

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant

Record of Proceeding
FSGB No. 2007-035

And

Date: August 6, 2008

Department of State

DECISION

EXCISION

For the Foreign Service Grievance Board:

Presiding Member:

Arthur A. Horowitz

Board Members:

Lois E. Hartman
Theodore Horoschak

Special Assistant:

Joseph Pastic

Representative for the Grievant:

Neera Parikh, Esq.
American Foreign Service Association

Representative for the Department:

Joanne M. Lishman
Director
Grievance Staff

Employee Exclusive Representative:

American Foreign Service Association

CASE SUMMARY

HELD: Grievant failed to demonstrate by a preponderance of the evidence that: his 2004-2005 Employee Evaluation Report (EER) did not comply with Department regulations; the contested EER contained inaccurate and/or falsely prejudicial statements; he was not counseled; and he was subjected to a hostile work environment.

OVERVIEW

Grievant entered the Foreign Service in February 2003. In June 2003, he commenced his initial overseas tour as a General Services Officer. Upon completion of that assignment in the summer of 2005, he transferred to his second overseas posting. His grievance focuses on events occurring during his initial overseas tour.

He asserts that his reviewing officer (the DCM) “unduly discriminated against me, harassed me, singled me out and retaliated against me.” He presents an exhaustive chronological listing of incidents starting shortly after his arrival at post and concluding with events in April 2005. To facilitate its analysis of the case, the Board categorized the incidents as: the reviewer’s reactions to grievant’s personal conduct; the reviewer’s unprofessional conduct towards grievant; and the reviewer’s challenges of grievant’s performance as General Services Officer. Grievant also challenged the propriety of the rating officer selected by the reviewer and statements contained in the rater’s and reviewer’s assessments of his performance as set forth in the EER. He contends that he was not counseled with respect to issues identified in the Areas for Improvement section of the challenged EER.

In setting forth his case, grievant relied on personal expressions of belief and viewpoint, unsupported by any material evidence or independent corroboration of his claims. Given the lack of material evidence, the Board examined the agency’s 30-page decision letter denying the grievance, which included an in-depth analysis of grievant’s claims, including both the results of its investigation and, separately, its findings and conclusions. It is clear that grievant experienced a work environment that was difficult, possibly even unpleasant. However, the record demonstrates that grievant’s own actions were a major factor in this situation. The Board found no reason to disturb the agency’s determination to deny the grievance.

The appeal was denied in full.

DECISION

I. THE GRIEVANCE

On August 13, [year], the Grievant appealed the June 5, [year] decision of the Department denying a grievance that he filed on February 28. He claimed, *inter alia*, that his 2004-2005 Employee Evaluation Report (EER) did not comply with Department regulations and contained inaccurate and falsely prejudicial statements, and that he was subjected to a hostile work environment.

For relief he requested: (1) the grieved EER be expunged in its entirety; (2) a reconstituted 2005 Selection Board be convened to review his amended Official Performance File (OPF);¹ (3) he be granted an award approved by the Post award committee; (4) a complete and unredacted copy of an investigative report regarding anonymous “poison pen” letters attacking his character; and (5) all other relief deemed just and proper.

II. BACKGROUND

In February [year], the grievant entered the Foreign Service as a career candidate. In June 2003, he was assigned to the American Embassy in [city], [country], as a General Services Officer. Upon completion of this assignment in the summer of 2005, he transferred to [city],[country].

Grievant contests his EER for the April 16, [year] to April 15, [year] timeframe. His rating officer during this period was [name], Senior General Services Officer. His reviewing officer was [name], Deputy Chief of Mission. Grievant, who submitted his appeal to this Board on August 13, [year], did not undertake discovery; he filed his

¹ Grievant also requested a reconstituted 2005 Commissioning and Tenure Board (C&TB); however, as he was recommended for tenure by the September 2006 C&TB, this request is moot.

supplemental submission on September 17. The Department responded on October 11; grievant's rebuttal was submitted on November 13. The Record of Proceedings was closed on November 30, [year].

III. POSITIONS OF THE PARTIES

To facilitate the presentation of the parties' positions, the issues are addressed in the order in which they appear in the agency's June 5, [year] decision denying the grievance.

GRIEVANT

Hostile Work Environment

The Grievant asserts that [name], his reviewing officer, "unduly discriminated against me, harassed me, singled me out and retaliated against me." He further alleges that the reviewer's criticism was hostile, demeaning, condescending, humiliating, mean-spirited, and unprofessional.

