

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between

██████████  
Grievant

And

Department of State

Record of Proceedings  
FSGB Case No. 2011-062

May 11, 2012

**DECISION**

EXCISION

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For the Foreign Service Grievance Board:

Presiding Member:

John M. Vittone

Board Members:

Kevin F. Herbert  
Jeanne L. Schulz

Special Assistant:

Joseph Pastic

Representative for the Grievant:

*Pro se*

Representative for the Agency:

Melinda Chandler  
Chief, HR/G

Employee Exclusive Representative:

American Foreign Service Association

## CASE SUMMARY

**Held:** Grievant failed to demonstrate by the preponderance of evidence that the Department violated law, regulation, or collective bargaining agreement, or abused its discretion in establishing grievant's entry level salary.

## OVERVIEW

██████████ joined the Department of State (Department, agency) in February 2010. As part of the application process she had submitted her resume to the Registrar's Office for calculation of her entry level grade and step. She accepted the position and salary offered and at the same time, filed an appeal with the Salary Review Committee (SRC), asking for reconsideration of credit not given for various work experiences. She also pointed out mathematical errors in the computation made by the Department which she believed negatively impacted the work credit she received. The SRC determined that the grade, step and salary offered were correct.

She filed an agency level grievance based on alleged errors made in calculating her creditable work experience and claimed that the Department had provided inadequate guidance on the nature of what she needed to provide to the Registrar and the SRC to make her case. The Department denied the grievance on grounds that sufficient information had been available to her at the time she applied and later when she appealed her grade and step to the SRC, and that some of her prior employment did not meet the definition of qualifying experience.

Grievant appealed to this Board, reiterating her view that she was not given sufficient guidance on how to document a salary dispute with the SRC. She contended that with sufficient guidance, she would have provided more complete information that would have enabled her to establish that a Swim Team Head Coach position she had held was managerial and professional in nature, entitling her to more credit based on her experience. This would have enabled her to enter the Foreign Service at a higher pay level. In her view, information on the swim team position she submitted with her grievance, a position description, and her supplemental submission, a letter from her former Swim Team Director, providing additional detail relating to the head coach position, should be considered by the Board due to the insufficient guidance provided by the Department.

The Board determined that grievant had sufficient guidance to allow her to fully respond to the Department's requests for information from the outset and through the offer of employment letter, and that materials submitted after the SRC determination should not be considered by the Board.

The grievance appeal was denied.

## DECISION

### I. THE GRIEVANCE

██████████ (grievant) contends that her experience as head coach for a swim team should be considered managerial in nature, “like any Head Coach’s position,” and that the time she worked in that position, along with her Bachelor’s and Master’s degrees and experience would put her entry grade at the FP-04, Step 5 level. In later submissions she dropped all her other earlier asserted claims.<sup>1</sup>

For relief grievant requested that: she be credited for swim team coach work, which would bring her salary level to at least FS-04 Step 5; any adjusted grade and step be backdated to her date of entry, with back pay and interest; and, any additional relief deemed just and proper.

### II. BACKGROUND

On June 15, 2009, grievant received a letter from the department with a conditional appointment offer. She was informed that a final salary determination would be made after a confirmed appointment offer was made. The letter stated “It is very important that you provide as much detail as possible about your previous employment to assist us in evaluating prior experience and consequently determining your initial salary.” An offer of employment was made on January 28, 2010 and included reference to Standard Operating Procedure (SOP) 134A for information on the salary determination process. Grievant was requested to provide an updated resume to enable the Registrar’s Office to determine her final grade, step and salary and

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<sup>1</sup> In her Rebuttal of January 31, 2012 (at page 5), grievant stated that:

Although the Agency’s response to my appeal discusses several other periods of employment during my varied work history both before and after receiving my Bachelor’s degree in May 2004, as well as three arithmetical errors in the initial H.R. calculation from February 8, 2010, I am not addressing these issues, since none of these in aggregate would add sufficient extra months to raise my creditable time to 7 years ( and thus these small variations and errors would, in aggregate, not be enough to allow me to receive one extra step to FP-04 Step 5 to Step 6). )

to send an appointment letter and related documents. Grievant submitted her updated resume on January 29, 2010, and resubmitted it on February 1 and again on February 3, with revisions. By letter dated February 8, 2010, grievant received an offer of appointment as an FP-05 Step 10, Foreign Service Officer Candidate.

