



Testimony
Before the Subcommittees on Oversight
and Management Efficiency and
Transportation Security, Committee on
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Representatives

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TRANSPORTATION SECURITY

TSA Could Strengthen Oversight of Allegations of Employee Misconduct

Statement of Stephen M. Lord, Director
Homeland Security and Justice Issues

Chairmen Duncan and Hudson, Ranking Members Barber and Richmond, and Members of the Subcommittees:

I am pleased to be here to discuss the findings of our report issued yesterday assessing the Transportation Security Administration's (TSA) efforts to address employee misconduct.¹ TSA employs approximately 56,000 transportation security officers (TSO) and other TSA personnel to ensure the security of the traveling public at more than 450 TSA-regulated airports nationwide.² News stories in recent years have highlighted several high-profile allegations of misconduct by TSA employees, including TSOs being involved in theft and drug-smuggling activities, as well as circumventing mandatory screening procedures for passengers and baggage. For example, in 2011, a TSO at the Orlando International Airport pleaded guilty to federal charges of embezzlement and theft for stealing more than 80 laptop computers and other electronic devices, valued at \$80,000, from passenger luggage. TSOs engaging in misconduct raise security concerns because these employees are charged with helping to ensure the security of our nation's aviation system.

The process of addressing TSA employee misconduct involves various components within the Department of Homeland Security (DHS). For example, depending on the facts and circumstances of a case, the DHS Office of Inspector General (OIG), TSA Office of Inspection (OOI), or TSA Office of Security Operations (OSO) may conduct an investigation into allegations of TSA employee misconduct. OSO generally adjudicates cases at airports—that is, determines whether the evidence is sufficient to propose and sustain a charge of misconduct and determines the appropriate penalty. The Office of Professional Responsibility (OPR), an independent office that TSA established in 2010 to provide greater consistency in misconduct penalty determinations, adjudicates a more

¹GAO, *Transportation Security: TSA Could Strengthen Monitoring of Allegations of Employee Misconduct*, [GAO-13-624](#) (Washington, D.C.: July 30, 2013).

²The total number of TSA employees at TSA-regulated airports represents personnel within the Office of Security Operations, such as TSOs, supervisory TSOs, lead TSOs, transportation security managers, transportation security inspectors, and behavior detection officers. This statement is focused on TSA personnel at TSA-regulated airports. We excluded TSA employees at headquarters, the Federal Air Marshal Service, regional offices, and other nonairport locations, and do not include private sector screeners employed by contractors providing screening services at airports participating in TSA's Screening Partnership Program.

specialized set of cases, such as misconduct involving senior-level TSA employees at airports and other locations.

My testimony this morning will address the key findings from the report on TSA's efforts to address employee misconduct that we issued yesterday.³ Specifically, like the report, my statement will address (1) data on TSA employee misconduct cases and (2) TSA efforts to manage and oversee the investigations and adjudications process.

For the report, we reviewed standard operating procedures, policy statements, and guidance for staff charged with investigating and adjudicating allegations of employee misconduct, and analyzed TSA misconduct data from fiscal years 2010 through 2012. While we identified some limitations with the data, we found the data sufficiently reliable for providing general information on the nature and characteristics of employee misconduct. We compared TSA processes for investigations and adjudications with TSA policies and procedures and *Standards for Internal Control in the Federal Government*.⁴ In addition, we selected a sample of 7 airports, based on variances in number and type of past cases of employee misconduct and geographic dispersion, from the approximately 450 TSA-regulated airports nationwide, and conducted site visits and interviews with TSA officials responsible for addressing employee misconduct. While not generalizable, the airport interviews provided us with the perspectives of TSA officials responsible for conducting TSA employee misconduct investigations or adjudications. We also analyzed a random, nongeneralizable sample of 50 allegations referred from the DHS OIG to TSA to identify follow up actions. We conducted this work in accordance with generally accepted government auditing standards. More detailed information on the scope and methodology can be found in our published report.

³[GAO-13-624](#).

⁴GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1, 1999).

TSA Investigated and Adjudicated Approximately 9,600 Misconduct Cases from Fiscal Years 2010 through 2012

In July 2013, we reported that TSA investigated and adjudicated approximately 9,600 cases of employee misconduct from fiscal years 2010 through 2012, according to TSA employee misconduct data that we analyzed.⁵ Two offense categories accounted for about half of all cases—(1) attendance and leave, which accounted for 32 percent; and (2) screening and security, which accounted for 20 percent. Charges for screening and security-related incidents pertain to violating standard operating procedures, including not conducting security or equipment checks, and allowing patrons or baggage to bypass screening. TSA developed a Table of Offenses and Penalties that delineates common employee charges, along with a suggested range of penalties. Of the cases that we analyzed, 47 percent resulted in letters of reprimand, which describe unacceptable conduct that is the basis for a disciplinary action; 31 percent resulted in suspensions of a definite duration; and 17 percent resulted in the employee's removal from TSA. The remaining cases covered a variety of outcomes, including suspensions of an indefinite duration.

TSA Has Taken Steps to Help Manage the Investigations and Adjudications Process, but Could Develop Additional Procedures to Better Monitor Employee Misconduct Cases

In our July 2013 report, we found that TSA has taken steps to help manage the investigations and adjudications process, such as creating OPR in 2010 to provide greater consistency in misconduct penalty determinations and providing training for TSA staff at airports responsible for investigating and adjudicating allegations of employee misconduct. While TSA has taken these steps, we reported weaknesses in four areas related to monitoring of employee misconduct cases: (1) verifying that TSA staff at airports comply with policies and procedures for adjudicating misconduct, (2) recording case information on all adjudication decisions, (3) tracking the time taken to complete all phases of the investigations and adjudications process, and (4) identifying allegations not adjudicated by the agency.

