

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

██████████,
Grievant

and

The Department of State

Record of Proceedings
No. G-91-087-STATE-74

Date: June 7, 1993

MOTION TO COMPEL

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Leroy S. Merrifield

Board Members:

James S. Landberg
G. Richard Monsen

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

I. THE GRIEVANCE

The grievant, [REDACTED], a class FP-04 diplomatic security officer with the Department of State, filed a grievance with his agency on July 25, 1992. He alleged that while he was serving as a security officer at the U.S. Embassy in [REDACTED], his superiors engaged in a series of actions which were prejudicial to his career interests, including improper curtailment of his assignment and preparation of an unfair and prejudicial Employee Evaluation Report (EER) covering his performance from August 3, 1990 to February 22, 1991.

When the Department failed to reach a decision on the grievance within 90 days, grievant appealed to this Board on December 23, 1991. Board consideration of the grievance was suspended pending the outcome of efforts by the parties to negotiate a settlement. When settlement efforts failed, the Board resumed consideration of the grievance.

In the course of preparing his submission, grievant submitted a number of requests for discovery to the Department. Although the Department has responded to most of these requests, it has failed to respond in whole or in part to three interrogatories submitted by grievant -- numbers 10, 11, and 12. Grievant has requested the Board to compel the Department to provide the information requested in the cited interrogatories as well as additional information from his spouse's medical file. This decision rules on grievant's motion to compel.

II. BACKGROUND

Grievant charges that he is the victim of administrative errors, bad management practices and a prejudicial attitude towards him by his embassy

superiors, particularly his EER rating and reviewing officers and the embassy Deputy Chief of Mission (DCM). These actions included failure to prepare timely work requirements, criticism of grievant's performance at the time of the bombing of the U.S. Marine Security Detachment quarters on October 10, 1990, allegations of grievant's misconduct, and the U.S. ambassador's request that grievant not accompany him on in-country travel, and finally, the embassy's request that grievant's assignment be curtailed. In addition, several incidents occurred during this period which may have played a circumstantial role, including his wife's ingestion of poison, allegedly improper actions by post medical authorities, and the shooting out of several windows in grievant's residence.

Grievant contends that the critical EER comments about his performance were inaccurate and falsely prejudicial and that the adverse actions against him by his superior officers were unfair and violated regulations. He implies that the prejudicial actions were in retaliation for his disagreement with management of embassy security. The Department asserts that no violations of law or regulation occurred and that the EER criticisms of grievant's performance are fair and accurate.

In pursuit of his case, grievant requests the Board to compel the Department to respond to three interrogatories and to provide information from his spouse's medical file regarding the poisoning incident and allegedly improper efforts at counseling by post medical authorities. The Department has declined to provide some of this material on grounds that it is not relevant and asserts that it has already made available all of grievant's spouse's medical files. We will address each of the requested items.

Interrogatory 10

Grievant requests all monthly status reports of the [REDACTED] Regional Security Office (RSO) for the period from February 1989 to June 22, 1992. The Department informed grievant on February 18, 1992, that it had located and reviewed a file of reports from [REDACTED] in the Diplomatic Security Bureau's Office of Overseas Programs. The file contained only the monthly reports for the period August 1990 through November 1991. According to the Department, most of the reports were classified. The Department says the reports were reviewed for pertinent information, of which there was very little; and declassified, edited copies of the reports with pertinent information were provided to grievant.

The edited reports provided to grievant by the Department cover the entire period in which the events which gave rise to the grievance occurred. Grievant urges further efforts to find reports for the remaining periods of his request, but he has provided no explanation of why such material would be relevant to his case. In the absence of good reason why such reports, even assuming they exist and could be located, might contain evidence that is relevant and material, we are not prepared to require the Department to undertake a further search for such reports. This request is denied.