On February 9 and 10, 2010 grievant sent inquiries to the Registrar's Office asking how her grade and step determinations had been made and requesting additional credit for her work experience. She was directed to follow the procedures for requesting a salary review, referenced in her appointment letter, SOP 134A. This SOP in turn referred to SOP 134D, dealing with Salary Review Procedures. On February 12, 2010 grievant signed an agreement to join the Foreign Service, annotating it to reflect she had submitted a salary review request that same date to the Salary Review Committee (SRC). The SRC conducted a review based on her last resume, submitted on February 3, 2010, and found no basis for changing the FP-05 Step 10 appointment level. Grievant entered on duty as a Foreign Service Officer candidate on March 28, 2010.

On March 18, 2011, she filed an agency-level grievance claiming that in setting her salary, the Department did not properly credit qualifying work experiences. The Department denied the grievance on September 30, 2011, referencing Section 404 of the Foreign Service Act which provides discretionary authority to the Secretary of State for assignment of Foreign Service personnel to "appropriate salary classes in the Foreign Service Schedule". It also cited 3 FAM 312.1-1, which sets the criteria used for establishing entry-level salaries, quoting language which provides that the Board of Examiners for the Foreign Service determines the appropriate class and salary rate, considering the officer's qualifications, experience and education. The Department found that the position grievant occupied as Head Coach of the [REDACTED] [REDACTED] Swim Team, was not considered by the Registrar or the SRC to be

on balance a “professional position” and therefore not a qualifying experience permitting a higher grade/step.

On November 30, 2011, grievant appealed to this Board arguing that guidance provided by the Department on how to document a dispute with the SRC on entry level salaries was “limited at best.” She attached her swim coach job description to the appeal. The Department responded, arguing that there was no merit to that contention. On December 19, 2011, grievant filed her supplemental submission, a letter from her former Team Director, which she stated clarified her employment status with the team and verified that her position was managerial, therefore qualifying her for additional work experience credit.

The Department responded on January 17, 2012. On the central issue of work performed as head coach, the Department limited its arguments to the information grievant had provided in her first resume and her expanded resume submission to the SRC, which contained a fuller description of her past responsibilities. The Department found grievant’s position did not meet the definition of “qualifying experience” in the view of the Registrar or SRC, and denied that she had received insufficient guidance about the documentation required to dispute her entry salary.

Grievant filed a rebuttal on January 31, 2012 and the Record of Proceedings was closed on April 20, 2012.

### **III. POSITION OF THE PARTIES**

#### **THE GRIEVANT**

Grievant was surprised to learn that her salary level was set at FS-05 Step 10 by the Registrar’s Office. Her own calculations had arrived at the higher FS-04 Step 5 or possibly Step 6. At her request, HR provided a breakdown of jobs credited. She requested reconsideration, with particular emphasis on her head coach position and stated:

I was concerned that this position was discounted simply because it involves a sport, perhaps ignoring the fact that it was a huge managerial endeavor involving tremendous responsibility: I was directly responsible for managing over 200 people.

The Registrar refused to consider points raised in her queries and referred her to the salary review appeal process. The SRC denied her appeal, stating it did not consider her work as Head Swim Team Coach to meet the definition of qualifying experience. Grievant states: “I cannot fathom why this job (Head Coach) was discounted. The fact that this job was not counted was the main reason for my salary review and is the main reason for this grievance letter.”

Grievant claims that the only extra documentation sought in her offer of appointment letter gave little detail on what was expected/needed from her but included a request for an updated resume that provides “a description of your position responsibilities that *concisely* (emphasis added) explains the scope of work.” Grievant claimed that SOP 134A, referenced in her offer letter, was an internal document for use by HR Specialists and not available to applicants. Later she claimed that nowhere does the SOP explain to candidates that the employee’s primary duty must have been work requiring advanced knowledge, defined as work which is predominantly intellectual in character, requiring consistent exercise of discretion and judgment. It was never made clear to her what detail or content was required to have work experience deemed qualifying. She argues she was following the appointment offer letter’s instructions for a “concise description” in her updated resume and that it was only after the SRC had made its decision that she became aware of what she might have been able to provide.