The grievant presents an exhaustive² chronological listing of incidents, beginning shortly after his arrival at post and concluding with events in April [year], in support of his position. To facilitate our analysis, and provide a coherent overview of these incidents, the Board categorizes them as follows:

[Name]'s Reactions to Grievant's Personal Conduct –the grievant cites [Name]'s actions with respect to four separate issues: (1) [Name]'s repeated questioning of the number of dependents listed on grievant's travel orders; (2) [Name]'s handling of allegations against grievant as set forth in two poison pen letters asserting that grievant was engaged in an illicit sexual relationship; (3)[Name]'s assertions that grievant was

² The listing, containing some 40 incidents, consists of approximately eight single spaced pages. Some of the listed incidents build on earlier incidents or denote instances where a complained of behavior is repeated.

permitting his girlfriend to utilize his privately owned vehicle (POV); and (4) [Name]'s insistence, contrary to the regulations, that reference be made in grievant's EER to an EEO complaint made against him.

[Name]'s Unprofessional Conduct – (1) [Name] requested that grievant proctor an upcoming Foreign Service Officer Exam. After being advised by grievant that his spouse planned to take the exam, [Name] contacted grievant's spouse while the grievant was on TDY and "demanded to know whether she was taking the Foreign Service exam 'because your husband is saying you are.'" (2) [Name] failed to properly handle an incident where a Drug Enforcement Agent threatened grievant; (3) while grievant was on the phone talking with the Chief of Mission's Office Management Specialist (OMS), [Name] screamed derogatory remarks in the background and refused to talk with grievant when he asked to speak with him; (4) [Name] attempted to intimidate grievant by threatening to discipline him; and (5) [Name] took exception to terminology used by grievant in processing and endorsing a request for use of an Embassy vehicle for an official function.

Improper Challenges to the Grievant's Performance of General Services Officer Duties – (1) [Name] insisted that, contrary to the regulations, landlords be prevented from entering government-leased quarters; (2) [Name] questioned grievant's allegedly untimely handling of work orders; (3) [Name] asserted that grievant was responsible for delays that employees experienced in moving into assigned housing; (4) [Name] held grievant accountable for alcohol he believed was missing following an official function; (5) events surrounding the allocation of the Post's sole "loaner" baby crib; (6) use of rat poison in [Name]'s residence; and (7) grievant's responsibility with respect to the Post motor pool.

Purported Illicit Drug Activities of a Realtor's Acquaintance Working with the Embassy – On at least two occasions, [Name] raised this issue with Foreign Service National (FSN) employees and Embassy officers in a fashion which disparaged grievant. The grievant asserts that the Embassy had been working with this realtor for some ten years and that he, despite inquiring of his Embassy colleagues, had received no forewarning that the individual in question was the target of an on-going investigation.

Preparation of Disputed EER – Grievant contests the selection of the rating officer by reviewing officer [Name] as well as [name]'s actions during preparation of the EER.

Award Approval – Grievant asserts that one of the TDY Management Officers nominated him for a Meritorious Honor Award; that the nomination was approved by the Post award committee; but that such action was overridden by [Name]. This occurred despite [Name]'s assurances to the nominating officer that he would approve the award.

Retaliation – In April 2005, grievant met with the Ambassador to discuss the issue of the poison pen letters and his working relationship with [Name]. Subsequently, [Name]'s "hostile and demeaning attitude" towards grievant escalated.

EER – Inaccurate and Falsely Prejudicial Statements

Grievant claims that he was not counseled with respect to the issues identified in the Areas for Improvement section of the EER. He further asserts that his rater was having an affair with an FSN, whom she married some six months after her departure from post. "This act alone clouds [Name] (sic) credibility."

Part V. Evaluation of Potential, Section A – Grievant sets forth two reasons for contesting the rater's selection of the box which reads "Candidate is likely to serve effectively but judgment is contingent on additional evaluated experience." First, in his

previous evaluation, the same rater had checked the box recommending grievant for tenure. [Name] “elected to down grade this recommendation without counseling me for substandard performance or giving any justification for the lower recommendation.” Second, [Name] told grievant that, if he could persuade her (i.e., [Name]’s) rater “to change comments in her EER, she would in turn change my EER to include marking the box that states ‘Candidate is recommended for tenure’”

Part V. Evaluation of Potential, Section B

Under leadership, grievant challenges the following language as inaccurate:

This was not the grievant’s most comfortable work environment when seeking out additional guards for the event. He modified our local guard contract to accommodate this request. However, the company was under the impression that the Embassy had contracted out this service when facility guards reported for duty.

Grievant argues that he had nothing to with the guard contract. Further, to modify the contracts would require input from the Department. The entire issue with respect to the additional guards was in fact overseen by the Regional Security Officer and not by grievant.

