

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant
And

U.S. Department of State

Record of Proceedings
FSGB No. 2007-049
January 31, 2011

ORDER

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Arline Pacht

Board Members:

Garber A. Davidson
Alfred O. Haynes

Senior Advisor

Margaret Sula

Representative for the Grievant:

Edward J. Reidy

Representative for the Department:

Joanne Lishman
HR/G

Employee Exclusive Representative:

American Foreign Service Association

ORDER

I. ISSUE

██████████ (grievant), through her attorney, filed a Motion for Reconsideration and Reversal of the Foreign Service Grievance Board's (FSGB) November 9, 2010 Decision denying her grievance filed on May 6, 2008.

II. BACKGROUND

Grievant, a former member of the Foreign Service,¹ initially filed her grievance directly with this Board, charging that the Department denied her a financial benefit and did not permit her to withdraw her application for voluntary retirement, thereby constructively discharging her from the Foreign Service. After receiving briefs from the parties regarding its jurisdiction, the Board issued an Order on April 9, 2008, finding that it lacked procedural jurisdiction as the regulations require that grievances must first be presented with the employing agency before presentation to the FSGB. However, the Board retained preliminary subject matter jurisdiction. The matter was returned to grievant without prejudice. On May 6, 2008, ██████████ filed her grievance with the Department. In its decision, the Department provided grievant with four additional months of creditable service with appropriate adjustments to her salary and annuity. However, the Department did not respond to grievant's claim that she was involuntarily discharged nor permitted to revoke her voluntary retirement.

Grievant accepted the Department's offer of additional creditable service and salary/annuity adjustments but appealed that part of the Department's decision dealing with her claim of involuntary retirement and constructive discharge.

¹Grievant retired voluntarily from the Foreign Service on September 30, 2007. That retirement action forms the basis of ██████████ appeal.

Both parties engaged in a lengthy discovery process and filed Supplemental Submissions followed by responsive pleadings. Upon final submission of the parties' pleadings, the Board issued its decision on November 9, 2010, denying the grievance. On December 19, [REDACTED] filed the instant Motion for Reconsideration of the Board's Decision.

III. POSITIONS OF THE PARTIES

Grievant

Grievant contends that the FSGB misconstrued the purpose of her appeal, asserting that she only needed to allege facts that, if proven, could establish a *prima facie* case of involuntariness. Instead, she claims that the Board wrongly imposed a burden of proof that required her to show by a preponderance of the evidence that her retirement was involuntary.

Grievant also claims that the Board's decision failed to address other issues in her case, including alleged inconsistencies in the Board's findings and denial of the opportunity to challenge the accuracy of the Department's evidence.

The Department

The Department rejects grievant's motion in its entirety, contending that she failed to present newly discovered or previously unavailable material as required by 22 CFR § 901. The Department further argues that the issues raised by grievant in her Motion were considered by the Board and addressed in its ruling.

IV. DISCUSSION AND FINDINGS

In her Motion, grievant asks this Board to reconsider and reverse its November 9, 2010 decision based upon her claim that the Board "is mistaken as to the nature of her appeal." Specifically, she argues that the sole purpose of her pleadings was to present sufficient evidence

to establish a *prima facie* case. For the following reasons, we find grievant's Motion for Reconsideration unpersuasive.

The Foreign Service Act of 1980, as amended, provides that the decision of the Board shall be final, subject only to judicial review.² The Board's authority to reconsider its decisions is further restricted by the following statutory language: The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence. 22 CFR § 910.1. The Board has held that it may also reopen a grievance appeal to reconsider a clear error of law or to prevent manifest injustice. FSGB Case No. 2002-043 (January 2, 2004), citing *Henderson v. United States*, 580 F. Supp. 1010 (D.D.C. 1983). Reconsideration is limited to matters encompassed in the decision on the merits, not to what might have been argued. It is not intended to provide grievant with an additional chance to argue his cause. *Id.*

The Board engaged in a thorough review of the entire record in this case. The sole substantive issue posed in this matter was whether grievant was denied the right to revoke her application for voluntary retirement and was involuntarily discharged. In proving her case, grievant had the burden of establishing by a preponderance of the evidence that her grievance was meritorious.³

Throughout the instant proceeding, grievant had ample opportunity to present her entire case to this Board. She engaged fully in the discovery process, and filed numerous and lengthy submissions to support her claim, setting forth detailed accounts of the facts as she perceived them including those that controverted statements of facts presented by the agency. The Department had the same opportunity to respond to these pleadings.

² 22 U.S.C. § 4137.

³ 22 C.F.R. § 905.1.

The Board carefully assessed all of the evidence presented, evaluated alleged inconsistencies and the parties' arguments as set forth in the record before concluding that grievant failed to meet her burden of proving that she was involuntarily removed from the Service. The Board also took into account grievant's assertions regarding her burden of proof and jurisdiction.

Having carefully considered grievant's Motion to Reconsider, the Department's response and the grievant's reply thereto, the Board finds that she presented no "newly discovered or previously unavailable material evidence," nor is there a clear error of law or manifest injustice. Those findings, together with the final and binding nature of our decision, do not provide this Board with any grounds upon which to grant grievant's request.

V. DECISION

Grievant's Motion for Reconsideration is denied.

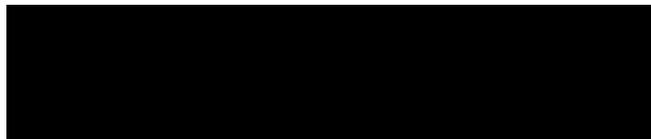
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