BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

[redacted]
Grievant

and

Department of State

Record of Proceedings
Case No. 91-073

Date: March 7, 1997

ORDER: MOTION FOR RECONSIDERATION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member: Thomas J. DiLauro

Board Members: Raymond L. Perkins
Edward A. Dragon

Special Assistant: Mary Ann Kekich

Representative for the Grievant: Self

Representative for the Agency: Joanne M. Lishman
Director
Grievance Staff

Employee Exclusive Representative: American Foreign Service Association

ORDER

I. BACKGROUND

[redacted] filed a grievance with the Department of State on July 4, 1991. He appealed the agency's decision to this Board in November 1991, and we issued a decision on September 2, 1992. The decision directed the removal from his Official Personnel Folder (OPF) of Employee Evaluation Reports (EERs) dating from 1987 to 1989, along with references to his OPF's having been referred to the Performance Standards Board (PSB) on the basis of those EERs and any evidence of the findings of the PSB based on those EERs. His time in class (TIC) was extended by three years "as remedy for the gaps in his file caused by the removal of the two EERs and the approximately one year without assignment." Grievant's request for a promotion to FS-2, retroactive to 1988, was denied on the grounds that his performance record did not convince the Board that the remedy of promotion was justified by the circumstances in the case.

On July 31, 1996, some three years and 10 months after the Board's September 2, 1992 decision, grievant filed directly with this Board a request for reconsideration of the remedies granted in that decision. The Board asked the Department to comment upon the grievant's submission, and it did so on October 30, 1996.

II. DISCUSSION

Section 1106(9) of the Foreign Service Act of 1980, as amended, provides: "The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence." Section 910.1 of the Board's regulations repeats the statutory language. We consider grievant's submission in light of whether grievant has presented any new or previously unavailable material evidence.

In his submission, grievant requests a reconsideration of the remedies to include the following:

- promotion to the FS-2 level, retroactive to 1988;
- removal from his scorecard of all multifunctional rankings and low rankings by the Economic board subsequent to 1990;
- extension of time-in-class; and
- deletion of language cited at the end of the previous page of his 1991 EER, and deletion or clarification of language in his 1987 Review.

In his request grievant alleges that the remedies previously granted by the Board have proven inadequate. In support of his request, grievant argues that various Department actions before, during, and after consideration of his grievance continue to deny him a fair chance at promotion and that he faces expiration of time in class. Grievant outlines and discusses many events which occurred before, during, and after the Board's decision of September 2, 1992.

We have carefully reviewed all the various events that grievant believes support a reconsideration of the 1992 remedies. With respect to those events that occurred before and during the Board's consideration of the grievance, we find that grievant has not presented any new or previously unavailable material evidence. As we read grievant's presentations and arguments, we believe that these constitute either a rearguing of previously submitted evidence, or new arguments based on postdecision events. Neither of these approaches presents newly discovered or previously unavailable material evidence that would support a reconsideration of the Board's decision of September 2, 1992.

To the extent that grievant complains of matters which occurred after the Board's decision of September 2, 1992, these would, of necessity, be the subject of a new and separate grievance, which is properly first presented to the agency for determination. The Department, in its submission, advised that grievant has been granted medical disability retirement. It is not necessary for us here to consider the effect of such retirement on possible consideration by the agency of a new grievance, should one be filed.

III. DECISION

Grievant's request for reconsideration of the remedies provided in the Board's decision of September 2, 1992 is denied.