Under interpersonal, grievant contests the following language:

He is often misunderstood by his actions or instructions. There have been several employee and landlord complaints about verbal commitments in which resolution had to be brought to the attention of post management.

Grievant argues that he was never informed or counseled regarding the assertion that his actions or instructions were being misunderstood. As a Contracting Officer, he denies making verbal commitments to anyone: to have done so “would have been justification to have [his] Contracting Warrant revoked.” Further, he claims to have

always documented any negative dealings with employees or landlords, forwarding copies of the documentation to the Management Officer.

Under communication skills, grievant contests the following language:

Grievant now understands the importance of documentation. He must take more written notes of what is discussed and agreed to during discussions. A guard booth renovation project revealed several changes that occurred without documentation. The employee that made the undocumented commitment was not given timely notice on their actions and procedures to rectify their actions. . . .

Grievant argues that the unauthorized commitment was made by a Maintenance Supervisor, an individual who had been “formally counseled by me and my Rater many times about making unauthorized commitments. . . .” That individual’s repeated unauthorized commitments were part of the basis for grievant’s efforts to demote said individual. Thus, the example is unwarranted because grievant had addressed the issue and had taken action.

Part VI. Review Statement – Grievant contests his reviewer’s entire statement, shown below, as inaccurate and/or falsely prejudicial:

I support the rater’s assessment of the grievant’s performance. The grievant can get things done, and performed well in many areas. Because the grievant has done well in these areas, I feel he could, given the opportunity for additional evaluated experience, develop his skills in communications, judgment, and sensitivity to chain of command. This could earn him tenure. During this period he has been EEO conscious. The rater . . . and the grievant had a fully professional relationship.

The grievant helped drastically improve the [h]ousing pool. He took charge of the Embassy’s largest warehouse auction, with gross proceeds of over \$100,000.00 USD. He detected that Embassy cell phones had high charges, and discovered that Embassy cell phones had been “Cloned.” He saved the embassy thousands of dollars and has monthly meetings with the phone company. As POSHO, the grievant conducted health inspections on the embassy cafeteria, found it unsatisfactory, and shut it down. He conducted on-going motor pool

refresher training, and enforced USG policy that chauffeurs who fail to meet medical clearances should be prevented from driving U.S. Government vehicles. He had drinking water at Chancery and employee residences tested for potability. He ensured that properties were within SHEM standards, even overcoming employee objections to swimming pool fences.

I asked the grievant to address office functions (reporting and recording, organization, and planning work). He paid attention. He stated he will soon address follow up.

The grievant on one occasion sought to reassign an FSN to a position of lesser responsibility. The Front Office inquired whether due process was being undertaken. In response, the grievant wrote a memo to the Ambassador explaining that if things were not undertaken in accordance with the grievant's own suggestions, he would immediately curtail to avoid impairment to his efficiency. In a separate DCM meeting with relevant section heads, he was asked if he knew the source of information to a real estate agency used by GSO about a possible investigation of her connection to narco-traffickers. He announced he was the source, used expletives to justify himself, and, abruptly walked out, stating he was constantly being harassed over such matters, [sic] the grievant, however, did take pains to apologize after both incidents.

The grievant has demonstrated he does have the ability to develop the judgment, and interpersonal and communication skills that will earn him tenure.

THE DEPARTMENT

Hostile Work Environment

Grievant's claim of hostile work environment is based on 3 FAM 4412(c)(4), i.e., dissatisfaction with respect to the working environment of a member. As to his allegations of discrimination, harassment, and retaliation, there is nothing in his filing to suggest that he bases his claims on 22 U.S.C. 4131(a)(1)(H).³ Nor has he cited or provided any discussion or evidence that the alleged discrimination, harassment, and/or

³ 22 USC 4131(a)(1)(H) provides for filing of grievances alleging discrimination under relevant sections of the Civil Rights Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973, and the Age Discrimination in Employment Act of 1967.

retaliation arose due to a protected status such as race, color, religion, age, or disability. That said, the agency-level filing was untimely for consideration under 22 U.S.C. 4131(a)(1)(H) as it was filed more than 180 days following grievant's departure from post.

Grievant presented "an extensive amount of evidence in support of" his claim that he was subjected to a hostile work environment. However, the record evidence "fails to establish that the incidents complained of, collectively or individually, constituted harassment or created a hostile work environment."

The Department maintains that grievant's arguments:

1) contain only allegations or assertions without supporting facts, 2) are expressions of belief and viewpoint, 3) do not address the findings at issue, and/or 4) raise irrelevant and immaterial matters, they do not operate to provide the required showing, i.e., preponderance of the evidence, and thus do not demonstrate that the DCM engaged in harassment or created a hostile work environment. . . .

