

EXCISION NO. 516

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant
and [Agency]

Record of Proceedings

No. []

Date: September 23, 1980

For the Foreign Service Grievance Board;

Presiding Member: Board Members:

Special Assistant
to the Board:

Representative for the Grievant:

Representative for the Agency:

In order to prevent an unwarranted invasion of privacy names of individuals and other identifying information have been deleted from this material in accordance with Section 552(b) (6) of the Freedom of Information Act. These names and other identifying information are also withholdable under the Privacy Act.

I. GRIEVANCE

[Grievant, FS category], with the [Agency], filed a grievance with the Board on [date] in which he alleged that an [evaluation report] prepared on his performance in [Post A] was falsely prejudicial and improperly led to the early termination of his five-year time-limited appointment. He also claimed that he was denied procedural due process in the conduct of a suitability investigation by the [Agency] and the [Post A].

The [Agency] maintained that the contested [evaluation report] accurately described the grievant's performance, that the proposed termination of the grievant's time-limited appointment was based upon his unsatisfactory performance in [Post A] as well as other considerations, and that the grievant's right to due process was not violated in its suitability investigation of the grievant.

In accordance with Part 905 of the Board's regulations, a pre-hearing conference was held [date] . The hearing took place on [four different dates]. Post-hearing briefs were submitted by the [Agency] on [date] and by the grievant on [date].

II. BACKGROUND

[Grievant] entered on duty with the [Agency] on [date], having been recruited to fill a [job specialization] vacancy in [Post A]. At the time of his appointment, he had had more than twenty years' government service, including administra-

tive positions overseas with the [two other foreign affairs agencies]. After a period of introductory [type] training at the Foreign Service Institute, he arrived in [Post A] on [date] , to take up his duties as [specialty] under the supervision of the [title, name].

The record in this case shows that a [special] message was sent by the [Head of Mission] on [date] informing the [Agency] of allegations regarding: 1) [Grievant's] misuse of [Post forms] and 2) his personal indebtedness. That cable stated, inter alia, that the [Head of Mission] had "become convinced that it would be in the best interest of the Service and of [grievant] that he be transferred immediately back to the [Agency]." Some of the allegations mentioned in the [special] message were contained in the second of two [evaluation reports] prepared on [grievant's] performance by [rating officer], i.e., his [evaluation report] covering the period [date - date], [Grievant] attempted to rebut these allegations in his Rated Officer comments, [section] of the [evaluation report]. The Review Panel, in its Statement in [section] of the report, notes the "extended efforts" which it made to ensure that the [evaluation report] would meet prescribed standards. The [evaluation report] was forwarded to the [Agency] on [date].

The record indicates that, with the agreement of all parties concerned, [grievant] was detailed to the [Agency 2 at

Post] from [date - date] . An [evaluation report] for that period is contained in his performance file.

A letter dated [date] from the [title and name of high personnel official], informed [grievant] of the termination of his time-limited appointment effective [date]. The letter explained that the [Agency's] action was taken under the provisions of 3 FAM 710, and specifically pointed out that his "performance record reflect [ed] serious errors of professional judgment and apparent ignorance of [Agency] regulations." This letter prompted [grievant] to visit the [Agency], at his own expense, to discuss his situation. In a deposition dated [date] taken by the [Agency]'s [security section], [grievant] detailed his explanations of the allegations contained in both the [special] cable and the second [Rating Officer's] [evaluation report], By letter dated [date], [high personnel official], having reviewed this documentation, stated, inter alia, that:

"[W]hile I continue to believe that your overall performance in [Post] has not met the high standards expected of that position and of someone of your experience, I am prepared to grant you a limited extension of time in which to return to Washington to meet with your career development counselor and to explore other employment possibilities. ...Accordingly, I have directed the appropriate offices to amend the record to show that [date] is the new effective date for the termination of your FSR appointment...."

In his grievance submission to the [Agency] of [date], [grievant] charged that the termination of his appointment was

based on the [evaluation report] covering the [date - date] period. The [Agency], in its final review of [date], denied this claim- [Grievant]'s termination was prompted, the [Agency] says, by his overall performance following his arrival in [post, year] as well as by the fact that the [Agency] ceased to have a need for his services.

