

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between



Grievant

and

Department of State

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Record of Proceedings  
FSGB No. 2013-027

May 8, 2014

**DECISION**

EXCISION

For the Foreign Service Grievance Board:

Presiding Member:

Warren R. King

Board Members:

William B. Nance  
Harlan F. Rosacker

Special Assistant

Joseph Pastic

Representative for the Grievant:

Raeka Safai, AFSA

Representative for the Department:

Daniel Creekman, HR/G

Employee Exclusive Representative:

American Foreign Service  
Association

## OVERVIEW

**HELD:** Grievant has not met his burden of proving that a Selection Board (SB) had not given him fair and impartial consideration by showing that a board member had a reputation for biased judgment, was incapable of evaluating and ranking grievant due to animosity he had previously displayed toward him, and had not considered grievant's promotability based only on material that was properly part of his Performance Folder. His grievance appeal is denied.

## CASE SUMMARY

Grievant claimed that an SB member, while serving several years earlier as his third-level supervisor, had criticized him in an emotional and sarcastic manner and had insisted that his rating officer insert negative comments in his Employee Evaluation Report. He asserted that the former supervisor should have recused himself as an SB member, since his service violated agency regulations that require unbiased judgment and that members take into consideration only the information that is in grievant's performance file. When the Department announced the membership of upcoming SBs, grievant did not request recusal of his former supervisor. His grievance was not filed until after the SB results were announced.

In considering grievant's appeal we find that he has not offered evidence other than his own personal views that his former supervisor displayed animosity toward him, that he had a reputation for being biased, or that difficulties in their relationship four years earlier had influenced his role as an SB member. He offered only his own speculation that the SB member had taken into account material that was not in his performance file.

Grievant has not met his burden of proof, and his appeal is denied.

## DECISION

### I. GRIEVANCE

██████████ a security officer in the Department of State, appeals the Department's denial of his grievance claiming that the 2012 Selection Board (SB) had not given him fair and impartial consideration. Grievant alleged that ██████████, a senior Diplomatic Security (DS) official, had violated agency regulations while serving as a member of this panel by: not having a reputation for unbiased judgment; being incapable of evaluating and ranking grievant due to animosity he had previously displayed toward grievant; and not basing his decision "on grievant's promotability only on material that [was] properly part of [grievant's] Performance Folder." Grievant asserts that ██████████ should have recused himself. As relief he asks that a reconstituted SB review his performance file.

### II. BACKGROUND

Between 2006 and 2008 grievant was the sole DS officer assigned to the ██████████ Joint Terrorism Task Force (JTTF)<sup>1</sup> in ██████████ and was the first DS officer to be assigned there. For day-to-day operational purposes, he was supervised by the on-site FBI unit supervisor. However, his role was overseen by the DS ██████████ Field

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<sup>1</sup> Joint Terrorism Task Forces are based in 103 cities nationwide and include members from over 600 state and local agencies and 50 federal agencies. ([http://www.fbi.gov/about-us/investigate/terrorism/terrorism\\_jtfts](http://www.fbi.gov/about-us/investigate/terrorism/terrorism_jtfts))

Office (█████) where █████ served as Special Agent in Charge (SAC) and supervised the DS officers who served as grievant's rater and reviewer during the rating period.<sup>2</sup>

When grievant assumed the JTTF position, █████ asked that grievant be removed from a fraud investigation in which he had been participating while serving in DS headquarters in Washington. Based on a request from the U.S. attorney for the relevant state, however, a senior DS official decided that grievant should remain on the case. Grievant alleges that being overruled led █████ to react in a highly emotional manner, hold a grudge against him, treat him differently, and insist that his rater insert critical language in the Areas for Improvement (AFI) section of his 2008 EER. While the latter criticism was modified after grievant again apologized to █████ the 2008 EER with this criticism remained in grievant's performance file when it was reviewed by 2012 SB S-II 2012, of which █████ was a member.

█████ filed his agency-level grievance on November 9, 2012; and the Department denied it on April 23, 2013. Grievant appealed to the Foreign Service Grievance Board (Board, FSGB) on June 21 and made a supplemental submission on September 11. The agency responded on October 8, grievant submitted his rebuttal on October 23, and the record of proceedings was closed on October 24.

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<sup>2</sup> Grievant's job and work requirements are described in his draft 2008 EER, which is in the record, as follows: "The incumbent is one of twenty-six DSS Special Agents assigned to the FBI JTTF nationwide. For operational purposes, day-to-day supervision is through the FBI unit supervisor, although the █████ Field Office █████ Assistant Special Agent in Charge (ASAC) and Special Agent in Charge (SAC) must be apprised of all activities. Incumbent is rated by the █████ ASAC and reviewed by the SAC. Incumbent has no immediate subordinates." The Board notes that despite these work requirements, during the 2007-2008 rating period grievant was in fact rated by the Supervisory Special Agent and reviewed by the ASAC.

### III. POSITIONS OF THE PARTIES

#### GRIEVANT

Grievant claims that four Departmental regulations were violated through [REDACTED] membership on the SB panel.