With respect to grievant's complaint that [Name] sent him a number of harassing or condescending e-mail messages, the agency found that the messages were work-related and "a proper exercise of the DCM's authority and do not constitute harassment." While acknowledging that some of the e-mail messages were abrupt (and the DCM's choice of language was sometimes problematic), the agency took notice of grievant's responses to the contested messages – responses that "were, at times and at a minimum, argumentative and to some degree confrontational."

Turning to grievant's seven specific categories of claims, the agency's arguments are set forth in the same order as in grievant's statement of position:

[Name]’s Reactions to Grievant’s Personal Conduct

(1) Number of Dependents Claimed – The DCM’s questioning of grievant’s entitlement was “appropriate based on an apparent discrepancy in the number of dependents claimed and/or living with [him], particularly in a situation where housing appears to be at a premium and cause for constant concern and discussion among Embassy personnel.”

(2) The Poison Pen Letters – The DCM had a responsibility to investigate the matter and prepare a report detailing his findings. For a DCM to ignore allegations of either spousal abuse or sexual harassment would be a serious omission on his part.

(3) Grievant Permitting His Girlfriend to Utilize His POV – The agency did not directly address this issue, but it did note that [Name] “recalled questioning you, not about who was using your POV, but rather about your use of an official vehicle” and

(4) EEO Claim Made Against Grievant – [Name] acknowledged seeking to require inclusion of the EEO complaint in the disputed EER, as he believed that “such reporting was required.” There is no mention of the EEO allegation in the grievant’s EER as the DCM “acted on advice from the Department not to include this information.”

[Name]’s Unprofessional Conduct

(1) Proctoring of Foreign Service Officer Exam – The DCM’s questioning of grievant’s spouse did not constitute harassment. Grievant’s spouse worked at the Embassy; she appeared to handle the inquiry by responding in a straightforward manner. The question is not of the type to cause a reasonable person to become “distracted.”

(2) Threat from Drug Enforcement Agent – While grievant might have handled the incident differently, this is not evidence of harassment or discrimination. The

Department finds nothing inappropriate in the DCM's recommendation that the DEA agent undergo anger management counseling, nor his refusal to permit the grievant to involve the Ambassador in the matter.

(3) [Name]'s Outburst and Refusal to Accept Phone Call from Grievant – Although the agency does not directly address this issue, it cites the results of its investigation wherein the OMS with whom grievant was speaking confirmed that [Name] yelled in the background regarding grievant's handling of housing issues and refused to take his call, but she did not recall his making any derogatory statements.

(4) Threat to Discipline Grievant – No action to discipline grievant was ever proposed.

(5) [Name] Taking Exception to Terminology Used by Grievant in Processing and Endorsing a Request for Use of an Embassy Vehicle for an Official Function – Again the agency did not directly address the issue, but noted that [Name] acknowledges taking “exception to your use of the term ‘approval’ regarding his use of an official car and essentially confirms that he told you that it was not up to you to ‘approve’ his requests.”

Performance of General Services Officer Duties

(1) Landlord's Entering Government Leased Quarters – Although not directly addressing this issue, the agency cited [Name]'s statement that he recalled “advising you that the lease provided for landlord entry upon his property with proper notice to tenants.”

(2) Grievant's Untimely Handling of Work Orders – The agency does not address the issue.

(3) Delays Experienced in Moving into Assigned Housing – The agency does not address this issue.

(4) Accountability for Alcohol Following Official Function – [Name] acknowledges discussing the issue with grievant, as the grievant’s job responsibilities include tracking such items.

(5) Allocation of the Sole “Loaner” Baby Crib – [Name] asserts that his request for the loaner crib was legitimate and that he did not intentionally deny another employee use of the crib.

(6) Rat Poison Incident – The agency does not directly address the issue, but notes that [Name] acknowledged discussing the incident with grievant. He denies “insinuating” that grievant was responsible. To the contrary, he “only sought to remind” grievant of the potential liability.

(7) Grievant’s Responsibility with Respect to the Post Motor Pool –The agency notes that [Name]’s e-mail messages of June 1 and 3, [year], arose in a context where grievant’s advice and actions regarding use of official vehicles had created problems and consternation for other Embassy staff and where the DCM had issued a clear directive on the matter.

Purported Illicit Drug Activities of Realtor’s Acquaintance

The DCM took appropriate action in querying grievant regarding whether he had provided internal information to the realtor whose boyfriend was alleged to be a drug trafficker.

Award Approval

There is no evidence in the record affirming that the Post award committee did in fact approve the award recommended for grievant. Nor did the committee find fault with [Name]'s denial of the award.

Retaliation

The agency did not directly address this issue.