[Grievant] filed his grievance with the Board on [date] and requested prescriptive relief, which was ordered by the Board on [date] . He submitted a second complaint with the [Agency] on [date] . In it he claimed that he had not been properly briefed as to what had transpired in connection with the [special] channel message and that his due-process rights had thus been violated. The [Agency] 's reply of [date] suggested that, inasmuch as [grievant]'s charges were closely related to his original grievance, the two submissions should be considered as one grievance. The parties agreed so to proceed.

III. ELEMENTS OF THE GRIEVANCE

We are faced with a record of inordinate length and with a case which is potentially multi-faceted and far-ranging. Focally and centrally presented, however, is the [evaluation report] which is dated [date] and which covers the period from [date] , to [date] - what we have referred to as the second [evaluation report] on [grievant] by [Rating Officer]. The grievant is claiming due-process violations in connection

with a suitability investigation on him. But, so far as we are aware, the suitability investigation has not resulted in charges of misconduct; and the fact is that the [Agency] is not relying on suitability considerations in defending the proposed termination. The [Agency], on the other hand, insists that it is not proposing to terminate the grievant solely on the basis of the second [evaluation report]. We do not take issue with the statement as such but we are overriding it in terms of what we believe the outcome of the case to be turning on. We are convinced that the [Agency] would not be proposing to terminate [grievant] in the absence of the second [evaluation report] and that there is simply no denying the cornerstone nature of that [evaluation report] in the [Agency's] proposed action.

It is with this weight on the [evaluation report] that we approach the conflicting assertions as to its accuracy and fairness. Rather than provide an exhaustive review of all the claims and counter-claims, we deal with the nine [evaluation report] elements which are principally in dispute, providing a summary of each party's position, followed by our finding, on each of them.

IV. THE DISPUTED [EVALUATION REPORT]

Budget and Reporting Requirements

a. Grievant's Position

[Grievant] contends that [Rating Officer]'s statement that he did not give "adequate attention to budgeting and

reporting requirements" is vague and untrue. He states that those requirements were under the control of the Budget and Fiscal Officer and that his several requests for a monthly status report of funds from that officer were constantly refused -with the result that he {[grievant]} could not tell how much was available in the budget for purchases. He states that even though his Administrative Officer {[Rating Officer]} knew of his efforts, "he made no attempt to cause the [another officer], who was also under [his] supervision, to provide me with the necessary information."

b. [Agency's] Position

By way of refutation, the [Agency] presented the testimony of the Budget and Fiscal Officer. He observed that, when he offered assistance and information to [grievant], the response was that he ([grievant]) had many years of government service and it was not necessary for him to come to a 29-year old "whippersnapper." Instead of getting into the specifics of the budget area, according to the Budget and Fiscal Officer, [grievant] turned the work over to his national employees. Those employees, according to the [evaluation report], were not familiar with the work. [Grievant], the [Agency] submits, should first have learned what was needed and then have supervised the preparation of the reports.

c- Board's Finding

We side with the [Agency] on this issue. The allegation in the [evaluation report] is somewhat vague, but we think

that the criticism was understood by all concerned and that it was not lacking in validity. We find that [grievant] injudiciously delegated budget-and-fiscal reporting to local employees and thereby failed properly to discharge his responsibilities in this respect. Air Shipment of Rugs

a. Grievant's Position

[Grievant] objects to the statement in the [evaluation report] that he failed to:

"apply logic especially when under pressure to achieve results: a telegram requested the despatch agent in Baltimore to ship rugs for the [Head of Mission's] residence by air."

In his grievance submission, [grievant] explains that owing to several long delays in delivery of rugs for the [Head of Mission's] residence, he drafted a cable ordering air shipment "because the [Head of Mission 's] wife had been waiting [for them] for approximately 14 months." He further states that the "air freight cost would have been about \$300, which, under the circumstances, did not seem exorbitant," but that the Administrative Officer refused to clear the cable, and the rugs were therefore shipped by sea- In his testimony before the Board, [grievant] estimated that the cost would have been about \$350, which he felt was justified. He argues that the Administrative Officer "overlooked" the fact that the cable "never left the Mission."

b. [Agency)'s Position

The [Agency] contends that [grievant] displayed poor judgment in recommending that the rugs in question be air-shipped to [Post]. As noted in the [evaluation report], "the cost of airfreight would have been exorbitant, as [grievant] realized when he figured the costs." [Rating Officer] submitted [grievant' s] draft cable at the hearing. He had written on it: "...I question whether we want rugs air-shipped- What is weight? and what will cost be?" [Grievant's] reply, as noted in his own handwriting, indicated that it would cost \$560 to air-ship the rags. After the word "air" was removed by [grievant] in his final version of the cable, the telegram was cleared by the Administrative Officer ([Rating Officer]) and sent to the [Agency].

c. Board's Finding

We initially note that the word "air" was removed from the telegram before its dispatch, that the thus-revised telegram was cleared by [Rating Officer], and that the rugs were in fact sea-shipped as proposed by the [Post] - This needs to be noted because the [evaluation report] leaves the erroneous impression that a faulty telegram went out and that subsequent corrective action was necessary.

