

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

Record of Proceeding
FSGB No. 2011-005

And

May 22, 2012

Department of State

**ORDER: MOTION FOR
RECONSIDERATION**

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

John M. Vittone

Board Members:

Kevin F. Herbert
Alfred O. Haynes

Special Assistant:

Joseph Pastic

Representative for the Grievant:

Pro se

Representative for the Department:

Melinda P. Chandler
Director, HR/G

Employee Exclusive Representative:

American Foreign Service Association

ORDER: MOTION FOR RECONSIDERATION

I. The Issue:

██████████ (grievant), a member of the Foreign Service with the Department of State (Department), filed a Request for Reconsideration of the Foreign Service Grievance Board's (FSGB) decision issued on January 9, 2012, denying her grievance appeal she had filed with the FSGB on February 7, 2011. This decision addresses grievant's Request for Reconsideration.

II. Background:

On September 2, 2010, grievant filed her initial grievance with the Department claiming that the department erred in denying her application to participate in the Voluntary Leave Transfer Program. The Department denied the grievance based on lack of jurisdiction. However, after the case was appealed to the Board, the department asked for the matter to be remanded for consideration of the merits. On May 9, 2011, the Department issued its decision, finding some merit in grievant's claim and awarded her a substantial portion of the remedial relief she requested.

Grievant appealed the Department's decision to the FSGB and, on January 9, 2012, the FSGB issued its decision, denying the grievance appeal. Thereafter, on March 29, 2012, grievant filed a Request for Reconsideration, which is the subject of this Order. On April 5, 2012, The Department submitted a brief email response asserting that there was no merit to the Request.

III. Discussion:

The decisions of the Board are final, subject only to judicial review, as provided in Section 1110 of the Foreign Service Act of 1980, as amended.¹ However, the Board's regulations² provide that the Board may reconsider any decision upon the presentation of newly discovered or previously unavailable material evidence. In addition, the Board has held that a motion to reconsider shall be based on an intervening change in controlling law, the availability of new evidence or the need to correct clear error or prevent manifest injustice. It has further stated that "[a]bsent extraordinary circumstances, revisiting the issues already addressed is not the purpose of a motion to reconsider. See FSGB Case No. 2009-024.

In this case, grievant has the burden to show that the evidence that is being relied upon was newly discovered or previously unavailable and relevant and material to the matter at issue, that there has been a intervening change in controlling law, or that there has been clear error or manifest injustice. We find that she has not demonstrated any of the prerequisites necessary to support a Motion for Reconsideration under the rules of the Board.

First, the supplementary information relied upon by grievant in her motion is not newly discovered. In fact the proffered information, consisting of a pay slip from December 2006, was always in grievant's possession and could have been presented during the course of the grievance submission. Even if she did not know the information was in her possession, she could have discovered it through the exercise of due diligence. Even if we were to rule that the pay slip is newly discovered information under the rules

¹ 22 U.S.C. 4137 and 3 FAM 4455 ©

² 22 C.F.R. 910.1

governing the Motion, we do not find that it would strengthen grievant's posture in the grievance given the prior findings we have made on the ROP.

In addition, grievant requests reconsideration of a series of issues and inferences she claims were not addressed or sufficiently addressed in the Board's original decision. These include the finding of a newly discovered material fact; the suggestion of a reasonable inference; and the identification of an issue not previously addressed. Grievant also seeks reconsideration in order to revise the decision to include a statement of reasons and correct various alleged errors; and to submit an amended request for relief to correct what had been prior misunderstandings. The Board has carefully considered each of grievant's requests for reconsideration, and we find that what the grievant seeks here is a general reconsideration of her grievance not based on information previously unavailable or newly discovered, but rather based on the original ROP and the findings of the Board in its decision of January 9, 2012. The "errors" that grievant identifies are not errors in interpretation of the regulations or laws that would merit reconsideration, and therefore we do not find that grievant has carried her burden to demonstrate the need to correct clear error or to prevent manifest injustice. None of the reasons for requesting reconsideration meets the criteria for obtaining reconsideration of a Board order or decision as established by regulation and Board precedent. The Board does not revisit its decisions absent the showing that the criteria for reconsideration have been satisfied. Grievant has failed to do so in this case. Accordingly, the request for reconsideration will be denied.

IV. Decision:

Grievant's request for reconsideration is denied.