Preparation of disputed EER

Grievant's assertion that [Name] attempted to coach [Name] on grievant's EER is based solely on grievant's "belief." Given that grievant had provided no evidence in support of his allegation and that both [Name] and [Name] "made statements denying that any influence existed . . . there is no evidence to show that [Name], in fact, was coached or was influenced by the DCM in preparing [his] rating."

2005 Employee Evaluation Report

"[H]aving eliminated a hostile work atmosphere as a possible negative factor contributing to" grievant's EER, the agency addressed grievant's assertion that he had not been counseled, and reviewed the EER to determine whether it contained falsely prejudicial and/or inaccurate statements.

Addressing grievant's claim that he was not counseled, the Department found that the record demonstrates the opposite. His rater indicated that grievant was counseled by the Management Officer in her presence on the issue of being misunderstood. She further noted that although she "had asked grievant on several occasions to provide written instructions to the staff, often he did not."

Turning to the challenged EER, the agency contended as follows:

Part V. Evaluation of Potential, Section A

There is no evidence to support the grievant's claim that [Name]'s failure to recommend him for tenure was due to grievant's not having obtained changes in her EER. Further, [Name] sufficiently and credibly explained her reasons for not recommending grievant for tenure in the 2005 EER (i.e., given a closer and more prolonged period to observe grievant's work, she believed that improvements were required and additional evaluation time warranted).

Part V. Evaluation of Potential, Section B

Under leadership, grievant contests the highlighted language:

The grievant has contributed significantly in coordinating several high profile visits to post. He is proactive with all tasks and manages to get results. His involvement in last year's July 4th celebrations demonstrated his abilities to adjust to every changing demand before, during and after the event. **This was not the grievant's most comfortable work environment when seeking out additional guards for the event. He modified our local guard contract to accommodate this request. However, the company was under the impression that the Embassy had contracted out this service when facility guards reported for duty.** The grievant resolved the issue on site, and later had all charges reversed with the facility coordinator.

The rater had little specific recall of the incidents two years after the fact. In sum, the available evidence is insufficient to permit a finding as to whether the remarks are either inaccurate or false. As the grievant had the burden of demonstrating that they are, the remarks should stand as written. "Even assuming for the sake of argument that the EER comments do not correctly describe [his] involvement," the Department concluded that the grievant was not harmed by the description since the rater positively credited his leadership skills.

Under interpersonal, grievant contests the highlighted language:

The grievant is a professional who gets the job done. **He is often misunderstood by his actions or instructions. There have been several employee and landlord complaints about verbal commitments in which resolution had to be brought to the attention of post management.** Occasionally, priorities needed to be readjusted to meet an emergency that may have changed the priority order in which a request was received. The grievant must remember to inform his customers who may be affected.

The agency found no merit to grievant's argument that he had no authority to make "verbal commitments;" according to the grievant's rater, as a Contract Officer he "had authority to make such commitments; [he] simply [was] required to document them and, at times, apparently failed to do so." The grievant's claim that he made no commitments is thus at odds with his authority as a Contracting Officer and fails to address the issue of his having failed to document verbal commitments.

Nor did the agency find any merit to grievant's claim that he was not counseled with respect to the assertion that he was often misunderstood. The record "is replete with instances of times you were counseled by the DCM regarding occasions on misunderstandings arising as a result of your statements or actions." Further, grievant never claimed that misunderstandings did not occur, but only that he was not counseled on this matter. He has failed to demonstrate that the statements are inaccurate. And he has neither addressed nor otherwise demonstrated how the statements are falsely prejudicial.

Under communications, grievant contests the highlighted language:

The grievant now understands the importance of documentation. He must take more written notes of what is discussed and agreed to during discussions. A guard booth renovation project revealed several changes that occurred without documentation. The employee that made the undocumented commitment was not given timely notice on their actions and procedures to rectify their actions. As the Contracting Officer for a

project, the grievant must remember to document changes as they occur to prevent additional work and confusion. There is concern that the grievant does not provide more feedback to employees during the rating cycle. Often evaluation reports are delayed and recommendations in areas of improvement are not communicated in a timely manner.

The Department argues that the “staffer’s taking inappropriate action and failure to keep [grievant] informed is precisely the criticism intended here, *i.e.*, that it was [his] responsibility to monitor the employee’s work and to provide instructions or direction.”

