

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant

Record of Proceedings
FSGB No. 2010-014

And

August 12, 2010

Department

**ORDER:
Motion to Compel Discovery
EXCISION**

For the Foreign Service Grievance Board:

Presiding Member:

John M. Vittone

Board Members:

Gail M. Lecce
Jeanne Schulz

Senior Advisor

Margaret Sula

Representative for the Grievant:

Pro se

Representative for the Department:

Joanne M. Lishman
Director
Grievance Staff

Employee Exclusive Representative:

American Foreign Service Association

ORDER

I. THE ISSUE

On April 13, {year}, the grievant, a career candidate with the Department, appealed to this Board the denial by the Department of her agency level grievance. She contends that the proposed 10-day suspension imposed by the deciding official was not timely imposed¹ and that a ten day suspension is not reasonable, is inconsistent with the precept of “like penalty for like offense” and is inconsistent with the *Douglas* Factors.

II. BACKGROUND

The grievant filed Discovery Requests with the Department on April 30, {year}. The Department responded by Memorandum dated June 4, {year}, answering some, but not all of her requests for documents and interrogatories. Objections to responding generally included that the requests were irrelevant, immaterial, overly broad, overly burdensome, and unlikely to lead to the discovery of admissible evidence. Grievant filed a Motion to Compel Discovery by memorandum dated June 16, {year}.

III. GRIEVANT’S MOTION

Document Request 4:

Provide a redacted copy of the proposal for discipline, the ROI, the final decision, the case comparison worksheet and the Douglas Factor worksheet for the 2004 case of a FS-01 Political Officer who was proposed for a three-day suspension and received a two-day suspension for accidentally leaving classified documents in a taxicab in Washington, D.C.

Grievant contends that the requested documents are in one identifiable case similar to hers and are therefore obviously relevant and material to her case.

Document Request 5:

¹ Events forming the basis of the discipline occurred in August 2005 and the proposal for discipline letter was dated November 4, 2008.

Provide a redacted ROI [Report of Investigation] and/or other memoranda documenting (other than the Grievance Board's decision . . .) the case of the employee who was presented with a bill for \$1,824 for damage to his kitchen countertop and wood floor.

Grievant argues that the agency's refusal to provide the requested documents, as distinguishable from her case, deprives her of the right to judge the documents for themselves. The agency did not impose discipline on the other employee.

Document Request 6:

Provide a redacted ROI and/or other memoranda or letter documenting the case of the employee whose family caused damage to his Oakwood apartment.

Grievant presents the same argument as in No. 5, above. Additionally she disputes the agency's contention that there is "no nexus between your job as a Foreign Service officer and your housing when living domestically; however overseas, the condition of your government-leased housing has a nexus to your job as well as a connection to a Foreign Government."

On information and belief grievant thinks that the Department has an arrangement or contract with Oakwood apartments whereby Department employees pay their rent on a sliding basis which coincides with their per diem. "Therefore, if a Department employee damaged an apartment at Oakwood, arguably it would reflect very badly on the Department and thus, I submit there is a nexus between the employee's off duty conduct and the reputation of the Department."

The Department responds that it does not argue that there is no nexus between the job of an officer and the Department, but rather that the condition of the housing of an officer overseas has a nexus to his/her job *and* to the foreign government involved. The impact of grievant's conduct overseas on the Embassy's reputation in the host country

were considered in her *Douglas* factors. The employee involved in the Oakwood apartment damage paid for the damage and was issued a Letter of Admonishment which is no longer in his file.

Document Request 8:

Provide a redacted copy of the proposal for discipline, the ROI, the final decision, the case comparison worksheet, and the *Douglas* Factor worksheet of all like cases involving a security violation occurring in the past ten years.

Grievant contends that the Department has a duty to comply with the precept of similar penalty for like offenses and *Douglas* Factor 6 refers to “consistency of the penalty with those imposed upon other employees for the same or similar offenses.” She points out that this Board has ordered the agency to provide such information in numerous previous cases.

The Department responds that grievant has advanced no indication of why she believes the Department failed to comply with the precept of similar penalty for like offense. In the Department’s view, there are no similar cases representing the aggregate of charges for comparison purposes as exist in this case. Her security violation here followed three security infractions in the span of two months at her previous posting in {post name}. Likewise, her poor judgment here followed similar conduct in {post name}. Both patterns of conduct were considered in setting an appropriate penalty in grievant’s case, as reflected by the *Douglas* Factors. Moreover, from 2000 to 2010, the Department notes that there were approximately 226 discipline cases involving security violations. To produce the requested records in those cases would be overly broad and unduly burdensome.

Document Request 9:

Provide a redacted copy of the proposal for discipline, the ROI, the final decision, the case comparison worksheet, and the Douglas Factor worksheet of all like cases involving poor judgment involving damage to government housing or any hosing [sic] in which the Department has a contract or agreement with the landlord or apartment complex, such as Oakwood Apartments, occurring within the past ten years.

Grievant repeats her argument in Document Request No. 8, above.

The Department responds that other than the employee referred to in Document Request 6, there have been no other employees proposed for discipline for damage to housing.

Interrogatory 8:

Does the Department have a contract or other type of agreement with Oakwood apartments pertaining to Department Foreign Service employees staying in their facilities (for example, regarding sliding-scale rental payments for Department foreign service employees, etc.)?

Grievant asserts that serving overseas is analogous to attending training at the Foreign Service Institute (FSI) and that she has been disparately treated by a proposal of discipline. She argues that favorably responding to her discovery request would help establish that a nexus exists between an Oakwood Apartments employee's off duty conduct and the Department's reputation.

The Department responds that it does have a contract to provide direct bill payments at a negotiated rate for those individuals in training at the Foreign Service Institute. The Department states that it does not have an arrangement or contract with Oakwood which enables employees to pay their rent on a sliding basis to coincide with per diem allowances.

IV. DISCUSSION AND FINDINGS

Document Request 4:

In its June 28 Response to Grievant's Motion to Compel, the Department provided redacted copies of the proposal for discipline, deciding official's decision and *Douglas* Factor worksheet for the 2004 case of a FS-01 Political officer who was proposed for a three-day suspension and received a two-day suspension for accidentally leaving classified documents in a Washington, D.C. taxi cab (FSGB Case No. 2005-042) (February 23, 2006). The request for the ROI is neither relevant nor likely to lead to the discovery of relevant information. The request is denied.

Document Request 5:

The Department states that an ROI does not exist. The Department provided the other redacted documents requested by grievant in its June 28 response.

Document Request 6:

The Department's response to grievant's Motion to Compel is sufficient.

Document Request 8:

We agree with the Department that grievant's request is overly broad, overly burdensome and unlikely to lead to the discovery of admissible evidence. We limit grievant's request to and direct the Department to provide redacted copies of the proposal and decision letters for security violations involving the loss of classified documents in public places in the last ten years.

Document Request 9:

The Department's response to grievant's Motion to Compel is sufficient.

Interrogatory 8:

The Department's response to grievant's Motion to Compel is sufficient.