

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between

██████████

Grievant

And

Department of State

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Record of Proceedings

FSGB No. 2011-055

December 1, 2014

**ORDER: THIRD MOTION FOR  
RECONSIDERATION**

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Susan R. Winfield

Board Member:

Harlan F. Rosacker

Special Assistant:

Lisa K. Bucher

Representative for the Grievant:

Self

Representative for the Agency:

Thomas M. Lipovski  
Attorney Advisor, HR/G

Employee Exclusive Representative:

American Foreign Service Association

## **I. ISSUE**

This order addresses a third Motion for Reconsideration (MFR) filed by [REDACTED] (grievant) challenging a final decision by the Foreign Service Grievance Board (FSGB, Board), dated January 24, 2013 and two previous orders denying his first and second MFRs, dated September 9, 2013 and June 12, 2014 respectively. In the final decision, the Board concluded that an Inspection Evaluation Report (IER) on grievant's performance as Consul General in [REDACTED] was conducted fairly and in accordance with agency regulatory procedures. The Board determined that one statement in the IER was unfounded and not supported by adequate corroboration and therefore should be redacted. The Board otherwise denied the grievance, concluding that all other negative statements in the IER were adequately corroborated by evidence provided by identified sources.

## **II. BACKGROUND**

The Board described the background of this original grievance in detail in our decision of January 24, 2013 and in our orders on his two previous MFRs. We will not repeat that description here.

After issuance of the final decision in this grievance, the Board reviewed its original decision twice, in response to grievant's claims in two MFRs, and denied both motions in Orders dated September 9, 2013 and June 12, 2014. Grievant filed the instant motion on September 2, 2014, asking again for reconsideration. The Department of State (Department, agency) filed an opposition to the instant motion on September 16, 2014 and grievant filed a rebuttal on October 10, 2014. The Record of Proceedings (ROP) is closed with the issuance of this Order. After considering grievant's third MFR filed on September 2, 2014, the Board concludes that it should also be denied for reasons that follow.

### **III. POSITIONS OF THE PARTIES**

#### **A. THE GRIEVANT**

In the instant motion, grievant asserts that the Board's Order of June 12, 2014 resolving his second MFR was a "manifest and egregious injustice," in that members of the panel repeatedly "lied" about what Department of State (Department, agency) witnesses had said and knew full well that he should win his case on its merits. He avers that the Board improperly paraphrased witnesses' statements in a false and prejudicial way; there was no record support for many of the Board's conclusions; and the Board denied him a fair opportunity to present his arguments and evidence when it closed the Record of Proceedings (ROP) upon the issuance of its June 12, 2014 Order: MFR2. Grievant also argues that the IER team was prejudiced against him throughout its inspection and the DCM was likewise biased against him when he failed to properly inform him about and counsel him regarding criticisms in the IER. Grievant insists that all of the negative comments in the IER were the product of a very few employees whom he had counseled. He offers and reargues much of the same evidence that he submitted in support of his claims in the grievance appeal and in the two previous MFRs.

#### **B. THE AGENCY**

In opposition to this motion, the Department avers that grievant has not established any of the grounds for reconsideration that are recognized by the Board. The Department asserts that grievant

has not argued that he should be permitted to introduce newly discovered or previously unavailable evidence, [and he] has not shown that there is any need to correct clear error or prevent manifest injustice.

The agency notes that it has already submitted extensive briefing for the record and will not submit anything additional, unless requested to do so by the Board. The Department contends

that the Board's decision was "well supported by the evidence of record" and that this third MFR should be denied.

