

Federal Air Marshal Service

U.S. Department of Homeland Security



Transportation
Security
Administration

Date: April 10, 2006

To: Robert McLean ^{RSM} MacLEAN
Federal Air Marshal
Los Angeles Field Office

From: [REDACTED]
Special Agent in Charge

Subject: Notice of Removal

This is to notify you that I have decided to remove you from your position with the Transportation Security Administration (TSA), effective close of business on April 11, 2006. This action is being taken to promote the efficiency of the service and is based on the following:

Reason: Unauthorized Disclosure of Sensitive Security Information

Specification: On July 29, 2003, you disclosed Sensitive Security Information (SSI) in an unauthorized manner. Specifically, you informed the media that all [REDACTED] FAMs were sent a text message to their government issued mobile phones that all RON (Remain Overnight) missions up to August 9th would be cancelled, or words to that effect. You admitted and acknowledged the foregoing during an official, administrative inquiry regarding your conduct.

The media person to whom you disclosed this information is not a covered person within the meaning of the SSI regulations, 49 C.F.R. § 1520. The information you improperly disclosed concerned RON deployments and such information is protected as SSI pursuant to 49 C.F. R. § 1520.5(b)(8)(ii) which safeguards "Information concerning the deployments, numbers and operations of ...Federal Air Marshals. The disclosure of this SSI had the potential to reveal vulnerabilities in the aviation security system, and as such, was extremely dangerous to the public we serve.

On September 13, 2005 you received a written notice of a proposed removal from [REDACTED] Assistant Special Agent in Charge for (1) Unauthorized Media Appearance; (2)

Unauthorized Release of Information to the Media; and for (3) Unauthorized Disclosure of Sensitive Security Information. That written notice also advised you of your right to make an oral and/or written reply.

I carefully considered and evaluated all the available information in this matter, including your oral response of October 14, 2005 and your written response of October 17, 2005 to the proposal notice. In your written and oral replies, you do not contest the factual content of the charges. However, you argue that the off-duty speech specified in each of the three reasons is protected by the First Amendment of the U.S. Constitution and therefore the removal action is barred as a matter of constitutional law.

Based on the above, I have determined that Reason (1) and Reason (2), of the proposal, are not sustained by the record. However, I find that Reason (3); Unauthorized Disclosure of Sensitive Security Information is supported by the facts and that your release of SSI to the media was unauthorized and not protected by the First Amendment of the U.S. Constitution.

In determining the appropriateness of the penalty, I have considered a number of factors, commonly referred to as the Douglas factors. I considered your combined 14 years of military and civilian federal service, including your 5 years as a Federal Air Marshal. I also considered that you have no previous discipline with the FAMS and that your previous performance appraisals were satisfactory. As a law enforcement officer, you are held to a higher standard of accountability and responsibility and your unauthorized disclosure of SSI information to the media has not demonstrated that standard. Your unauthorized media appearance and unauthorized release of SSI information to the media raise serious doubts about your judgment and trustworthiness. Moreover, the disclosure of this SSI had the potential to reveal vulnerabilities in the aviation security system, and as such, was extremely dangerous to the public we serve. As such, I find little chance for your rehabilitation as a FAM. Based on the egregiousness of your actions I have lost confidence in your ability to perform and find that removal from Federal employment for your unauthorized disclosure of SSI is necessary to promote the effectiveness of the FAM Service and the efficiency of the Federal Service.

Based on the above, I find the proposed penalty reasonable and that your removal is the appropriate action.


This is a final decision. You have the right to appeal this decision to the Merit Systems Protection Board (MSPB). If you elect to file an appeal with the MSPB, your appeal must be filed within thirty (30) days of the effective date of this action or within thirty (30) days of the date of this letter, whichever is later. The MSPB's regulations are available on its website, www.MSPB.gov. You may use the appeal form attached to this letter, or file on-line. Your appeal should be sent to the following address:

Merit Systems Protection Board
Western Regional Office
250 Montgomery Street
Suite 400, 4th Floor
San Francisco, CA 94104-3401

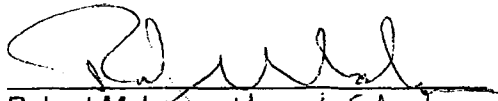
You must return all TSA-issued property to your supervisor, including ID badge(s), equipment, and manuals.

You are advised that TSA regulations prohibit you from divulging Sensitive Security Information (SSI) even after you are no longer employed by TSA. If you disclose SSI, TSA may seek a civil or criminal penalty or take other enforcement action against you.

Please sign the acknowledgement of receipt below. Your signature does not indicate agreement with this action; it only represents receipt of this notice on the date signed.


Special Agent in Charge

Date 4/10/2006


Robert McLean MacLEAN
Acknowledgement of Receipt RJSAM

Date 04/10/2006

 4/10/06

Delivery Information:

Hand Delivered By _____

Date