

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

and

Department of State

Record of Proceedings
FSGB No. 2011-041

March 14, 2012

DECISION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Susan R. Winfield

Board Members:

Barbara C. Cummings
Kevin F. Herbert

Special Assistant

Jill E. Perry

Representative for the Grievant:

Pro se

Representative for the Department:

Melinda P. Chandler
Director, HR/G

Employee Exclusive Representative:

American Foreign Service Association

CASE SUMMARY

HELD: The Board found that grievant failed to meet his burden of proving that his curtailment from [REDACTED] was constructively involuntary or that the Department erred in breaking his linked assignment to [REDACTED]. The appeal is denied.

OVERVIEW

Grievant was assigned to [REDACTED] for an 18-month tour that began in January 2010. At that time, he was given a linked (preferential) assignment to [REDACTED] which would follow his tour in [REDACTED]. He claims that he was particularly interested in being posted to [REDACTED] for personal family reasons.

Grievant states that from the beginning of his [REDACTED] assignment, he was harassed by several other USG employees and that as a result of this treatment, on August 1, 2010, he submitted a request to his Career Development Officer (CDO) in Washington, D.C. to voluntarily curtail from [REDACTED]. The next day, he states, he reconsidered and advised his supervisor in [REDACTED] and the Information Management Officer in [REDACTED] that he wished to withdraw his curtailment request. He claims that they both told him that it was too late. Grievant did not communicate his intention to withdraw his curtailment request to his CDO. Instead, he began pursuing an assignment to [REDACTED]. Despite his CDO expressing uncertainty about his being able to maintain the linked assignment if he transferred out of [REDACTED], grievant claims that he believed he would be able to do so.

On August 5, 2010, grievant e-mailed his CDO to reaffirm his desire to "process" his curtailment request. Two days later, he experienced chest pains and was evacuated to [REDACTED] for treatment of a possible heart attack. A psychiatrist in [REDACTED] determined that grievant was suffering from situational anxiety and stress and could not return to [REDACTED]. Grievant was ordered to curtail from post under a Category 4 medical curtailment. He was returned to the United States on August 18.

On August 26, 2010, the Mid-Level Assignment Panel in the Office of Career Development and Assignments (HR/CDA) reviewed grievant's curtailment request and voted to break his linked assignment to [REDACTED] based on the fact that his curtailment was processed as a voluntary ("no-fault") one and he had completed only eight months of his 18-month tour in [REDACTED]. Grievant appealed the Panel's decision to the Director General (DG) who, on September 24, 2010, sustained the decision to break the linked assignment. Grievant was not assigned to [REDACTED]. He was offered an opportunity to bid on a position in [REDACTED] by the Department if he was willing to accept a one-year bridge assignment to [REDACTED]. Grievant declined the offer. In October 2010, grievant bid on several positions, with [REDACTED] as his seventh priority. He was assigned one of his top three choices to [REDACTED].

Grievant claims that his request to curtail was constructively an involuntary one brought

about by the harassment that he experienced at post. He argues that the constructive involuntary curtailment was the direct result of several procedural errors, including: the abuse and harassment he experienced in violation of regulations concerning proper treatment of employees; the wrongful advice from his superiors insisting that he could not rescind his request to curtail; and the failure of the Department to accord him the procedural due process rights of an involuntarily curtailment. He claims that these procedural errors caused the anxiety and stress that resulted in his medical evacuation and ultimately, the break in his linked assignment.

Grievant argues, alternatively, that the Category 4 curtailment order should have superseded his voluntary curtailment request and that the Department erred in interpreting its policies governing linked assignments. Further, grievant claims that on at least three other occasions, the Department did not break the linked assignment of employees who had been medically curtailed from the posts that gave rise to their linked assignments.

