

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between

██████████  
Grievant

Record of Proceedings  
FSGB No. 2011-005

and

March 9, 2011

Department of State

**ORDER: REMAND**

EXCISED

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For the Foreign Service Grievance Board:

Presiding Member:

Elliot H. Shaller

Board Members:

Alfred O. Haynes  
Gail M. Lecce

Special Assistant

Joseph Pastic

Representative for the Grievant:

*Pro se*

Representative for the Department/Agency:

Thomas Lipovski  
HR/G

Employee Exclusive Representative:

American Foreign Service Association

## **ORDER: REMAND**

This Order addresses the agency's request that the case be remanded to it for investigation. The grievant has objected to this request. For the reasons discussed below, the panel has determined that the matter should be remanded, but that the time frame for the agency's response should be shortened and that the Board should retain jurisdiction.

The grievant in this case, [REDACTED], alleges that the agency wrongfully denied her application for leave donations under the Voluntary Leave Transfer Program. Grievant initially pursued the matter by filing an equal employment opportunity (EEO) complaint with the agency's Office of Civil Rights (OCR). But she formally withdrew her complaint before filing her agency appeal. In this regard she has included in the record a letter dated August 3, 2010 from OCR acknowledging receipt of her request to voluntarily withdraw the complaint, and stating that OCR considered the complaint to be officially closed.

On September 2, 2010, grievant pursued the matter by filing an appeal with the agency. By letter dated December 10, 2010, the agency denied the appeal for lack of jurisdiction. The denial was based on Section 1109 of the Foreign Service Act of 1980, under which a grievance may not be filed if the grievant has "formally requested, prior to the filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive Order . . . and the matter has been carried to final decision under such provision on its merits or is still under consideration."

Grievant appealed the agency's decision to this Board on February 7, 2011. On February 28, the agency sent an e-mail to the Board acknowledging that the agency had

jurisdiction and asking that the matter be remanded for further investigation. The e-mail further stated that the agency anticipated that it would be able to issue a decision on the grievance within 60 days from the date of remand.

On March 3, 2011, grievant filed a motion objecting to the Department's request for a remand, citing the unnecessary delays that had already occurred, the ill effects she had suffered as a result, and statistics purportedly showing that in recent years the percentage of agency decisions that the Board has affirmed has declined substantially. She asked that, on remand, the agency only be given 30-days to respond to her appeal. On the same day the agency filed an e-mail response noting that it had already ruled on the merits of certain aspects of the grievance, asserting that the statistics grievant cited about the percentage of agency cases overturned by the Board are irrelevant, and stating that it would commit to issue a decision within 60 days. On March 7, 2011, the grievant sent an e-mail to the Board contending that the statistics she cited were relevant and that the agency should have realized before that her EEO case had been officially closed.

Based on the above representations by the parties and the evidence in the record, it is apparent that the agency did have jurisdiction and that the matter should be remanded. To avoid unnecessary delay, and because the matter was previously before the agency for a period of 99 days before it denied the appeal on jurisdictional grounds and, according to the agency, it has already ruled on the merits of some aspects of grievant's appeal, it would be appropriate to shorten the time frame for the agency's response to the appeal from the normal 90 days to a period of 60 days from the date of remand.

The Board will retain jurisdiction over this matter while the agency reaches its decision. In the meantime, the timeline for the appeal process is tolled pending the agency's issuance of its decision on the merits of the appeal.

Accordingly, it is ordered that the appeal in this matter shall be remanded to the agency and that it shall respond thereto within 60 days of the date of remand.