

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

[Grievant]

Grievant

and

The Department of State

Record of Proceedings  
No. G-91-031-STATE-  
23

Date: September 8, 1992

**ORDER ON DISCOVERY -  
EXCISION**

For the Foreign Service Grievance Board:

Presiding Member:

John J. McCarthy

Board Members:

Geraldine Sheehan  
Calvin C. Berlin

Special Assistant  
to the Board:

Michael J. Gould

Representative for the Grievant:

Self

Representative for the Department:

Joanne M. Lishman  
Director, Grievance Staff

Exclusive Representative:

American Foreign Service Association

## ORDER

### Further Rulings on Discovery

The rulings below involve several issues which the parties have been unable to resolve.

1. Department's request for access to grievant's medical file.

On August 17, 1992 the Department requested that the Board direct grievant to authorize inspection of her medical file, or that the Board strike from the grievance all medical allegations and issues. We have considered the Department's statement in support of its request as well as grievant's objections to the request, as set forth in her memorandum to the Department dated July 13, 1992 and her objections received by the Board on August 2, 1992.

The Department's request is denied. While grievant's illness at post is relevant, in that it is mentioned in the EER by both the rater and the grievant and the Board has approved limited discovery concerning that matter, we find the Department's request overly broad and unwarranted .

. Moreover, we do not believe it necessary to obtain the details of the conditions that caused grievant to be medivaced -- the rater has acknowledged that grievant's performance may have been affected by that illness.

2. Grievant's Additional Discovery Request. dated August 21. 1992. Grievant requests that the Department produce for her inspection the entire personnel file of a [Blank] FSN employee whom grievant supervised at that post. Grievant wishes to discover whether or not that employee was fired for poor performance after grievant left the post. If he was fired for that reason, grievant argues, her rating of his inadequate performance would thus be validated and would tend to show she was a good manager.

Although the matter has not been presented in a motion to the Board, we wish to see discovery concluded as soon as possible. Anticipating that the issue may be submitted to the Board, we rule at this time that the information sought is immaterial and without probative value. We note also that just as there is concern for privacy of medical files, the shield of confidentiality also applies to employee records. The Department need not produce the documents requested.

3. Grievant's request for agency records.

Grievant asks the Board, in her memorandum of August 20, 1992, to direct the Department to produce the discovery requests to six witnesses to whom grievant directed written interrogatories.

Grievant's request is granted. Grievant is entitled to copies of communications to agency employees in which grievant's interrogatories are transmitted, as in the case of the memorandum of April 16, 1992 from Joanne M. Lishman to [Name], which was made available to grievant and to the Board.

4. Completion of discovery and closing of the record.

In view of the unusual duration of discovery proceedings and the lapse of time since the grievance was filed with the Board, discovery should be completed without further delay. Any outstanding discovery requests that the Board has approved or to which the responding party does not object, should be answered by September 25, 1992

Grievant's final statement or argument should be filed with the Board on or before October 26, 1992. The Department's final statement should be submitted no later than three weeks after receipt of grievant's statement.

Extension of these deadlines will be granted only for good cause shown to the Board before the particular time period expires.