

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between:

██████████,  
Grievant

Record of Proceedings  
No. G-91-024-State-17

and

Date: May 5, 1993

The Department of State

MOTION FOR  
RECONSIDERATION

EXCISED

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For the Foreign Service Grievance Board:

Presiding Member:

John J. McCarthy

Board Members:

Marilyn Johnson  
Raymond L. Perkins

Special Assistant  
to the Board:

Irene M. Barbeau

Representative for the Grievant:

Self

Representative for the  
Department of State:

Joanne M. Lishman  
Director, Grievance Staff

Exclusive Representative:

American Foreign Service Association

## I. REQUEST TO RECONSIDER

██████████, a Foreign Service officer (FS-04) with the Department of State, requested this Board on February 16, 1993, to reconsider its decision of her 1991 grievance, G-91-024-State-17. In that decision, issued on March 16, 1992, the Board directed that certain deletions and changes be made to ██████████ EER for the period of April 16, 1989 to May 15, 1990, but denied her request that the EER be expunged from her official personnel file. \_^

The basis for ██████████ request is new evidence which she believes will support her contention that she could not have received a good efficiency report from her supervisors in ██████████ regardless of how well she had performed. The documents which she presented with her February 16 memorandum<sup>1</sup> are copies of:

- a) an interoffice memorandum dated May 30, 1990, from an inspector of the State Department's Office of Inspector General (OIG) to the acting director of the OIG Office of Investigations reporting his findings after conducting a review at the embassy in ██████████ of a "Hotline" complaint filed by ██████████;
- b) a letter to the ambassador in ██████████ from the inspector, also dated May 30, 1990, informing the ambassador of the review in which members of his staff had cooperated;
- c) ██████████ EER for the period of July 8, 1991 to May 15, 1992.

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<sup>1</sup> On April 8, 1993, ██████████ asked the Board to include as additional new evidence an agency proposal to settle a subsequent grievance concerning her EER for 4/16/90 - 4/30/91, prepared by the same rating and reviewing officers whose comments were the basis of the grievance under consideration here. The Board is unable to accept the proposed settlement as new evidence; first, because the settlement has not been agreed to by both parties, and secondly, because the settlement does not contain any language that can be construed as acknowledging bias, hostility or error affecting the validity of her EER for the period 4/16/89 to 5/15/90

██████████ asserts that the report of the OIG investigation provides vital evidence that prejudice and hostility against her existed in ██████████ and that her 1990 EER is inaccurate, biased and falsely prejudicial. She requests that the EER be removed from her personnel file because it is flawed and because it, along with the EER she received the following year from the same supervisors in ██████████ has severely damaged her career.

██████████ presents the copy of the EER she received for her performance in the Bureau of Consular Affairs from 1991 to 1992 to substantiate her claim that in ██████████ she was the victim of harassment and discrimination, and that despite adverse circumstances she always works professionally and efficiently. II. DISCUSSION AND FINDINGS

Section 1106(9) of the Foreign Service Act of 1980 provides that the Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.

The 1992 EER which grievant presents as evidence relative to the decision she seeks to have reconsidered was written two years after the grieved performance evaluation considered by the Board. It was prepared by supervisors in the Bureau of Consular affairs on the basis of grievant's performance in a different position and with different work requirements from those in the grieved 1990 EER. We cannot accept ██████████ EER for the period of July 8, 1991 to May 1992 as material to the validity of allegations concerning the evaluation of her performance in a different setting from April 1989 to May 1990.

We accept the inspector's report of his review in ██████████ of ██████████ ██████████ "Hotline" complaint and his letter to the ambassador as newly discovered evidence. The question is whether alone or with other evidence it

might have affected the determination of [REDACTED] 1990 grievance, had it been in the record of proceedings.

In support of her contention that prejudice and hostility toward her on the part of post management precluded her receiving a fair evaluation in [REDACTED] [REDACTED] cites portions of the inspector's report in which he writes that some managers had described her as a "frustrated woman "who should have "worked things out" with her supervisor. She also quotes the inspector's comment that he had "encountered an unprofessional attitude shared by too many of the officers at Embassy [REDACTED] " and that references in some documents and verbal comments made during the review suggested that she had been "prejudged and regarded as a nuisance. . . ."

The inspector's memorandum contains ample language to this effect, as well as the view that [REDACTED] could not be considered solely responsible for the difficulty; that post management had not dealt effectively with the situation between her and her supervisor. In his letter to the ambassador, the inspector stated that [REDACTED] had filed three grievances and that he considered the grievance process the appropriate channel for dealing with her complaints. He recommended to the acting director of the Office of investigations that OIG suspend action on the "Hotline" case "while [REDACTED] grievance complaints are being pursued through appropriate channels." In the absence of a formal report by an OIG investigator, we assume that the inspector's recommendation was followed.