Beyond this, we view the matter as adding up to no more than a judgmental disagreement. On the one hand, there was the fact that the rugs were destined for the [Head of

Mission's] official residence and were long-overdue; and, on the other hand, there was the cost of air freight relative to the cost of sea freight. [Grievant] came out in favor of air shipment. We do not believe that this deserved the attribution of either faulty judgment or incompetence. Assuredly, the matter did not deserve the stress it received in the [evaluation report].

Needless to say, [Rating Officer] was entirely within his authority in overruling [grievant]. This is what he did and this is what [grievant] complied with. There are indications that he is of less than accurate recollection as to what the cost of air shipment would have been, but there are no indications that he undertook to quarrel with [Rating Officer's] sea-shipment disposition. Vehicle Maintenance and Replacement

a. Grievant's Position

[Grievant] labels as untrue the statement in the [evaluation report] that his requests for replacement of [Post] vehicles were tardily submitted- He claims that guidelines from the [Agency] indicated that replacement of vehicles was not to be automatic and that the cost factor in keeping a vehicle in good shape was more important than the age of the vehicle. It was his understanding that the [Head of Mission] liked his car and wanted to keep it if [grievant] could maintain it in good running order. He "thought that we

were keeping it in good running condition and therefore did not order a new one...." In any case, "the [Head of Mission] whom [he] saw frequently, never indicated to [him] that the problem of keeping his car running had reached the point where he wanted [[grievant]] to replace the car he liked." [Grievant] cites a letter dated [date] from the [Agency 's] [section]. The document notes that his purchase order for the [Head of Mission's] car was submitted well in advance of the scheduled time for ordering a replacement vehicle.

b. [Agency]'s Position

The [Agency] maintains that [grievant] did not submit the paperwork for the "early replacement of [Post] vehicles" in a timely fashion and that the timely performance of the paperwork was necessary in [Post] because maintenance was one of the [Post's] principal problems, driving conditions were harsh, vehicles were in "terrible condition," the [Head of Mission] was complaining, and the lead time for receiving replacements was long.

c. Board's Finding

We find that the [Agency] has not substantiated the allegation in the [evaluation report]. We do not question the [Agency]'s reference to the "terrible condition of the vehicles" but we cannot legitimately conclude that there were any sort of precise or firm instructions, breached by [grievant], as to the timing for ordering replacement

vehicles. Nor are we prepared to hold that [grievant] was derelict in procuring a replacement vehicle for the [Head of Mission] To the contrary, the evidence suggests a misunderstanding – for which [grievant] cannot be faulted – between the [Head of Mission] and certain staff members as to the timing for the replacement of the [Head of Mission's] official vehicle. Personal Indebtedness

a. Grievant's Position

[Grievant] contends that the [Agency] knew that he had substantial personal debts at the time it hired him, that he had not incurred debts needlessly, and that he "managed [his] indebtedness to the best of his abilities...." He claims that although he had been advised that he could submit a voucher for certain representational expenses, he never did so, but used his personal funds instead. He insists that he "has never misused Government funds for [his] own personal gain or use."

b. [Agency]'s Position

The [Agency] maintains that [grievant]'s chronic personal indebtedness reflected adversely on his performance as a [specialty] and caused considerable embarrassment to the [Post]. Thus, although [grievant] received an allowance for his son's education, a long-overdue bill for the tuition had to be brought to the attention of the [Head of Mission] .

Contrary to [grievant]'s contentions with regard to representational claims, the [Agency] notes that there is documentary evidence showing that [grievant] submitted one such representation voucher. Fundamentally, the [Agency] is saying that [grievant] allowed his personal financial difficulties to generate repeated difficulties for the [Post].

c. Board's Finding

We are holding against the [Agency] because we believe that the [evaluation report] on this matter – both in tone and in its particulars – is exaggerated. We accept that there was some spill-over, causing some public-relations problems for the [Post], of [grievant]'s personal financial difficulties, but we do not believe that there was serious embarrassment and we view the [evaluation report]'s overwhelmingly negative tone as adding up to misleading overstatement. We note the more temperate and balanced language employed by the reviewing officer as to this allegation in the [evaluation report].

