

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

[REDACTED]
Grievant

And

Department of State

Record of Proceedings
FSGB Case No. 2009-027M

December 10, 2014

**ORDER: Motion to Require Changes
to Letter of Reprimand**

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Elliot H. Shaller

Board Members:

**Nancy M. Serpa
Jeanne L. Schulz**

Special Assistant

Lisa K. Bucher

Representative for the Grievant:

Pro se

Representative for the Department:

Thomas M. Lipovski
Attorney Advisor
HR/G

Employee Exclusive Representative:

American Foreign Service Association

I. THE ISSUE

Grievant and the Department of State (the Department, the agency) are negotiating the wording of the Letter of Reprimand to be inserted into grievant's official personnel records pursuant to the Board's Decision on this case dated January 13, 2013, and its Order on Grievant's Motion to Reconsider dated November 1, 2013. In her Motion to Order Changes to the Final Letter of Reprimand, grievant asks the Board to require the agency to "remove and/or correct all unsubstantiated, irrelevant, immaterial or prejudicial information"¹ from the final version of the Letter of Reprimand.

II. BACKGROUND

In its January 10, 2013, Decision on grievant's discipline case, FSGB 2009-027, the Board sustained two specifications of Misuse of Position and one specification of Poor Judgment. The Board found, however, that a five-day suspension for the conduct was excessive, and it mitigated the penalty to a Letter of Reprimand. Grievant filed a Motion to Reconsider certain aspects of the decision, on which the Board ruled on November 13, 2013. Thereafter, the parties commenced the process of implementing the Board's rulings, including the drafting of the final wording of the Letter of Reprimand. Because the parties were unable to reach agreement on the text of that letter, grievant filed the Motion to Order Changes to Final "Letter of Discipline"² with this Board on July 13, 2014. The Department filed its response to the Motion on July 18, 2014, shortly before grievant was due to depart on home leave and transfer to a new overseas assignment. Given those circumstances, the agency agreed to grievant's request to delay the filing of her rebuttal until October 3, 2014. She filed said rebuttal on October 1, 2014. The Record of Proceedings is closed with this order.

¹ See grievant's July 3, 2014, Motion to Order Changes to Final Letter of Discipline (Letter of Reprimand) at 1.

² Grievant uses the term "Letter of Discipline," but we shall refer to it by its proper name, "Letter of Reprimand."

III. DISCUSSION OF ISSUES

Grievant objects to a series of statements in the draft Letter of Reprimand she has been negotiating with the Department. Among other things, she asks that the Board order reinsertion of some sentences that the Department (HR/G) has deleted in the drafting process, insertion of the word “required” before reference to the Statement she made to DS investigators, deletion of language that she alleges makes her look guilty of more egregious behavior than was actually the case, and replacement of several paragraphs proposed by the Department with wording she has crafted.

The Department argues that the Letter of Reprimand “justifiably relies upon and quotes from grievant’s sworn statement to DS investigators,” that it properly sets out the first specification of the charge of Poor Judgment sustained by the Board, and that grievant’s motion should be denied in its entirety.

IV. FINDINGS

The Board has a longstanding policy of according deference to the agency with respect to its responsibilities to discipline its workforce, and, except where such actions fall outside the zone of reasonableness, to select the most appropriate action, including the drafting of disciplinary material. Thus, with one exception, we decline to intervene in the drafting process, and hereby deny grievant’s motion to order changes in the final Letter of Reprimand.

The single area in which we order the Department to comply with the changes to the Letter of Reprimand grievant requests is in its use of any language that originated in the memorandum from Special Agent [REDACTED], which the Board in its decision definitively labeled “double hearsay.” Thus, for example, with respect to the “poor judgment charge,” a statement in the letter that the FSN involved in the dinner meeting thought that meeting was an attempt to

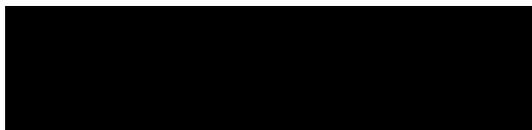
“soften him up” (a term used first in the [REDACTED] memo, and repeated in the Deciding Official’s letter, but never used by the FSN himself in his statement) shall be deleted from the final Letter of Reprimand. Any other statement in the draft Letter of Reprimand that is only derived from or supported by the [REDACTED] memo must also be deleted.

In all other respects, the motion is denied.

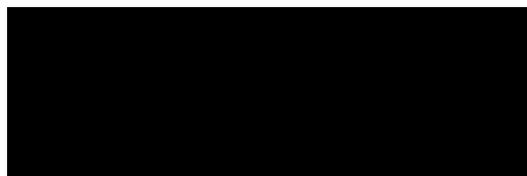
For the Foreign Service Grievance Board:



Elliot H. Shaller
Presiding Member



Jeanne L. Schulz
Member



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Member