The Board concluded that grievant did not satisfy his burden of proving that his curtailment from [REDACTED] was constructively involuntary. Although he avers that he was harassed and mistreated by supervisors in [REDACTED] he provides no corroboration of his claim that this was the reason for his request to curtail. Moreover, his decision to rescind the request to curtail the next day (even if not successful) supports a conclusion that grievant was not operating under circumstances where he believed he had no alternative other than to curtail. Also, although the Department does not dispute that grievant's superiors rebuffed his efforts to rescind the curtailment, we concluded that curtailment was not the only alternative available to him. The applicable regulations do not authorize or empower superior officers to decide whether an employee will pursue or rescind a request to curtail. Grievant does not explain why he did not challenge his supervisors or why he did not notify his CDO of his decision to rescind the curtailment request.

The Board further concluded that despite the intention of the medical doctor to curtail grievant from [REDACTED] under a Category 4 medical curtailment, it appears that grievant's earlier no-fault request was processed or was being processed before the Category 4 medical order was received. We concluded that grievant did not meet his burden of proving that the Category 4 medical curtailment should have superceded a prior no-fault voluntary curtailment request. Moreover, grievant did not prove that there was any procedural error on the part of the Assignment Panel when it voted to break the linked assignment, given that grievant's curtailment was properly received as a voluntary no-fault request and because his linked assignment was preconditioned on a predecessor assignment in [REDACTED] or [REDACTED] only.

DECISION

I. GRIEVANCE

The grievant, [REDACTED] was assigned to [REDACTED] in January 2010 for 18-months with a follow-on "linked" assignment to [REDACTED] in July 2011. Grievant claims that as a result of being subjected to hostile and abusive treatment by several superior officers at post, he submitted a no-fault curtailment request after serving approximately eight months of this 18-month assignment. Grievant changed his mind the next day, advising two superior officers that he wished to remain in [REDACTED]. Both superiors, however, told him that it was "too late." Grievant did not pursue his decision to rescind by contacting his CDO or by otherwise questioning or challenging the statements of his superiors. Instead, he advised his CDO to process his request to curtail and informed him that he was bidding on an alternative assignment in [REDACTED]. Shortly thereafter, grievant was medically evacuated from post, suffering symptoms believed to be a heart attack. After he was evaluated, grievant was diagnosed with situational anxiety related to his post. His doctor issued a Category 4 medical curtailment and ordered grievant not to return to post.

Thereafter, on August 26, 2010, the Mid-Level Assignments Panel accepted grievant's no-fault curtailment request and voted to break his linked assignment to [REDACTED]. It does not appear that the assignments panel considered the medical curtailment order. On September 9, 2010, grievant appealed this decision to the Director General who, on September 24, 2010, upheld the assignment panel's decision.

[REDACTED] filed a grievance with the Department on February 18, 2011, claiming that the Department violated, misinterpreted, and misapplied applicable regulations and

published agency policies that affected the terms and conditions of his employment, in violation of 3 FAM 4412 (c) (2), when he was subjected to repeated harassment and abusive treatment without relief. He claimed that the abuse was so severe that it amounted to a constructive involuntary curtailment that was not processed properly. He also argued that the abuse brought about significant stress and anxiety that caused him to be Medevaced from post. He contended that his curtailment should have been reviewed on medical grounds, rather than as a no-fault request. Grievant also argued that there were other officers who were medically curtailed from tours in [REDACTED] and [REDACTED] whose linked assignments were not broken.

On June 29, 2011, the Department denied the grievance and provided notice of the right to appeal. On August 29, 2011, grievant appealed the Department's decision to this Board. In his appeal, grievant seeks the following relief:

- 1) Reinstatement of the linked assignment to [REDACTED]
- 2) In the alternative, an assignment to the next available RM/GFS [REDACTED] ISO position¹; and
- 3) All other appropriate relief deemed just and proper.

The agency responded to the appeal on November 16, 2011. The Record of Proceedings was closed on December 6, 2011.