As to the particulars, we do not accept that [grievant] jeopardized the [Post's] credit rating with vendors. The evidence is quite clear, for example, that others, too, had great difficulty in receiving meaningful responses to inquiries regarding the accuracy of their personal telephone bills. We gather that belated payment of bills of various sorts is in the nature of things in [country A].

Overtime Request for 16 Hours for Driver

a. Grievant's Position

[Grievant] takes exception to the statement in his [evaluation report] that he "often overlooks details, signing off on overtime requests which are incomplete or inaccurate (one request was for 16 hours of overtime on a normal workday)." In his grievance submission, he explains that the [Principal Officer's] chauffeur "had worked over 48 hours of normal duty and the [Principal Officer] used him an additional 16 hours. Overtime was in order." [Grievant] asserts that he clearly explained the matter to [Rating Officer] at the time.

b. [Agency 's] Position

[Rating Officer] testified at the hearing that the standard workweek for drivers at the [Post] was 9 hours per day five days a week, with 3 hours on Saturday mornings. When the request for overtime was submitted, he could not understand how any individual could have performed 16 hours of overtime in addition to the 9-hour work day. When he questioned [grievant] about this, he "seemed very puzzled - and was upset with his dispatcher for turning in something that seemed to be that crazy to him." [Grievant] later informed him that because the driver and dispatcher had been late in turning in the request, "he was not going to be paid for it." The matter was mentioned in his [evaluation report], he stated, to point out that "there was...a pattern of his carelessness with details...."

c. Board's Finding

We accept [Rating Officer]'s statement that he cited this matter in the [evaluation report] as merely illustrative of [grievant's] alleged pattern of carelessness with details. But there is a twofold difficulty with the inclusion of the matter in the [evaluation report] . The first is that the testimony leaves little doubt that the driver's particular working-hours circumstance was such as to yield a rather tricky question respecting overtime entitlement. Designating the matter as one of carelessness with details represented either lack of fairness or lack of understanding as to what was involved. The second difficulty is related to the latter point: the testimony indicates that the overtime authorization was proper. Alleged Commitment of \$5,000 for Legal Fees

a. Grievant's Position

[Grievant] claims he made no promises, either orally or in writing, to a [country A] lawyer in connection with the purchase of property for the [Post] . He was careful, he asserts, to condition his discussion of fees of "no more than" \$5,000 on prior approval from the [Agency], in accordance with regulations. He therefore objects to the criticism in his [evaluation report] that he committed the [Post] to \$5,000 for legal fees.

b. [Agency's] Position

The [Agency] submits that [grievant] did make an oral commitment for legal fees to the lawyer and that he thereby tied the [Post's] hands and violated [Agency] regulations.

c. Board's Finding

On the evidence before us, we must hold against **the** [Agency] on this issue. We do not doubt that the \$5,000 figure was raised in the discussion between [grievant] and the lawyer. But we cannot hold that [grievant] made a commitment: [Rating Officer] is banking on what he says the lawyer told him (and the lawyer may well have been of impure motives) ; [grievant] denies it; and the documentary evidence is wholly in tune with [grievant *s] version – the telegram which he drafted reports an offer subject to [Agency] approval. Furthermore, the simple fact is that [grievant] lacked the authority to make a binding commitment for the legal fees. It is difficult to comprehend why [Rating Officer], in his conversation with the lawyer, would not simply have made this point as the conclusive answer to a concern that the Embassy had lost negotiating leverage. Wardrobes for Privately Leased House

a. Grievant's Position

[Grievant] objects to the statement in his [evaluation report] in which he is taken to task for "ordering three pieces of custom-made furniture, at a cost of \$700, for his

privately leased house...-" In his grievance submission, he explains that the house he leased had no closets, and the "landlord would not provide any, and therefore [he] prepared an order for the Embassy to buy these three items [wardrobes].... The purchase was approved by the Acting Administrative Officer...in [the Administrative Officer's] absence. However, on his return, instead of criticizing [the Acting Administrative Officer], he jumped on me." At the hearing, [grievant] elaborated that after he "saw that the Administrative Officer had approved getting...closets for the Marine house and for the gunner sergeant, [he] felt if that could be added into their homes, [he] would have a right also to have a closet."