Grievant argues that the SRC incorrectly assessed her experience and qualifications. It is not a question of whether the experts in the Registrar’s Office or the SRC abused their discretion, “the question is whether my qualifications and expertise entitle me to a higher entry grade and step.” She maintains that due to inadequate guidance, her grievance appeal and supplemental

submission (with the position description and letter from her former team director, providing additional details on the nature of her position as Head Swim Team Coach) is information that should be considered by the Board in adjudicating her salary level grievance.

The agency's assertion that she had ample information from the employment offer letter of February 8, 2010 and SOP 134A to guide her submission of additional material to the SRC with as much detail as possible, is wrong. She concedes that the offer letter did include a link to SOP 134A (salary standards for entry levels), but the only direction given on appeals to the SRA was in the final paragraph on page 2 of the letter. SOP 134A only stated that "Salary review/appeal procedures are covered by SOP 134D," but contained no information on how to access that document.

Since she did not have access to the SOP at the time of her SRC appeal she relied on a paragraph in the Department's offer letter:

The request should provide any new information that the Registrar's Office did not have at the time the initial determination was made, but note that information concerning work experience that substantially changes information provided in the initial application that you signed will not be considered. The request must include appropriate documentation, cite the relevant section of the applicable SOP . . . and explain specifically why you believe the Registrar erred in determining the correct salary.

Grievant contends that since she was unaware of the information contained in SOP 134D at the time she submitted her salary level appeal to the SRC, it is appropriate for her to be allowed to provide additional information in her grievance and appeal to support her contention that her coaching experience was "qualifying". As she sees it, her position as head coach was not properly evaluated by the Registrar and SRC because she did not know when she submitted her claims to them that a complete job description was required. She argues that her position as head coach meets all the requirements and more to support a claim of 16 months of qualifying

experience. Her supplemental submission to this Board included a letter from her former Team Director, providing her views on the nature of the head coaching position and describing in part the managerial responsibilities inherent in the position.

Grievant takes issue with the Department's reference to a single sentence in its "conditional offer letter" of June 2009: "It is very important that you provide as much detail as possible about your previous employment . . . ." She argues that this was over nine months before her final offer, was not mentioned in any subsequent communication or in SOP 134A, and she had no reason to think that her submissions to the SRC had been "inadequate." In fact, the Registrar's office specifically instructed in its January 28, 2010 appointment offer letter to provide an updated resume that "concisely" explained her position responsibilities and scope of work. She provided as much detail as possible at that time, given the constraints imposed.

Grievant concludes that counting her coaching position as managerial experience, her total period credited would amount to approximately 76.3 months, or 6.35 years. With a Master's degree and 6 years experience, her entry grade should be FP-04, Step 5."

### **THE DEPARTMENT**

The Department points out that SOP 134A describes the process through which a Foreign Service Officer Career Candidate's entry salary is determined. It maintains that grievant has not demonstrated that it violated law, regulation or collective bargaining agreement in setting her entry level grade and step, and that it cannot consider supporting documentation submitted for the first time as part of a grievance.

Grievant was informed in the Department's June 15, 2009 conditional offer of appointment letter that: "[a] final salary determination will be made after a confirmed appointment offer is made. It is very important that you provide as much detail as possible about

your previous employment to assist us in evaluating prior experience and consequently determining your initial salary”. On January 28, 2010 grievant’s offer of appointment letter included a reference to SOP 134A, which explains the salary determination process. Grievant was instructed to submit an updated resume to enable the Registrar’s Office to determine her appropriate grade, step and salary. Based on the information submitted, she was offered an appointment as an FP-05 Step 10, Foreign Service Officer, which she questioned.

She was directed to the procedure for requesting a salary review, mentioned in her appointment letter, along with the Department’s Website. The procedures for salary determination are contained in SOP 134A, which in turn refers the reader to SOP 134D: “Salary review/appeal procedures are covered by SOP 134D”. Grievant’s salary review request included additional information about the head coach position, but the SRC review again concluded that the FP-05 Step 10 grade and step was correct, that her “work experience . . . as swim team coach, did not meet the definition of qualifying experience” under SOP 134A. Much of her job as head coach was devoted to daily work-outs and training. Grievant’s arguments that her duties went well beyond coaching and that it was a professional position were considered by the SRC, but on balance were not found to be qualifying experience.