II. BACKGROUND

[REDACTED] grievant, is an FS-03 Information Management Specialist (IMS) in the Foreign Service with the Department of State (Department, agency). He began an 18-month assignment to [REDACTED] in January 2010 as the Information Programs Officer. At that time, he was given a linked (preferential) follow-on assignment to [REDACTED] that was due to commence in July 2011, following

¹ Bureau of Resource Management, Global Financial Services Information Systems Officer.

completion of his tour in [REDACTED] Grievant was particularly interested in being posted to [REDACTED] because he wanted to join his young son and the son's mother who live in [REDACTED] Grievant claims that from his arrival at the [REDACTED] [REDACTED] in March 2010, he was subjected to a pattern of abusive treatment from most of the staff, including the Senior Civilian Representative to whom he reported, a political/economic officer, a TDY general services officer and an employee of the United States Agency for International Development (USAID), among others. Grievant described in detail two incidents that demonstrated the abusive treatment he states he endured. The first incident occurred in June 2010, when grievant claims a USAID officer abandoned him in an unsecured area outside of the camp, leaving him terrified and forcing him to find his way back on his own. The second incident occurred on July 6, 2010, when grievant claims he was assaulted by a DOS contractor, the Rule of Law officer, who lunged toward him and struck him in the shoulder during a heated discussion of escort requirements in secure access areas.

Grievant claims that he complained about the second incident to the Senior Civilian Representative, the Management Officer in [REDACTED] and the IMO² in [REDACTED] none of whom responded to his satisfaction. Grievant also complained about the second incident to the RSO³ in [REDACTED] and the visiting Undersecretary for Management, again without satisfaction.

On August 1, 2010, in what grievant describes as "a moment of frustration and slowly deteriorating health" caused by the unremitting hostile treatment he received at post, he submitted a request to his CDO in Washington, D.C., to curtail him voluntarily

² Information Management Officer.

³ Regional Security Officer.

from [REDACTED]. The next day, on August 2, 2010, he reconsidered his curtailment request, thinking that he was capable of completing his assignment in [REDACTED]. He then asked his supervisor in [REDACTED] and the IMO in [REDACTED] to rescind the curtailment request. He states that he was told that the Human Resources Officer (HRO) in [REDACTED] said it was too late and that he should prepare to leave post. On August 3 and 5, 2010, grievant contacted the [REDACTED] HRO directly to rescind his curtailment request. On both occasions, grievant states he was told that it was too late.

Grievant was then invited to bid on an onward assignment to [REDACTED]. On August 5, 2010, he submitted a bid on the [REDACTED] assignment and instructed his CDO to proceed with his voluntary curtailment request, despite the fact that the CDO expressed suspicion that this would break the linked assignment to [REDACTED]. Grievant claims that later that day when he discussed his curtailment with the IMO in [REDACTED] she said that she was not sure that the CDO's information was correct and thought that grievant might be able to maintain his linked assignment.

On or about August 7, 2010⁴, grievant experienced chest pains, blurred vision and muffled hearing. After initial examination at post, he was medically evacuated to [REDACTED] for treatment of a possible heart attack. In [REDACTED] the Regional Psychiatrist (RP) determined that grievant's symptoms were caused by extreme stress and, despite grievant's stated desire to return to post, on August 13, 2010, the RP instructed grievant's CDO to process a Category 4 medical curtailment from [REDACTED].

On August 17, 2010, grievant was informed that he did not get the [REDACTED] assignment, but that the regional bureau executive office would support his desire to

⁴ Grievant states that he became ill: "Five days after first attempting to rescind my voluntary curtailment request."

maintain the linked assignment to [REDACTED] "as best we can." On August 18, 2010, grievant returned to the U.S.

On August 26, 2010, the Mid-Level Assignment Panel of the Office of Career Development and Assignments (HR/CDA) reviewed grievant's no-fault request to curtail and voted to break his linked assignment to [REDACTED]. Grievant appealed this decision to the Director General (DG) who sustained it on September 24, 2010.⁵

During the next assignment negotiations in October 2010, the Department offered grievant a one-year bridge assignment to [REDACTED] to assist him in timing his availability for the [REDACTED] position opening in July 2011. Grievant did not accept this offer. Instead, he bid directly on the [REDACTED] position on October 15, 2010; however, when he listed his top three assignment choices on October 20, 2010, he failed to list [REDACTED] as one of them. Grievant's top three choices were all in [REDACTED] [REDACTED] and two [REDACTED] postings. His [REDACTED] bid was listed in the seventh position. Grievant was subsequently assigned to a position at Embassy [REDACTED] that commenced in January 2011.