1) [REDACTED] did not have “a reputation for unbiased judgment,” which 3 FAM 2326.1-2(a)(4) requires for members of SBs.

Grievant asserts that many of [REDACTED] subordinates believe that he holds grudges and permits “his objectivity to be colored by those grudges.” He avers that agents are known to be on [REDACTED] “list,” based on having taken actions of which he did not approve. One agent left the Service, due in part to having been sidelined by [REDACTED]

After grievant was transferred from Washington, DC, to [REDACTED] in 2006, [REDACTED] insisted in 2007 that he be removed from a case in which he had become heavily involved while serving in headquarters. After discussions in which grievant did not participate, [REDACTED] objections were overruled by a DS office director; and the case continued to be part of grievant’s responsibilities. Grievant claims that [REDACTED] responded in a “highly emotional” manner to the denial of his request. He did not visit grievant during several subsequent trips to [REDACTED] or have any other substantive contact with him, and he limited grievant’s responsibilities and thereby his effectiveness.

As evidence of [REDACTED] continuing enmity, grievant cites the following “sarcastic” February 2008 email message in which [REDACTED] reacted to the fact that grievant had not cleared an email message with [REDACTED] before sending it to the head of another State

Department office in [REDACTED]. Instead grievant had only sent [REDACTED] a copy of the message to the other office head.

Thank you soooo much for clearing this through US before you write a check we MAY NOT be able to cash. How many times do we have to say something about this? Do you listen? (*sic*)

After grievant apologized in writing for his handling of this incident, [REDACTED] did not respond. However, when he received his draft Employee Evaluation Report (EER) for 2007-2008, the Area for Improvement (AFI) section included criticism that he subsequently learned stemmed from the incident. His rater confirmed that the following critical language had been included at [REDACTED] insistence.

Though [REDACTED] has a broad knowledge of DS programs, as the sole DS agent in [REDACTED] it is imperative that he remain integrated with the [REDACTED] team so that his work complements and advances [REDACTED] s regional mission. At times, when working on inter-agency or intra-agency initiatives, [REDACTED] has not first consulted and cleared them with [REDACTED] Managers, a practice that endangers office credibility. [ROP p. 24]

After grievant again apologized to [REDACTED] and discussed the matter with him “in multiple calls,” [REDACTED] responded by email agreeing to the following modified language:<sup>3</sup>

As the sole DS agent in [REDACTED] it is imperative that [REDACTED] remain an operative member of the [REDACTED] team to ensure his efforts complement and advance our broader regional mission. At times, [REDACTED] has not first coordinated or cleared his actions with [REDACTED] Managers, leading to avoidable conflicts in policy or planning. [REDACTED] must assiduously keep his chain of command apprised of his actions and plans to assure full continuity of programs. Development of this practice will be his ticket to success in moving to higher levels. [ROP p. 27]

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<sup>3</sup> The final EER was not submitted for the record. However, based on the parties’ arguments, the Board assumes that the AFI is the only section changed in the draft which is part of the record.

2) ██████ the SB panel's "principal DS member,"<sup>4</sup> did not rank grievant's performance based on relative merit, as required by 3 FAM 2326.1-3, but rather based on ██████ grudge.

██████ bias -- as the senior DS official on the panel -- may have influenced other panel members, particularly more junior DS officials. In any case his bias affected the panel's ultimate decision. The Grievance Board stated in FSGB 98-096 (May 26, 2000)<sup>5</sup> that an employee is:

entitled to the expectation that each member of the Selection Board could render fair and impartial consideration of his file. The participation of even one hostile panel member could unfairly disadvantage an officer in the competition with his peers.

(Emphasis in original)

Grievant cites the overall record in his performance folder that was reviewed by the panel. It included three individual Superior Honor Awards, two individual Meritorious Honor Awards, two Meritorious Step Increases, several letters of commendation, and EERs of "extremely high caliber [that] clearly display the potential to serve at that FS-01 level in accordance with the promotion precepts."

3) ██████ did not adhere to the requirement in 3 FAH-1 Exhibit H-2321.1A(III)(C)(3) that "Boards will base their decisions of a member's promotability only on material that is properly a part of the member's Performance Folder."

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<sup>4</sup> While ██████ was the highest-ranking of the three DS members of the SB panel, he was designated by the Department simply as a member. The chair of the panel was a Senior Foreign Service generalist officer, and there was a public member.

<sup>5</sup> The date of this Board decision was incorrectly stated in the ROP.

Grievant contends that the fact that another DS officer was promoted who had just served as [REDACTED] deputy “supports the notion” that [REDACTED] personal experience influenced his decision and that of the SB.

4) [REDACTED] violated 3 FAH-1 Exhibit H-2321.1A(III)(C)(3)(f) which provides that:

When a Board member believes that s/he may be unable to render a fair and unbiased judgment of an individual, that member shall state that fact in writing and will be excused from further consideration of that individual.