b. [Agency's] Position

In commenting on [grievant]'s purchase order for wardrobes, [Rating Officer] noted in the [evaluation report] that the "items he ordered...are not supplied to any other USG civilian employees at this post." The Acting Administrative Officer, at that time the Budget and Fiscal Officer, testified at the hearing that he originally thought that, "based on the purchase order...[he] was authorizing...a dresser, a piece of bedroom furniture." He further testified that the propriety of the purchase came under question later - when he recognized that, when leasing a residence in [Post], it was the responsibility of the lessor to either "persuade the

landlord at the landlord's expense to construct closets or the employee [himself] must bear the cost of it and then is the owner of the closet."

c. Board's Finding

We again hold against the [Agency] . All that is clear about this matter is that it represented an area which stood as unclear. [Grievant] can hardly be held accountable for a false impression held equally by his superior. Unauthorized Use of [Post] Purchase Order Form

The form in question is an "Authority to Purchase" form which states that "[T]he bearer is hereby authorized to purchase the following items for the [Post]." There is a space at the bottom of the form which indicates to which account the items are to be charged and for what purposes. Use of the form extends credit to the [Post] for official purchases from local vendors.

a. Grievant's Position

[Grievant] acknowledges having used [Post] purchase order forms for personal purchases, but states that he clearly marked on each form that the purchases were for his personal use. He asserts that he lacked awareness of another form – one to be used for personal purchases – until informed about it by [Rating Officer] in [date] ; he submits that the two forms are almost identical in appearance; he argues that his erroneous use of the forms resulted from inadequate training

as a [specialty] ; and, denying that it ever happened, he objects to the implication that his personal purchases were charged to the [Post] for payment.

b. [Agency^Ts] Position

As the [specialty], [grievant] should have known the correct form to be used when making personal purchases, the [Agency] asserts, and his attempt to plead ignorance is "difficult to accept since his office was responsible for printing the forms." Both the Administrative Officer ([Rating Officer]) and the Budget and Fiscal Officer advised [grievant] shortly after his arrival at the [Post] that use of the form in question for personal purchases was improper. The [Agency] points out that one such purchase order clearly notes that the purchase was to be billed to "shared" administrative expenses "for the [grievant's] residence." Another such purchase order indicates that the charges on it should be deducted "from rent." Since [grievant] was housed in privately-leased housing, he was responsible for the payment of his own rent. The [Agency] contends that it is difficult to understand how he could have expected the charges noted on the purchase order to be deducted from his rent. Given his official capacity as [specialty] for the [Post], the [Agency] concludes that [grievant] showed poor judgment in the improper use of [Post] purchase forms for his personal purchases.

c. Board's Finding

Our holding on this issue is against [grievant]. We do not conclude that [grievant] - willfully or otherwise - profited from the misuse of [Post] purchase forms. But we do conclude, not only that [grievant] used the wrong form on several occasions, but also that he is blameworthy for having done so. [Grievant] used the wrong form as late as a year after his arrival at the [Post] and, by our assessment of the evidence, after the distinction between the two forms had been explained to him. We believe that the matter was properly seen as raising a question as to [grievant's] competence in the field of his assignment and that, accordingly, the matter was properly cited in the [evaluation report].

Use of Regular Air Fare Instead of Excursion Fare for Medical Travel to the U.S.

The [evaluation report] contains this passage:

"In the previous rating period the rating officer discussed with [grievant]... additional airfare charged to the [Post] (above the allowed excursion-rate fare to [U.S. city B]) which would have saved [grievant] \$56 for his private travel to Washington."

In [date], [grievant] flew to Washington for the purpose of medical treatment. It was his right to do so. But the authorized location for medical treatment - and hence the location to which to fly at government expense -- was [city B]. In arranging the roundtrip between [Post] and Washington, [grievant] charged the regular roundtrip [city B] fare - \$203

- to the government. The excursion roundtrip fare for these two cities was 5147. The difference is the \$56 cited in the [evaluation report].

a. Grievant's Position

It is pointless to provide the explanation which [grievant] gave in his grievance submission - having to do with week-end travel and the avoidance of per-diem moneys as an offset against the \$56 - for the explanation is incorrectly premised. Similarly, [grievant]'s insistence that he was free to go to Washington for medical treatment is of no import - for no one is questioning it. The significant fact on this issue is that the regular-fare claim was disallowed and that [grievant] thus paid all of the [Post)/Washington/and return air fare less \$147 (the roundtrip excursion fare between [Post] and [City B]). He never pocketed, much less kept, the 556. He takes exception to the [evaluation report's] implication that he tried to cheat the government.