III. POSITIONS OF THE PARTIES

GRIEVANT

Grievant argues that the Department violated, misinterpreted and misapplied applicable regulations and published agency policies when his superiors subjected him to an intense and regular pattern of arbitrary and abusive treatment at post and when others to whom he reported the abuse failed to respond appropriately to his complaints.

Grievant claims that in subjecting him to a hostile work environment, post personnel violated the Merit System principles that require high standards of integrity and conduct. He maintains that because his work environment became "unbearable" and because post

⁵ The decision letter was issued by the Acting Director General, Steven Browning.

supervisors ignored his complaints, his request to curtail from [REDACTED] was in effect a constructive involuntary curtailment requiring that special procedures be followed.

Grievant also argues that the Department violated, misinterpreted and misapplied additional regulations (3 FAM 2443.2 and 3 FAM 2443.3) when it refused to rescind his request for voluntary curtailment. He argues that but for the involuntary curtailment and the refusal to rescind it, he would not have had his follow-on assignment to [REDACTED] broken.

Grievant further contends that his curtailment request was improperly processed as a no-fault (voluntary) curtailment, rather than a medically advised Category 4 curtailment, which was also a violation of Department regulations and policies. Finally, grievant argues that he has been denied any information on the decision-making process of the Mid-Level Assignments Panel when it decided to break his linked assignment to [REDACTED]. He contends that under applicable regulations and policies, an early curtailment from a predecessor assignment does not automatically result in a decision to break a follow-on linked assignment; thus, the Assignments Panel violated these regulations and policies when it decided to break his linked assignment.

THE DEPARTMENT

In response to Grievant's allegations that he was subjected to a pattern of arbitrary and abusive treatment at post and that his complaints were not addressed appropriately, the Department maintains that this was not the first incident in grievant's career in which he was unable to establish a productive working relationship with his counterparts. The Department refers to a 2005-2006 Employee Evaluation Report (EER) in which grievant's Rating Officer commented on his "sometimes abrasive approach to local staff

and other colleagues." The Department also maintains that tensions often "run high" in posts in war zones and that this is one of the rationales for allowing "no fault" curtailments from such posts.⁶ Although the Department does not challenge grievant's assertions about the abuse he claims he suffered, it argues, without more, that grievant's curtailment was voluntary and was not rendered constructively involuntary because of any abuse he experienced. The Department denies that the interpersonal conflicts grievant had were violations of merit system principles that pertain to "personnel actions." The Department maintains that both the Assignments Panel and the Acting Director General gave careful consideration to grievant's circumstances when they reviewed the assignment action and grievant's appeal. The Department argues further that these reviews met the standards required by merit system principles.

The Department contends that because the instant claim challenges an assignment, it is not grievable absent a violation of law or regulation. The Department maintains that post personnel received and processed grievant's request for a voluntary curtailment from [REDACTED] before they received instructions from the Regional Psychiatrist in [REDACTED] to process a medical Category 4 curtailment. The subsequent medical orders did not void grievant's prior voluntary curtailment request which, according to the Department, was already two weeks in progress. Moreover, the agency maintains that regardless of whether the assignment was processed as a medical

⁶ Under 3 FAM 2443.1:

An employee assigned abroad may request [a voluntary] curtailment of his or her tour of duty for any reason. The employee should submit a written request for curtailment that explains the reasons for the request to the appropriate assignment panel through his or her counseling and assignment officer. Post management must state its support for or opposition to the employee's request.

By comparison, the Department points out that a "no fault" curtailment is "unique to [REDACTED] posts" because of the "hardships and stress inherent to [REDACTED] assignments." It appears that an employee need not specify the reasons for requesting a "no-fault" curtailment from an [REDACTED] assignment.

curtailment or a voluntary curtailment, the effect was the same: grievant's curtailment significantly reduced the period he spent at the post that gave rise to the linked follow-on assignment. The Department argues that it was within the Assignment Panel's discretion to break grievant's linked assignment and that nothing in either of the two applicable policy cables (ALDACs⁷) guaranteed that a medical curtailment would preserve a linked assignment.