#### **IV. DISCUSSION**

Decisions of this Board are intended to be final, subject only to judicial review, as provided in Section 1110 of the Foreign Service Act of 1980, as amended. 22 U.S.C. § 4137. *See also*, 3 FAM 4455(c). The Board has limited discretion to reconsider a final decision upon the presentation of newly discovered or previously unavailable material evidence. *See*, 22 U.S.C. § 4136(9) and 22 CFR § 910.1. It has been the Board's practice to follow an expanded scope of review of motions for reconsideration based on statutory and regulatory standards derived from case law. Under this expanded review:

A motion to reconsider shall be based on (1) an intervening change in controlling law, (2) availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice. . . . Absent extraordinary circumstances, revisiting the issues already addressed is not the purpose of a motion to reconsider.

*See*, FSGB Case No. 2013-005R (Order dated September 25, 2014) at p. 5 and FSGB Case No. 2003-013 (Order dated March 12, 2013).

In FSGB Case No. 2002-043 (May 17, 2004), citing *White v. N.H. Dept. of Env. Security*, 455 U.S. 445, 451 (1982), the Board ruled that a motion for reconsideration is not intended as a forum to rehash old arguments, or to make new arguments that might have been made previously:

[R]econsideration is limited to matters encompassed in the decision on the merits; not what might have been argued.

Declining to exercise discretionary authority in the cited case, the Board concluded further, citing *Long v. U.S.P.S.*, 46 MSPR 93 (1990):

Exercise of that discretion . . . is “required only in ‘extraordinary circumstances’ such as clear and material error . . . likely to change substantially the posture of the case.”

FSGB Case No. 2002-043, *supra*, at 6-7.

In the instant motion, grievant reargues the same issues that he presented in his grievance appeal and in both prior motions for reconsideration, which the Board carefully and thoroughly took into account in its final decision and both orders on the MFRs. Every issue that grievant raises in the instant motion, he has either argued before or he could have argued before. He presents no new evidence. He does not establish clear error or manifest injustice.

The issues that grievant reiterates include his claims that: he was not provided timely notification of his alleged shortcomings or a meaningful opportunity to address them; none of the criticisms was accurate – he was very attentive to morale issues at the post; he was a good leader and manager; the employees who criticized him were retaliating against him because he had constructively counseled them; the OIG team was prejudiced against him; the OIG team based its conclusions on an insufficient sampling of post employees; and the IER was not a “standard” IER, but rather one that was intended to correct a highly positive EER he had just received from the DCM and Ambassador.

Grievant presents an all-out attack on members of the Board, members of the IER team and his DCM, arguing that at every turn, everyone who was in a position to either evaluate his performance or evaluate the IER intentionally violated his rights and offered him an unfair, biased assessment. Despite his detailed critique of every action taken by everyone involved in this record and his repeated explanations and excuses for every criticism, we stand by our conclusions in the final decision on appeal: (1) that the IER process was fair and unbiased; (2) each critical comment in the IER, save the one that was redacted, was accurately supported by

credible evidence and statements from identified employees; and (3) “the record is clear that grievant was, or should have been, fully aware of the problems that were reported in the IER.” We also remain satisfied that our consideration of the grievance and of each of the MFRs, including the instant motion, was thorough, careful and correct. We find no clear error or manifest injustice in this record of proceedings.

It is very clear that grievant does not agree with the negative assessments by the OIG team, or with the Board’s findings in our decision and in our orders. However, the fact that one party disagrees with the outcome of the Board’s decisions and orders is insufficient cause for reconsideration.

Grievant also claims that the Board denied him an opportunity to present additional evidence when it closed the record upon issuing its June 12, 2014 order on the second MFR. It is standard Board practice for the grievant to make the last submission and thereby to “have the last word.” In the last MFR and in this instance, grievant presented his rebuttal as the final submission from the parties that was taken into account by the Board in its orders. Grievant does not explain how closing the ROP at the last moment – with the issuance of the order – in any way deprived him of an opportunity to fully present his evidence and arguments.

## **V. CONCLUSION**

The instant motion for reconsideration is denied.

**For the Foreign Service Grievance Board:**



Susan R. Winfield  
Presiding Member



Harlan F. Rosacker  
Member