Part VI. Review Statement

In reaching its conclusion, the agency focused on the final two paragraphs of the reviewer’s statement which read:

The grievant on one occasion sought to reassign an FSN to a position of lesser responsibility. The Front Office inquired whether due process was being undertaken. In response, the grievant wrote a memo to the Ambassador explaining that if things were not undertaken in accordance with the grievant’s own suggestions, he would immediately curtail to avoid impairment to his efficiency. In a separate DCM meeting with relevant section heads, he was asked if he knew the source of information to a real estate agency used by GSO about a possible investigation of her connection to narco-traffickers. He announced he was the source, used expletives to justify himself, and, abruptly walked out, stating he was being constantly being harassed over such matters. The grievant, however, did take pains to apologize after both incidents.

The grievant has demonstrated he does have the ability to develop the judgment, and interpersonal and communication skills that will earn him tenure.

Based upon its analysis of grievant’s March 23, [year] memorandum to the Ambassador regarding the proposed reassignment of an FSN and his subsequent memorandum dated May 5, [year], apologizing for the tone of the prior missive (documents provided by the Embassy), it found no basis to conclude that the reviewer’s statement was inaccurate or falsely prejudicial. To the contrary, the agency concluded

that the reviewer's statement accurately and reasonably set forth the circumstances of the April 8, [year] meeting and grievant's subsequent actions.

IV. DISCUSSION AND FINDINGS

In cases other than those concerning disciplinary actions, the grievant has the burden of establishing, by a preponderance of the evidence, that the grievance is meritorious.⁴ Thus, in order for the grievant to prevail on his claims, he must produce preponderant factual evidence to support his claims. That is, he must present persuasive material evidence or independent corroboration of his claims. Expressions of belief and viewpoint without supporting facts do not provide the required showing, i.e., the burden of proof by a preponderance of the evidence.

For the reasons discussed below, we find that the grievant has failed to meet his burden.

Hostile Work Environment

Based upon the record before us, it is clear that the grievant experienced a work environment that was difficult, and possibly even unpleasant. However, he has presented no persuasive or material evidence to support a conclusion that he was subjected to a hostile work environment or unreasonable working conditions. To the contrary, our analysis of the ROP reveals that grievant's own conduct and demeanor contributed to the difficult work the grievant environment.

The grievant has presented allegations and assertions without providing any corroborative evidence from third parties supporting his arguments. He did provide

⁴ 22 CFR Section 905.1(a).

statements from four individuals,⁵ but none of these statements directly addresses the issue of a hostile work environment.

One statement, from the Management Officer who nominated the grievant for the contested award, simply indicates that [Name] had agreed to support the award if it were approved by the Post award committee. As previously stated, the record contains no evidence that the award committee ever approved the recommendation. The other three merely reflect the individuals' working relationships with grievant.

Given the lack of material evidence submitted by the grievant, the Board closely examined the agency's 30-page single-spaced decision letter. That document sets forth an in-depth analysis of grievant's claims, including both the results of its investigation and, separately, its findings and conclusions. The decision letter clearly delineates grievant's claims and sets forth a reasoned analysis supporting its denial of the grievant's grievance.

Based upon a review of the entire record before us, we find no reason to disturb the Department's determinations in this matter. Rather than repeat verbatim the Department's arguments, provided below are examples of where the grievant failed to provide the required showing, i.e., preponderance of the evidence, demonstrating that [Name] engaged in harassment or created a hostile work environment. With respect to the e-mail messages provided by grievant and discussed at length in the Department decision, and given the lack of material evidence provided by grievant, we concur with the Department's view that "many of these e-mails complained of were intended to assign you work, question how your work was performed, correct your advice regarding interpretation of regulations or address situations in which you gave incorrect advice, or

⁵ These statements were submitted with grievant's November 13,[year] rebuttal.

direct you to perform your work in a certain way.” Turning to the specific examples raised by grievant:

[Name]’s Reactions to Grievant’s Personal Conduct

Grievant presented no argument that [Name]’s actions in investigating the “poison pen” letters violated any rule, regulation or law. Nor has he presented any argument as to how [Name]’s actions in this matter contributed to a hostile work environment. As regards [Name]’s memorandum on the matter, grievant has provided no evidence to support his claim that the Assistant Regional Security Officer told him that “his office was unaware of any investigation and that [Name] was only doing this to try and clear himself.”

The grievant did not dispute [Name]’s explanation in response to the Department’s investigation that housing was at a premium at post and cause for constant concern and discussion among Embassy personnel. Given the potential adverse impact on post morale arising from the shortage of acceptable housing and the grievant’s failure to refute the statement, we find no evidence that [Name] acted inappropriately in confirming that grievant’s travel orders correctly stated the number of dependents he had. To the contrary, [Name] would have been remiss had he not verified the information in the travel orders in light of what appeared to be a discrepancy in the number of dependents claimed and those residing at post.