The Department contends that grievant is himself responsible for the fact that he will likely not have an assignment in [REDACTED]. The Department cites numerous efforts made by assignments personnel to assist grievant in securing a satisfactory onward assignment, including efforts to make it possible for him to bid on positions in [REDACTED]. The Department points out that it was grievant's clearly voluntary choices that prevented him from receiving an assignment to [REDACTED] including his last bid in October 2010, in which he listed [REDACTED] as his seventh choice, rather than one of his top three.

V. DISCUSSION AND FINDINGS

In all grievances, other than those involving disciplinary actions, the grievant has the burden to show, by a preponderance of the evidence, that his grievance is meritorious. 22 CFR 905.1(a). Grievant makes two basic claims: first, that his curtailment from [REDACTED] was constructively involuntary. He argues that he was the victim of severely abusive treatment at post and a failure of post supervisors to take any action in response to his complaints, which forced him to request a curtailment. He also argues that post supervisors improperly denied his efforts to rescind the curtailment request. Secondly, he contends that the Department, via the assignments process, committed procedural errors both by treating his curtailment as voluntary instead of medical and by breaking his

⁷ ALDAC is an acronym for All Diplomatic and Consular Posts.

linked, onward assignment to [REDACTED]

In support of his arguments, grievant describes numerous experiences of alleged harassment and abuse by his supervisors at post. We acknowledge grievant's claims about the hostilities he experienced at post, and we note that the Department does not contest his assertions. For example, the Department did not submit any denials by the supervisors who grievant accused of harassing him. However, even assuming that these events occurred as grievant avers and that he experienced a hostile work environment created by abusive supervisors, we do not conclude that grievant has met his burden of establishing that harassment was the reason for his curtailment from [REDACTED]. We note that grievant presents no evidence, other than his bare assertions, as to the reasons why he initially requested to curtail. For example, he does not provide any emails or other correspondence between himself and his CDO corroborating his claims that harassment was the basis for his decision. Nor does he provide statements from coworkers confirming that he was the victim or target of abuse at post. We recognize that because this was a "no-fault" request to curtail from an [REDACTED] assignment, grievant may not have been required to state his reasons for the curtailment request in writing. We simply note that whatever he may have submitted in support of his request to curtail, he has not provided us with a copy, or even a description, of it to corroborate his reasons for the curtailment request.

In order to establish that his request to curtail was constructively involuntary because of abusive behavior by his superiors, grievant would have to prove that his request to curtail was the product of coercion or duress. As this Board explained in FSGB Case No. 2006-056 (August 28, 2007), "In deciding whether the [employee's

decision] was voluntary, all surrounding circumstances must be examined to test the ability of the employee to exercise free choice. At that, the doctrine of coercive voluntariness is a narrow one.”

Proof of coercion or duress, in turn, requires evidence that: (1) grievant involuntarily accepted the terms of curtailment established by the agency; (2) the circumstances permitted no other realistic alternative to his request to curtail; and (3) said circumstances were the result of improper acts by the agency. *See, Staats v. USPS*, 99 F.3d 1120, 1124 (Fed. Cir. 1996); *Schultz v. United States Navy* 810 F.2d 1133, 1136 (Fed. Cir. 1987); FSGB Case No. 2007-007 (August 21, 2009); FSGB Case No. 2006-056 (August 28, 2007); FSGB Case No. 2000-068 (November 19, 2001); *Heining v. General Services Administration*, 68 MSPR 513, 517-518 (1995).

Here, we do not find that the record supports the conclusion that the agency dictated the terms of grievant’s curtailment request, even accepting as true his claims of abusive treatment. Grievant does not allege that he was threatened with involuntary curtailment and was offered an opportunity to curtail voluntarily as the only alternative. For example, he does not assert that others urged him to curtail from post against his wishes. He concedes that the idea to curtail was his own solution to the problems he encountered. Indeed, proof that curtailment was not grievant’s “only alternative,” is the fact that the very next day, he changed his mind and decided that he “would work through the difficulties.” Thus, regardless of the initial impetus for the curtailment request, grievant’s almost immediate effort to rescind it supports our conclusion that he did not find himself without alternatives.