Verifying that TSA staff comply with policies and procedures for adjudicating misconduct. TSA does not have a process for reviewing misconduct cases to verify that TSA staff at airports are complying with policies and procedures for adjudicating employee misconduct. According to TSA policies and procedures, adjudicating officials need to collect

⁵Employee misconduct cases refer to allegations for which TSA has completed an investigation and adjudication.

sufficient evidence to support penalty charges and consider factors, such as an employee's disciplinary track record, in making a penalty determination. However, some misconduct cases have been overturned or the penalties reduced through the appeals process because staff at airports had not supported the charges with sufficient evidence, among other things. For example, from January 2011 to June 13, 2013, the OPR Appellate Board—which reviews appeals made by TSOs on certain actions, such as suspensions of 15 days or more—either overturned or reduced the penalty in 125 out of 836 cases (15 percent). A senior TSA official agreed that TSA would benefit from a review process to help verify that staff at airports are making adjudication decisions in conformance with policies and procedures. Without a review process, it is difficult for TSA to provide reasonable assurance that cases have been adjudicated properly and that risk to the agency is mitigated accordingly. Therefore, in our July 2013 report, we recommended that TSA establish a process to conduct reviews of misconduct cases to verify that TSA staff at airports are complying with policies and procedures for adjudicating employee misconduct. DHS concurred and stated that TSA is developing a process to provide increased auditing of disciplinary records. TSA expects to develop this process by March 31, 2014.

Recording case information on all adjudication decisions. TSA does not record the results of all misconduct cases that have been adjudicated by TSA airport staff in its Integrated Database, which is TSA's centralized system for tracking and managing employee misconduct cases. For example, the agency does not record all cases that resulted in a corrective action, which are actions that are administrative in nature, such as a letter of counseling. Specifically, we found that five out of the seven airports included in our sample do not consistently track corrective actions in the Integrated Database. A senior TSA official agreed that there is a strong need for TSA to clarify that TSA staff at airports should record corrective actions in the database. Recording all outcomes in the Integrated Database would help provide a centralized, institutional record on past misconduct. It would also enable managers to follow a progressive discipline approach, which is the process of taking progressively more severe action, when appropriate, until the unacceptable conduct is corrected or the employee is removed from the agency. Thus, in our July 2013 report, we recommended that TSA develop and issue guidance to the field clarifying the need for TSA officials at airports to record all misconduct case outcomes in the Integrated Database. DHS concurred and stated that TSA will develop and disseminate additional guidance to the field to ensure that all

outcomes are recorded in the database. TSA expects to develop and disseminate additional guidance to the field by August 30, 2013.

Tracking the time taken to complete all phases of the investigations and adjudications process. While TSA has established standards for the amount of time to complete the investigations and adjudications process, the agency has not required TSA staff at airports to track their performance against the standards. Specifically, our review of TSA data from the Integrated Database on misconduct cases handled by TSA airport staff identified that TSA does not capture information on the amount of time taken to complete the investigations and adjudications process, including the number of days to complete an investigation and issue a notice of proposed action. Tracking cycle times would provide TSA with operational information, such as differences in processing time by, among other things, type of case, and could allow the agency to identify any delays, such as challenges associated with evidence collection. According to TSA senior officials, tracking cycle times for investigations and adjudications completed by airport staff would also provide valuable information on the differences in case processing time frames across airports. In our July 2013 report, we recommended that TSA establish an agency-wide policy to track cycle times in the investigations and adjudications process. DHS concurred and stated that TSA will develop a process and mechanism to track cycle times for misconduct cases handled by TSA airport staff. TSA expects to develop a process and mechanism by March 31, 2014.

Identifying allegations not adjudicated by TSA. TSA does not have reconciliation procedures—that is, procedures to follow up on completed misconduct investigations to ensure that the agency has identified cases requiring adjudication. According to a random sample of 50 allegations referred from DHS OIG to TSA in fiscal year 2012, we found that 2 were not adjudicated by TSA. As a result of our review, TSA made adjudication decisions on these allegations, one of which resulted in a 14-day suspension for the employee because of disruptive behavior in the workplace. The results from our sample cannot be generalized to the entire population of over 1,300 allegations referred from DHS OIG to TSA in fiscal year 2012; however, it raises questions as to whether there could be additional instances of allegations referred to TSA in this population that the agency has not adjudicated. A senior TSA official agreed that a reconciliation process would offer benefits to TSA as there may be other allegations the agency is unaware of that have been investigated but not adjudicated. Therefore, in our July 2013 report, we recommended that TSA develop reconciliation procedures to identify allegations of employee

misconduct not previously addressed through adjudication. DHS concurred and stated that TSA will implement a reconciliation process to ensure that completed misconduct investigations are adjudicated. TSA expects to implement a reconciliation process by March 31, 2014.

Chairmen Duncan and Hudson, Ranking Members Barber and Richmond, and Members of the Subcommittees, this concludes my prepared statement. I look forward to responding to any questions that you may have.

GAO Contact and Staff Acknowledgments

For questions about this statement, please contact Steve Lord at (202) 512-4379 or lords@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this statement include Jessica Lucas-Judy (Assistant Director), Anthony C. Fernandez, Sally Gilley, Tom Lombardi, Lerone Reid, and Kelly Rubin.

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