The opening paragraph of the Board's "Discussion and Findings" in its March 16, 1992 decision signals the panel's recognition that "grievant for the most part had an unhappy tour, certainly during this particular rating period, and that this resulted in large part from an unpleasant and generally unproductive relationship with her supervisor, the rating officer." Noting the

lack of effective management on the part of the grievant's rating officer, the panel later wrote: "We are convinced that grievant was subject to poor supervision. She may well have contributed to the conflict with her supervisor, but certainly the supervisor bore primary responsibility for resolving the problem, and it is apparent from the record that he was deficient in maintaining an appropriate relationship."

The preceding statement and others in the decision indicate that evidence of the poor working relationship between [REDACTED] and her supervisor, even to the extent of possible hostility between them, was in the record before the panel which considered [REDACTED] allegations of falsely prejudicial statements in her 1990 EER, and was taken into consideration at that time. Thus, we do not find that information in the OIG inspector's memorandum and letter which [REDACTED] now presents as new evidence of prejudice and bias on the part of her supervisor differs significantly from that which the panel considered.

[REDACTED] states that the OIG report reveals that the [REDACTED] regional security officer (RSO) was unprofessional in his treatment of her suspicion and her subsequent "Hotline" report that local employees may have forged her signature on a letter. The inspector notes that the charge upon which [REDACTED] sought OIG intervention was that her supervisor, [REDACTED], and others had retaliated against her for reporting her suspicions to the RSO.

While avowing that he was unable to make a judgment on the allegation of retaliation because of often conflicting claims in written and verbal allegations by [REDACTED] and [REDACTED] and the latter's absence, the inspector expressed his belief that it was impossible to separate the allegation of the fraudulent letter from the broader problem of [REDACTED]

relation with her supervisors at the embassy. He reports that the RSO's investigation of the allegation of fraud did not support [REDACTED] allegation, and that she thought the RSO's conduct of the investigation was unprofessional. The inspector comments that the RSO's investigation did not show whether or not [REDACTED] was directly informed of the outcome, although her supervisor was provided a memorandum, including a "gratuitous" comment that the matter had been a "wild goose chase".

[REDACTED] allegations of visa fraud involving FSN employees are noted in the section of the Board's decision presenting the grievant's positions on the issues as well as in the discussion and findings. In the first instance it states:

Finally, in an issue of fact, she rejects the finding of the Department that the temporary removal (she also denies that it was temporary) of her authority over FSNs in her section resulted from her supervisor's fear of resentment on their part over allegations she is said to have made of visa fraud involving FSN employees. [REDACTED] says that her complaint to the regional security officer involved a belief that certain FSNs were forging her signature.

In its discussion the panel noted that there was a dispute as to whether grievant alleged visa fraud or the forging of her signature on letters of recommendation on the part of FSNs. It took the view that this did not make much difference insofar as the effect any such allegations might have had on her relationship with the FSNs in the embassy personnel section, except that the forging of her signature might make the source of the allegations more apparent.

The panel was aware of an investigation of the allegation by the RSO, if not of his findings or of his report to the grievant's supervisor that the investigation had been a "wild goose chase", as reported by the inspector. It

noted that "apparently as a result of the allegations and the resulting investigation, the supervisor divided his personnel section into two units ..." and that [REDACTED] did not "contest her supervisor's right to make such a decision

In light of the panel's knowledge of the RSO's investigation of [REDACTED] [REDACTED] allegations and its conclusion that they were not integrally related to the issues of the grievance, we believe that the new evidence now introduced would not have materially affected the Board's decision. The following citation from the decision reflects conclusions regarding the relationship of the grievant's allegations and the remedies she requested.

We are convinced that grievant was subject to poor supervision. She may well have contributed to the conflict with her supervisor, but certainly the supervisor bore primary responsibility for resolving the problem, and it is apparent from the record that he was deficient in maintaining an appropriate relationship. However, we find no showing here that poor supervision may have been a substantial factor in her non-promotion; that is, no showing that with proper supervision she likely would have performed in a manner that would have brought promotion. There is no evidence before us that would justify such speculation. Similarly, the unfortunate circumstances under which she was working are not justification for an extension of her time in class. If she was not going to be promoted anyway, even absent errors in the EER and poor supervision, her years of fair competition have not been unfairly abridged.

[REDACTED] contends that her career has been severely damaged by the last two EERs she received in [REDACTED] Excisions and changes in the EER at issue in the grievance before us, as a result of decisions by the agency and the Board, have removed inappropriate negative comments. Many positive comments on [REDACTED] professional competence and achievements remain, as do her rebuttals and explanations in the rated

officer's statement. As [REDACTED] notes, other EERs attest to her high degree of efficiency and professionalism. Selection and promotion board precepts dictate that proper weight be given to all EERs she will receive in what the panel has described as her "years of fair competition." As she is now an FS-04, she should have ample opportunity to demonstrate her abilities and achievements.

In sum, we find that had the OIG report which [REDACTED] presents as new evidence been available to the panel which considered grievance G-91-024-State-17, it would not have materially altered the decision issued by the Board on March 16, 1992. DECISION

The Board denies the grievant's request to reconsider its decision on G-91-024-State 17.

For the Foreign Service Grievance Board.



John J. McCarthy  
Presiding Member



Marilyn Johnson  
Member



Raymond L. Perkins  
Member