Grievant states:

. . . in a moment of frustration and slowly deteriorating health, I submitted a request to my CDO, ██████████ that I be permitted to voluntarily curtail from post. *After I had time to reflect on this decision, I thought the better of the request, realizing that I was equal to the task of the hardships in ██████████* One day after making my initial impulsive request to curtail, . . . I informed SCR ██████████ ██████████ in a face-to-face meeting and IMO ██████████ ██████████ via a telephone call and later e-mail, that I wished to rescind my request for voluntary curtailment.

(Emphasis added.) Because he described himself as “equal to the task” and because he believed that he had the right to “think better of it,” grievant establishes that he was not without alternatives and, therefore, was not in an involuntary situation.

The question then arises whether the statements of grievant’s supervisors rendered his curtailment involuntary. In other words, we ask whether the supervisors’ refusals to accept grievant’s efforts to rescind his curtailment request amounted to an involuntary curtailment. We acknowledge that grievant’s supervisors were both adamant and wrong when they instructed him that it was too late for him to rescind his request to curtail. The applicable regulations provide for post supervisors to oppose or support a voluntary request to curtail, 3 FAM 2443.1. However, these personnel are not empowered to determine or control a rescission of a voluntary curtailment request. The FAM makes clear that the choice to request to voluntarily curtail belongs to the employee, as effectuated by his CDO or assignment officer. We conclude that this implicitly gives the employee the exclusive right to request to rescind his/her curtailment request.

██████████ was grievant’s seventh Foreign Service assignment and, as such, he should have been completely aware of the role of CDOs and the interaction between CDOs and their clients. Because grievant knew, or should have known, of his right to rescind his

curtailment request, we conclude that grievant was not without alternatives even when his supervisors resisted his efforts to rescind the curtailment. We see no impediment to him contacting his CDO and advising him that he wished to rescind his request to process a no-fault curtailment.

We conclude also that grievant was not under duress when he bid on the new position in [REDACTED]. Rather, we conclude that grievant was asked to bid on a new position in [REDACTED] which he elected to do. On August 5, grievant wrote to his CDO: “[REDACTED] Please process the curtailment. I have bid on the IMS⁸ [REDACTED] job . . . and will complete my tour there.” On the same date, grievant wrote to [REDACTED] in the [REDACTED] Bureau, “By now I’m guessing you know I’ve requested a curtailment from [REDACTED]. We also recognize that grievant was on notice that the linked assignment might be in jeopardy if he curtailed. He states that his CDO “shared his suspicion that my linked assignment would be broken if I was curtailed from [REDACTED] and reassigned in [REDACTED]”¹⁰

In sum, we conclude, on the facts presented, that grievant requested a no-fault (voluntary) curtailment from [REDACTED] tried to rescind it, withdrew the rescission effort, found another assignment and elected to proceed with a voluntary curtailment.¹¹

A curtailment is an assignment action and therefore cannot be grieved unless it is contrary to law or regulation. 22 U.S. Code § 4131 (b) (1). We find that grievant has not met his burden of proving that his curtailment was processed contrary to law or

⁸ Information Management Specialist.

⁹ [REDACTED]

¹⁰ Grievant claims that the IMO in [REDACTED] gave a different opinion that expressed no more than a “hope” that the linked assignment would not be broken if grievant elected to curtail voluntarily.

¹¹ Because we find that grievant’s request was not involuntary, we do not discuss the requirements for due process under 3 FAM 2443.2 and 2443.3.

regulation. He maintains that the Department erred in processing his curtailment as a voluntary "no fault" one, rather than as a medical curtailment.

Grievant does not cite any authority for his proposition that the Department was obligated to substitute his doctor's medical curtailment order for the voluntary curtailment request that was already being processed. He also cites no authority for the priority that should be assigned by the agency to a medical curtailment order versus a no-fault request. By the time of the doctor's recommendation, grievant's voluntary request was already two weeks in progress at the Office of Career Development and Assignments. We are unaware of any regulatory priority for a medical curtailment order to be processed before a previously filed no-fault curtailment.