As to [Name]’s initial insistence that the EEO complaint filed against grievant be included in his EER, there is no evidence refuting the DCM’s assertion that he initially believed such inclusion was required. In any event, the subsequent exclusion of any

reference to the EEO complaint from grievant's EER rendered the initial inclusion a harmless error.

[Name]'s Unprofessional Conduct

Regarding [Name]'s request that grievant proctor the Foreign Service exam, the grievant provided no material evidence in support of his assertion that the DCM acted inappropriately when he contacted grievant's spouse directly to confirm that she planned to take the exam. While the grievant takes issue with the Department's citing of the "reasonable person test," he provided no statement from his spouse as to the tone of her conversation with [Name] or her reaction to said call. Nor has grievant provided an explanation as to why, when he was notified that he had been assigned the task of proctoring the exam, he did not immediately advise the DCM or the post Management Officer of the potential conflict of interest arising from his wife's desire to take the exam. Rather, he responded by advising the Management Officer that he knew of his having been assigned but he would check his schedule to see if he was available. Subsequently, the grievant advised his rater that his wife "may" take the exam. Under these circumstances, we find that the DCM's actions in contacting grievant's wife directly to ascertain her intentions regarding the exam were well within his reasonable discretion.

Nor does grievant assert that [Name] violated any rule, regulation, or law in the way he handled the issue of the Drug Enforcement Agent who threatened him. While grievant might have handled the matter differently, that does not invalidate the approach taken by the DCM.

Nor does the record support grievant's claim that while he was on the phone with the Chief of Mission's OMS, [Name] screamed derogatory remarks in the background.

The OMS acknowledged that [Name] did in fact refuse to talk with the grievant and shouted, but she does not remember his screaming derogatory remarks. As the Board has commented in the past, “each employee is expected to treat others with fairness and respect” so that “yelling at others is not acceptable conduct” but rather “is disruptive to the workplace.” While we do not condone any supervisor shouting at a subordinate at any time, in this case we note that [Name] was not confronting or addressing the grievant directly either in person or on the phone, and demonstrated good judgment in not escalating the situation when he refused to speak with grievant on the phone upon the latter’s request. Grievant’s own actions, in failing to terminate the conversation when first advised by the OMS that [Name] would not talk with him, contributed to the tensions. *See* FSGB Case No. 2006-005 (December 12, 2006), at 28-29. Additionally, the ROP reveals that [Name], recognizing that he and grievant needed to work out their differences, took the grievant to lunch on the following Monday. This gesture on [Name]’s part is not one that would be expected from a hostile supervisor.

As to the charge that [Name] attempted to intimidate the grievant by threatening to discipline him, grievant has provided no evidence that this event did in fact occur.

While it is clear that [Name] took exception to terminology used by grievant in processing and endorsing a request for his use of an Embassy vehicle for an official function, the grievant again failed to refute the DCM’s explanation of his actions. The ROP also reveals that on a separate occasion the grievant denied a request for use of an official vehicle where the requesting officer sought to have a non-embassy employee accompany him. The DCM had to intervene and point out that U.S. Government

regulations do not prohibit a guest of a Federal employee from riding in an official vehicle to an official event when there are no detours involved in the route taken.

Performance of his Duties as a General Services Officer

The grievant has provided no evidence refuting [Name]'s explanation that he simply sought to remind grievant that he was required to provide adequate lead time before permitting landlords to enter residences leased by the Embassy. Also with respect to housing, we find no merit to grievant's contention that [Name] made snide comments to other employees at post, specifically: "We are overhousing untenured JOs." The cited quote is in the final message of a series of e-mails dealing with up-coming housing assignments and the issue of housing for the incoming head of the Political Section. Read in context, the statement was not a snide remark but rather an observation regarding housing assignments.

Assuming that [Name] did question grievant's untimely handling of work orders, grievant has provided no evidence demonstrating how this action contributed to a hostile work environment or exceeded [Name]'s responsibility as DCM to oversee administrative matters impacting the effective functioning of the post. It is axiomatic that a demanding supervisor who pursues his or her responsibilities aggressively will cause stress on the part of subordinates; however, this does not necessarily translate into a hostile work environment.

Grievant does not provide any evidence refuting the DCM's assertion that in discussing the issue of alcohol believed to have been missing following an official function, he was simply reminding grievant of his job responsibilities.

The grievant asserts that the FAM specifically states that a “post only provides cribs for temporary use, until an employee’s shipment arrives.” However, he did not provide any information or citation with respect to the FAM in question. Nor has he provided any evidence that he advised [Name] of this fact.

As to the rat poison that [Name] claims was found in his home, again grievant has provided no evidence refuting the DCM’s assertion that he was simply reminding grievant of the liability issues posed by the use of this product.