The Department maintains that supporting material submitted after the Registrar and the SRC made their grade/step/salary determinations cannot be considered, as the information and procedures available to grievant at the time of her application provided ample opportunity to document her prior employment. The experts in the Registrar’s Office and the SRC followed appropriate procedures in determining her salary. The department also argues that there is no provision in any regulation, SOP or law that allows for submission of additional documentation once the SRC has reached its decision.

#### IV. DISCUSSION AND FINDINGS

In all grievance cases, other than disciplinary actions, the grievant has the burden to demonstrate by a preponderance of the evidence that the grievance is meritorious.<sup>2</sup> In this case the Board finds that grievant has not met that burden. Grievant's main argument is that her position as Head Swim Team Coach merited additional credit as a professional qualifying experience. There were other issues raised in connection with how other prior work experiences were calculated or viewed, but the Board finds these moot as they would not affect the final outcome of the grievance.

The Board finds that the material and information provided to grievant throughout the application process were clear and provided sufficient guidance to enable her to present fully her case for salary determination by the Registrar and ultimately the SRC. SOP 134 A was clearly available at [www.careers.state.gov/fs](http://www.careers.state.gov/fs) entry salaries/fso\_134A, as stated in her January 28, 2010 employment offer letter. SOP 134D was pointed out to grievant in SOP 134A and is available on the same site. Grievant thus had access to SOP 134D prior to her appeal to the SRC. Those SOPs, in addition to the letters on conditional and final offers of employment, lay out for all potential employees the requirements for documenting prior work experience. We find no violation of regulation, law, published policy or collective bargaining agreement in the Department's reaching its final salary decision.

The argument that grievant should not be held responsible for what she now considers an inadequate initial submission of her swim coach duties, as there was only one sentence in her June 2009 conditional offer letter that cautioned her to "provide us as much detail as possible

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<sup>2</sup> 22CFR905.1(a)

about your previous employment” and that advice was not repeated in subsequent communications, , is without merit.

The Board is also not persuaded that grievant’s interpretation of the word “concise” contained in her January 28, 2010 appointment offer misled her into making inadequate submissions to the SRC on the nature of the Head Swim Team Coach position. Grievant was instructed in that letter to provide an “updated resume” which provides “a description of your position responsibilities that concisely explains the scope of work.” In our view, “updated” and “concise” means that any changes in her work experience since her initial resume submission should be concise. Although there were no updates to be reported in her coaching job, grievant submitted three different revised resumes with additional information on the position and the SRC considered the final one, again finding no basis for changing the Registrar’s determination on salary level.

In FSGB Case 2010-024 (Dec. 15, 2010), the grievant requested a higher entry level salary than offered, based on what he perceived to be an error by the Registrar and SRC in crediting what he considered qualifying work experience. In that case, as here, the grievant submitted additional evidence of the nature of the work he was seeking credit for as a part of his grievance. In a footnote relating to a discussion of that additional submission, the Board noted: “The grievant does not argue and we do not find that the regulations require the Department to review an applicant’s file multiple times, each time incremental information is provided.” Similarly, we here do not find the Department obligated to review grievant’s job description, submitted with her grievance, nor the letter from her former director in her grievance appeal, and we therefore have not considered that additional information in deciding the outcome of this appeal.

While the ROP does not include the package of instructions given to potential applicants, we find the Department's advice in its 2009 conditional offer letter cited by grievant, that "[i]t is very important that you provide as much detail as possible about your previous employment," as providing sufficient notice of what was required. We are not persuaded that grievant should be excused from compliance because it was only mentioned once and she was never notified that her resume was "inadequate."

The Board does not find that the information presented by the grievant at the time of application or salary appeal established that the Agency committed an error in its decision. The Board's role is to determine if the Agency made an error or violated existing rules, regulations or laws, not to readjudicate appropriate salary levels based on documentation submitted after the time for doing so has past.

## **V. DECISION**

The grievant's appeal is denied.