Grievant cites three examples of officers who were allowed to retain their linked assignments after they were medically curtailed from their posts. In each of these circumstances, the officer was curtailed involuntarily under a medical Category 5 recommendation.¹² However, in none of the cases cited by grievant did the employee submit a request to voluntarily curtail that was already being processed by the Office of Career Development and Assignments by the time of the medical recommendation. None of these examples cited by grievant, then, is controlling here.¹³

¹² Under 16 FAM 211.2, a Class 4 clearance is no longer issued. It has been incorporated into another clearance category. At the time of the events in this case, a category 4 medical curtailment order was "[i]ssued to an individual with a medical condition that would pose a significant risk to the health or safety of the individual or others if the individual were assigned to work at one or more posts abroad, or would create an undue burden for a post." A category 4 curtailment prevented an officer from remaining at a specific post. Under this same regulation, a category 5 medical curtailment order is "issued to all who have a medical condition which is incapacitating or for which specialized medical care is best obtained in the United States." A category 5 curtailment prevents an officer from remaining in any post outside the United States.

¹³ We also note that we have no information about the medical conditions that caused the three employees to be curtailed under a category 5. We also do not have information about when and whether their conditions changed to permit them to continue with their linked assignments. Grievant does not establish any of the underlying facts that explain the circumstances facing the three employees when their linked assignments were reviewed.

Grievant next claims that the Department erred in its interpretation of the ALDACs that provide the policy governing linked assignments. With regard to curtailments, the applicable ALDAC that was in effect at the time stated:

2009 STATE 63250

Para. 18. Bidders who are paneled into linked assignments will be expected to complete their tours in [REDACTED] or [REDACTED] in order for timing to linked assignments to work. *Curtailments that significantly reduce the period of [REDACTED] or [REDACTED] service may lead to the breaking of onward links.*

(Emphasis added.) A subsequent ALDAC, applicable to 2011 assignments, is even clearer, even though we recognize that it does not apply to this particular linked assignment. It provides:

2010 STATE 70609

Para. 11. Bidders paneled into linked assignments will be expected to complete at least ten months of their one-year tours in [REDACTED] to remain eligible for their linked assignments. Curtailments that significantly reduce the period of [REDACTED] service may lead to the breaking of onward links.

(Emphasis added.) In both ALDACs, it is clear that Department policy with regard to linked assignments is that officers are expected to complete the assignment to which a follow-on assignment is linked. Moreover, both cables specify that curtailments that significantly reduce the period of service in [REDACTED] or [REDACTED] (or in [REDACTED] for the 2011 assignment) "*may lead to the breaking of onward links.*" Grievant completed eight months of an 18-month assignment. His curtailment significantly reduced his period of service at post. The record supports a conclusion that the Mid-Level Assignments Panel considered all of the information (as presented by grievant's CDO) and determined that his request to curtail was voluntary and therefore grievant was disqualified from his

linked assignment. This decision was consistent with the applicable policy and does not appear to be a violation of law, policy, or regulation.

Finally, what is most telling in this record is evidence that despite the curtailment and the breaking of the linked assignment, the Department made an effort to allow grievant an opportunity to bid on a position in [REDACTED] by arranging a one-year bridge assignment to [REDACTED]. Grievant declined this request. Then, when he submitted his updated bid-list on October 15, 2010, he bid on the position in [REDACTED] however, on October 20, 2010, he bid on several additional positions, including: [REDACTED] (two positions), [REDACTED]. On October 27, grievant then bid on two positions in [REDACTED] and one in [REDACTED]. Thus, grievant's assignment to a place other than [REDACTED] is in part the product of his choices, rather than a violation by the Department of any law, regulation, policy, or procedure.

VI. DECISION

The grievance appeal is denied in its entirety.

For the Foreign Service Grievance Board:



Susan R. Winfield
Presiding Member



Barbara C. Cummings
Member



Kevin F. Herbert
Member