

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between

Grievant

Record of Proceedings  
FSGB No. 2010-032

And

October 29, 2010

Department of State

**ORDER  
EXCISION**

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For the Foreign Service Grievance Board:

Presiding Member:

Susan R. Winfield

Board Members:

Alfred O. Haynes  
Jeanne Schulz

Senior Advisor

Joseph Pastic

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**

This Order addresses the grievant's late filing request for discovery.

### **II. BACKGROUND**

Grievant was a member of the Senior Foreign Service of the Department of State (Department, agency) at the time he filed a grievance with the Department regarding his Employee Evaluation Report (EER) covering the period from May 12, 2008 to April 15, [year]. The agency denied the grievance and he appealed to this Board on August 20, [year].

Grievant did not file discovery requests within the time provided for discovery and instead filed his Supplemental Submission on September 20, [year] with a memo noting that: "I have not submitted a discovery request since I was not made aware of the option until I received the FSGB formal notification on September 14, [year]. If that alternative still exists, then, yes, I wish to request that option."

Grievant had been advised of the discovery timelines in the Department's final decision letter of June 22 and by the FSGB Special Assistant assigned to this case in an August 25 e-mail to grievant as well as in the attachment thereto. All of these documents advised that grievant's timeline for requesting discovery was within 20 days of filing the grievance with the Board. In a September 21st e-mail, the Board informed grievant:

If you now wish to file a late discovery request, you must first obtain permission to do so by filing a separate request with the Board showing good cause for the request to be granted and stating generally what specific information you seek to learn from the agency through discovery. The Department would have the right to respond to your request.

In an October 1, [year] Order: Late Filing, the Board observed that grievant had neither filed nor requested permission to file a request for late discovery, but that the Department had formally objected to his filing discovery late in a pleading filed on September 27th, based on earlier direct communications between the parties. Grievant responded to the agency's objection, but still did not file a formal request for an extension of the deadline. This Board held that:

. . . to the extent that grievant is asking for an extension of the discovery timelines, his request must be denied because he has not complied with the previous order of this Board. We repeat that grievant may file a request to file late discovery, however he must expressly request specific additional time to do so, his request must be filed within 10 days of receipt of this order and it must be accompanied by an explanation as to why grievant did not file his request sooner along with a detailed explanation of what information he seeks to discover.

On October 8, grievant requested an extension of the deadline for filing discovery, however, he did not, as the Board's Order had instructed, request a specific additional time period for discovery, explain why he did not file his request sooner, or include a detailed explanation of what information he seeks. Instead, grievant provided a protracted account of the stress he experienced in his last assignment and the fact that he had been engaged in intensive job searches and had taken a recertification course with the Board of Examiners. Instead of providing a detailed explanation of the information he seeks from the agency, he simply listed 11 names and positions and stated:

If approved by the Board, I will ask a select few managers and subordinate employees from those provided below and who served as subject matter experts on projects or issues to simply provide accurate assessments against arguable performance assessments made by the rater and reviewing officer.

The Department submitted an objection to grievant's request on October 14.

Grievant's request for an extension of his discovery deadline clearly does not comply with the Board's Order. We agree with the Department's objections. Grievant's claim that the press of life's challenges impacted his ability to comply with the discovery deadline is not persuasive. He received no less than three notices of the discovery deadline as he was processing his grievance. Indeed, even after being informed of the missed September 10 deadline, he did not file a request for extension until October 8, two and a half weeks later. Many other employees with less experience in the Service comply with Board deadlines while still performing their assigned duties. Further, grievant fails even now to explain whom he wishes to question "among the select few," nor does he explain what he means when he says he wants them to "provide accurate assessments against arguable performance assessments." This does not constitute "a detailed explanation of what information he seeks to discover."

## **V. ORDER**

We sustain the Department's position that grievant's request to file late discovery has not established good cause for extending the deadline. Grievant's request for discovery is denied.