Purported Illicit Drug Activities by Acquaintance of Realtor Working with Embassy

Grievant notes in his supplemental submission that the “RSO was aware of the issue.” However, the grievant provided only unsubstantiated allegations that he had sought information from Embassy employees regarding any on-going DEA investigation. Regardless of what he learned or did not learn, the crux of the matter was grievant’s discussion of an internal matter with non-Embassy personnel, specifically with an acquaintance of the person under investigation.

Also of significance to the Board is the grievant’s actions in the April 8, [year] meeting called by [Name] to discuss the situation. At that meeting, grievant acted in an unprofessional manner, stating that he was fed up with [Name]’s “bullshit” treatment of him and that he would submit his resignation. Then, rather than ask the meeting chair [(Name)], grievant asked the Regional Security Officer to excuse him and abruptly left the meeting. Approximately two weeks later, the grievant apologized for his unprofessional behavior in an e-mail message to [Name], the Ambassador, and the others who attended the meeting.

Preparation of Disputed EER

The grievant provided no evidence to support his contention that the appointment of [Name] as his rating officer was improper. To the contrary, attachment B to his appeal filed with this Board clearly shows the legality of the appointment. Dated October 9, [year], the e-mail message in question reads in pertinent part: “now that she is tenured – she may supervise anyone Post wishes to have her supervise.” Nor has the grievant provided any independent evidence contradicting [Name]’s and [Name]’s statements that there was no undue influence exerted with respect to the preparation of his EER.

Award Approval

Other than stating that [Name], the person who nominated grievant for the award, had told him it was approved, the grievant has provided no independent evidence demonstrating that the award was in fact approved. He has provided no evidence as to how [Name] learned the award was approved; nor has he provided statements from any member of the award committee who reviewed the nomination.

Retaliation

Grievant has failed to provide any independent evidence supporting his claim that after he met with the Ambassador in April [year], the “hostile and demeaning attitude” exhibited by [Name] escalated.

EER – Inaccurate and Falsely Prejudicial Statements

We find no merit in the grievant’s claim that he was not counseled with respect to the issues identified in the Area for Improvement section of the contested EER. We find persuasive [Name]’s statement that she personally witnessed his being counseled on this matter by a Management Officer and the details of her own discussions with him

regarding this issue. Nor do we see the relevance of grievant's claim that [Name] was having an affair with an FSN at post whom she subsequently married.

Part V. Evaluation of Potential, Section A

[Name] has set forth a persuasive argument for revising her assessment of the grievant's readiness for tenure. Grievant has provided only speculation in attempting to refute her arguments.

Nor has grievant provided any independent evidence supporting his assertion that [Name] advised him that if he could persuade [Name]'s rater "to change comments in her EER" [Name] would in turn revise his EER to include marking the box that states "Candidate is recommended for tenure" In her statement, [Name]'s rater [(Name)] acknowledges that grievant spoke with her regarding [Name]'s purported request. However, her statement that "I remember speaking to [Name] [Name] about the comments to the grievant [grievant] but do not remember the result" provides no support for grievant's claim that [Name] did in fact make such a request.

Part V. Evaluation of Potential, Section B

In each instance, grievant asserts that the challenged language noted above is inaccurate.

Leadership

Grievant has provided no independent evidence supporting his assertion that he was not responsible for the guard contract.

Interpersonal

The grievant has provided no independent evidence supporting his position, by testimony from others or citation of a rule, regulation, or law. We find persuasive the

Department's argument that grievant was authorized to make "commitments" provided that he documented them.

Communication Skills

We find persuasive the Department's argument that the grievant never challenged that misunderstandings cited in the EER in fact occurred, but rather only alleged that he was not counseled on this matter. The issue of counseling has been addressed above. Again, grievant has failed to provide any material evidence demonstrating that the challenged language is either inaccurate or falsely prejudicial.

Part VI. Review Statement

Although the Department addressed only the final two paragraphs of the reviewer's statement, we reviewed the entire statement. Turning first to the final two paragraphs, we find persuasive the Department's assertion that they accurately and reasonably set forth the circumstances of the April 8, [year] meeting and grievant's subsequent actions. We further find that grievant has failed to demonstrate that they are falsely prejudicial.

As to the first three paragraphs, nothing in the ROP provides support for finding them either inaccurate or falsely prejudicial.

For the reasons discussed above, we find that grievant has failed to meet his burden of proving that the disputed 2004-2005 EER contained inaccurate or falsely prejudicial statements.

V. DECISION

The grievance appeal is denied.

For the Foreign Service Grievance Board:

Arthur A. Horowitz
Presiding Member

Lois E. Hartman
Member

Theodore Horoschak
Member