Interrogatory 11

Grievant requests notes, memoranda, reports or other documents concerning his interview with an official of the Office of the Inspector General (OIG) on or about March 20, 1991. The Department responded to grievant with a letter of April 17, 1992 covering a memorandum from OIG/OC dated April 13, 1992. According to the OIG memorandum, grievant's performance and EER were specifically excluded from the interview, since the OIG inspector understood that a separate review of the grievance issues

would be conducted by the Bureau of Diplomatic Security. The memorandum further states that this was explained to grievant by the OIG inspector. Finally, the memorandum indicates that only one page of handwritten notes were found regarding the interview and that these notes, and the OIG inspection report, contained no information relating to the grievance.

Grievant complains that a written report of the OIG interview should have been prepared and requests that he receive a copy of, or be allowed to review, the inspector's handwritten notes of the interview. However, he has provided no explanation of why these notes would be relevant and material in light of the OIG statement that issues related to the grievance were specifically excluded from the discussion. Grievant does not claim that the OIG assertion is inaccurate or that issues related to his grievance or personnel situation were, in fact, discussed in the conversation with the OIG inspector. In the absence of any reason to believe that the single page of notes would be relevant, grievant's request is denied.

Interrogatory 13

Grievant requests that the Department produce for examination and copying any portions of reports prepared by an agency Accountability Review Board which concern or in any way address the performance of the Administrative Counselor, Regional Security Officer and/or Assistant Regional Security Officer in the wake of the bombing of the Marine Corps barracks in ██████ in October 1990.

The Department responded on February 18, 1992, that it had reviewed two reports on the bombing -- both of them classified secret -- and concluded that neither report is material or relevant to the grievance. The Department contends that neither report contains anything which explicitly or implicitly

reflects on grievant's performance at the time of the incident. The Department therefore declined to make these reports available to grievant.

Grievant contends that he has significant knowledge about the bombing incident, but was not interviewed by the ARB. He states that it would be of great interest to ascertain if the reports are accurate or complete. The Department indicates, in a memorandum of April 15, 1993, that assuming grievant asserts a nexus between his grievance and the reports, it is prepared to furnish the reports to the Board for a determination on relevance and materiality in accordance with the Board's regulations (22 C.F.R. 903.9(c)).

Although grievant has not fully explained the possible relevance of the subject reports, grievant's performance on the scene shortly after the bombing was criticized by the DCM and his rating and reviewing officers. The DCM stated in writing that grievant's performance was less than adequate. Grievant argues to the contrary. Although we accept the Department's description of the report's contents, including the absence of any mention of grievant by name, in light of the key role this event played in the criticisms of grievant's behavior in the contested EER, the Board wishes to review the subject reports, in accordance with its regulations, to determine whether they contain information which is relevant and material. The Department is requested to make suitable arrangements for panel members to review the reports.

Medical Records

Grievant submitted a supplementary request for discovery of medical information on an incident in ██████ in which his wife ingested rat poison. Grievant states that he has received from FOIA channels his wife's medical records from ██████, but that these contain no information regarding the

incident, and the embassy medical advisor involved has since resigned. He requests the Department to conduct a thorough search for such a record.

The Department responded on April 15, 1993, that all of grievant's wife's medical records in [REDACTED] were checked out to her on February 8, 1990, and that no records are retained there. We assume the date should be February 8, 1991, since grievant only arrived in [REDACTED] on February 21, 1990 and departed post on February 23, 1991. In any event, the Department states that there are no records remaining in [REDACTED], and that copies of everything in the Department's medical files has been sent to grievant. It also invites grievant or his wife to inspect the Department's files to verify this.

Grievant has not explained how the requested information would relate to his grievance. He indicated in his request that the [REDACTED] medical advisor had informed his wife at the time that the laboratory report on the poisoning had been lost. In the absence of any indication that this incident may be relevant and material, or that a medical record of it may be pertinent, we are not prepared to compel the Department to undertake a search for a possible report on the matter.

III. DECISION

1. The Department should provide to the Board for its review, in accordance with applicable regulations, the two reports on the bombing of the Marine residence in [REDACTED], for a determination on whether they contain any information which is relevant and material to this grievance.
2. The remainder of grievant's motion to compel is denied.

For the Foreign Service Grievance Board.



Leroy S. Merrifield
Presiding Member



James S. Landberg
Member



G. Richard Monsen
Member