b. [Agency's] Position

The [Agency] submits that part of [grievant's] responsibilities was to sign off on GTR's and that [grievant] therefore should have been familiar with the various travel regulations, including the "excursion" regulation which here governed. Further, the [Agency] notes, the hearing testimony makes clear that the explanation concerning week-end travel simply does not stand up. The fact is that [grievant]

submitted a claim which, had it been approved, would have netted him \$56 to which he was not entitled. The [Agency] views the matter as at least adding up to seriously inadequate judgment.

c. Board's Finding

We conclude that [grievant] should have known better and that he therefore fell down on acting as professionally as is to be expected of an experienced officer in the handling of travel vouchers. But the difficulty with the [evaluation report] on this score is that it carries an innuendo of an effort to defraud the government. We find no justification for the innuendo. There was no fabrication of records, and [grievant] submitted an accurate account – both as to routes and as to dates – of his travel. What he did was to request greater reimbursement than the regulations entitled him to. And what happened was that that portion of the voucher to which [grievant] was not entitled was promptly disallowed by the responsible authority. The event was of the sort which is commonplace in government affairs. And it is not only true that the [evaluation report] gives the wrong impression of the incident. It is also true that the incident occurred in the prior rating period and that no mention of it is made in the [evaluation report] covering that period. One is left to wonder why it would subsequently have been dredged up.

V. SUMMARY AND CONCLUSIONS

Our findings on the nine [evaluation report] elements come down to the following result. It is on but two of the elements that we fully side with the [Agency] – that we accept the criticism as substantiated and as properly cited in the [evaluation report]. There are two other elements as to which, though we grant defectiveness in [grievant's] conduct, we find substantial fault with the [evaluation report]. And as to the remaining five elements, we have rejected the criticism as unsubstantiated or erroneous or unfair. Thus, what has to be said of our assessments as a whole – i.e., our assessments respecting the nine elements in their entirety – is that the [evaluation report] is heavily laden with falsely prejudicial material.

This needs to be joined with two further considerations. One goes to the fabric of the [evaluation report]. In fabric, the [evaluation report] is a litany of unremittingly negative comments. The criticism is relentless and harsh. Portrayed, explicitly or by suggestion, is an employee of pervasive incompetence and shady dealings. There is no balance and there is no allowance for the fact of an admittedly difficult assignment. One is left with the impression that systematic dountearing, not objective and dispassionate rating, was the point of departure. The other and related consideration flows from an examination of the immediately preceding [evaluation

report] and the immediately succeeding [evaluation report] on [grievant]. The former was also done by [Rating Officer]; the latter was done by [other U.S. Agency at Post]. Both, to say the least, are in marked contrast to the [evaluation report] here in question. Without explanation as to why it would be so, we are presented with a picture of a sharp downturn followed by a sharp upturn – all within a period of less than two years and all at the same post. Skepticism is unavoidable.

We have concluded, accordingly, that we must overturn the [evaluation report] and direct its removal from [grievant's] file.

Based on this, coupled with the fact that there admittedly are [Agency] openings (for someone with grievant's skills) , we have further concluded that we must direct the rescinding of the proposed termination of [grievant]. We are not overlooking the nature of [grievant's] appointment, and we are not saying that the [Agency] is obligated to keep [grievant] employed for five years from the date of his appointment. Nor are we saying that [grievant] has been an exemplary employee whose performance calls for no improvements. But we are saying that the proposed termination was so inseparably linked with the [evaluation report] that the quashing of the [evaluation report] must result in the quashing of the proposed termination. And we are also saying

that the [Agency] 's assertion of a lack of need for [grievant]'s services must be rejected as no longer standing up. For the assertion was made from the vantage point of a falsely prejudicial [evaluation report].

We refrain from comment on [grievant]'s due-process allegations respecting both the suitability investigation and the [special] channel message. By the conclusions and holdings we have come to, it seems to us, these matters need not be dealt with. VI. BOARS DETERMINATION

For the reasons and to the extent given in the foregoing Opinion, we direct:

- 1) that the [evaluation report] here in question be removed from the grievant's file;
- 2) that the proposed termination of the grievant's employment with the [Agency] be rescinded-