

EXCISED

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Foreign Service Grievance Board

June 5, 1972

TO: "She Secretary of State

SUBJECT: Record of Proceedings Nuiatoer 71-15-State-f^V4:
Remedial Recorsioendation in the Case of FSO-4 Öã↔æ{á^\

RBf: 3 FAM 667.3

YÖã↔æ{á^\ÿ, who will reach mandatory retirement in 1973 at acre £0,- filed a grievance with the Board in December, 1971, asserting that, over the past eight years while serving as an FEC-4 he has consistently received high ratines and repeated recommendations for promotion, yet has not been profoted. He contends that his failure to âæÁ*ã~↑~\æã is due to discrimination because of aie. and is in violation of Federal policies. As a redress, he seeks a retroactive promotion.

In accepting jurisdiction over the grievance, the Board noted that charges of discrimination on the basis of age are not covered in Equal Employment Opportunity regulations 3.nd so fall within the Board's jurisdiction.

The investigation of the grievance by a iseraber of the Board included an examination of the grievant's official personnel files, a review of the Precepts to Selection 3oa::i;s dating fro- 19€3 to the present, and interviews with tw~" officers in the Agency's personnel division. By arranger↑æ^\ the Board, Jitkgxcpv_retu to attend a pre-hearing confere^e which was held on April 7 and to be present at a formal hearing conducted on April 10. A transcript was ↑ade of the proceedings of the fonsal hearing.

YÖã↔æ{á^\Cbÿ performance file evidences an excellent efficiency record anã confirms his statement that in the past four years his rating and reviewing officers have all recommended his promotion. In addition, attention is called in a nussber of evaluation reports to his ability to assume a higher level of responsibility. This ability was clearly demonstrated in his performance i.n an 0-3 position in ãæãá^\æã for nearly three years. In light of this fine performance record, Y&ã↔æ{á^\Cbÿ expectations for promotion, especially from 19G7 em,

appear to the Board to have been justified. In its examination of the reasons he gives for his non-promotion., the Board. has found that the "policy against discrimination on the basis of age" in Executive Order 11141, dated February 12, 1964, was evidently not incorporated into the Agency's basic regulations governing personnel policy until late 1967. Although the 1963, 1964, 1965 and 1971 Precepts to Selection Boards enjoined them to ignore age as a factor in their consideration of officers for promotion, this admonition, acting as a safeguard against age bias, was not included in the Precepts from 1966 to 1971, crucial years insofar as the grievant's prospects for promotion were concerned. Not only was he advancing from age 53 to 58 in this period, but Selection Boards were reading recurring comments in his evaluation reports about limitations on his potential because of his age. References to age are not listed amongst the "Inadmissible Consents" in the attachment to PRKC 10 of Kay 10, 1972,, providing the "Consolidated List of Revisions to the Performance Evaluation System".

The Agency has stated that it is unable to determine conclusively the reason for the omission of a reference to age in the precepts covering the 1966-70 period, but believes the omission was due to an administrative rather than a policy decision. Whatever the reason, given the Agency's highly competitive promotion system, in which potential is consistently set forth in precepts as a key criterion for promotion, the omission, in the Board's opinion, deprived the grievant of the degree of consideration for promotion to which he was entitled by federal strictures and the Agency's responsibilities to implement them. Statistics given the Board by the Agency lend further weight to the claim that it was the factor of his age rather than his performance which led to the grievant's inability to be promoted. Of 126 officers in the grievant's group who were promoted from Class 5 to Class 4 in 1964 and have since been advanced to higher grade, and 35 are no longer in the Service. The average age of Class 4 officers at the time they were promoted by Selection Boards that met in 1968, 1969 and 1970 was about 41 years, at least 14 years less than the grievant's age in that period. Their average time in class was 3-1/2 years.

From the record before it, therefore, and in the absence of any evidence that establishes the existence of overriding factors, independent of his age, that would prevent his promotion, the Board upholds the grievant's claim.

As redress for the injustice that has affected his career advancement, the Board recommends the grievant for promotion, and that this proposed promotion be in the fourth salary step of Class 3. In the Board's judgment, this is the approximate point in grade which the grievant would have reached had his career Rot *teen* impeded by the circumstances stated above.

E»' Simkin Chairman,
Foreign Service Grievance Board

cc: Grievant
Mr. Shaw