proposing his removal. TSO Jackson looks forward to a favorable resolution to this matter. Please do not hesitate to contact me to discuss the issues contained herein.

Respectfully submitted,