During the two years [REDACTED] served as grievant’s supervisor, grievant avers that their interactions were frequently negative. [REDACTED] inserted himself negatively by insisting that grievant’s rater include specific language in his EER -- an EER which [REDACTED] considered while serving on the SB; and [REDACTED] and grievant never mended fences in any way. Grievant asserts that at the very least [REDACTED] interactions with him “would have risen to the level to which it ‘may’ have influenced [his] judgment -- an act that would have required him to recuse himself.”

Grievant asserts that the Department downplayed evidence of [REDACTED] animus toward him and the affect this animus had on [REDACTED] ability to serve as an impartial member of the SB. He contends that since the Department has not presented any statements from [REDACTED] himself, grievant’s account of their interaction between 2006 and 2008 is sufficient to rebut the presumption of regularity asserted by the Department. The Department apparently believes that in order to prove that animus affected [REDACTED] judgment as an SB member, grievant would have to provide evidence that that it continued between 2008 and 2012. That would be impossible since he and [REDACTED] were assigned overseas to different posts during the latter period.

Grievant also challenges the Department's reliance on precedent from FSGB Case No. 2005-015 (June 23, 2005). Unlike the SB panel members in that case [REDACTED] did not have "mere knowledge of action against [grievant] . . . [but] specifically took improper action against [him] and was biased against [him] for actions that were made by DS headquarters and beyond [his] control." Unlike the grievant in that case [REDACTED] has provided evidence that [REDACTED] was prejudiced against him; and the Board has ruled that when there is an appearance of bias, the remedy is recusal:

An apparent conflict is one that could cause a reasonable observer to question whether a process of judgment was compromised by the participation of a party to a dispute involving a person being judged. (FSGB 98-096 at 20)

[REDACTED] asserts that the Department illogically concluded that [REDACTED] involvement in drafting the AFI was justified by his being in grievant's chain of command; and that the Department was incorrect in finding that his "cordial relationship" with [REDACTED] was evidence that [REDACTED] did not hold a grudge against him.

[REDACTED] cites contradictions between statements obtained by the Department's grievance examiners in 2012 from his 2008 rating and reviewing officers and between their recollections of 2007-2008 events and the contemporaneous email correspondence that grievant has submitted for the record. He also challenges the Department's conclusion in denying his grievance that their statements "specifically refuted" his claims. He claims that Department placed undue weight on their recollections, in light of the fact that they were being asked to speak against [REDACTED] -- "a powerful, high ranking member of DS."

Grievant asserts that the Department completely disregarded his legitimate claim that he did not request [REDACTED] recusal because another DS manager told him that doing so would adversely affect his career.

The Department's stance . . . shows blissful ignorance to the reality of the Foreign Service and DS in particular . . . The Foreign Service, and especially DS, is a small community. The reality is that many career and assignment decisions are made by a small number of individuals, including [REDACTED], who not only participated in the 2012 selection board but also on the 2012 DS assignment panel. Important decisions in DS are swayed based on word of mouth, reputation, biases and subjective information. . . . [Grievant's decision not to request a recusal was] based on the advice of a more senior DS agent, who had served on recent promotion panels . . . the option to not request recusal was the "lesser of two evils."

While the Department claims that grievant had not expressed any concern about the SB's membership prior to their review, he points out that he consulted not only with a senior DS manager but with other DS agents. His decision not to request a recusal at that time was based on the likely adverse impact such a request would have on his career, not because he ever believed that [REDACTED] could deliver a fair and impartial decision.

Grievant realizes in retrospect that perhaps he should have requested a recusal, but he does not believe his failure to do so should disqualify him from a "fair promotion review." He asks simply for a review that is free of any potential biases. His appeal is not an "attempt to take a second bite at the apple merely because he is dissatisfied with the decision."

## **THE DEPARTMENT**

Grievant's appeal must be denied for two reasons. First, he had the opportunity to request [REDACTED] recusal but decided not to do so. He cannot challenge [REDACTED] participation

now because of his displeasure with the SB's conclusions. Second, he has "failed to provide sufficient evidence to rebut the presumption that the SB, in general and [REDACTED], in particular, performed their duties correctly, fairly, in good faith, and in accordance with the law and governing regulations."

Grievant has presented no evidence of interactions after 2008 that would have contributed to the animus he alleges. Even if grievant is correct in asserting that [REDACTED] was "out to get him" when he provided certain language to be included in his 2008 AFI, he has presented no contemporaneous evidence to show that the alleged vendetta continued until 2012. He has provided no evidence of [REDACTED] tendency to hold grudges other than his own account of conversations with a single DS agent. All of the evidence he has presented was available at the time the telegram announcing 2012 SB members was released. He cannot seek now to undo a decision based on his dissatisfaction with the results. Whatever his reasons, he had the opportunity to request recusal before the SB met and he chose not to.

The fact that [REDACTED] did not recuse himself indicates that he "believed he could render a fair and unbiased judgment" of grievant, as required by the precepts. "More importantly, under applicable law, [REDACTED] is presumed to have rendered a fair unbiased judgment, absent 'irrefragable evidence to the contrary.'" Grievant has not provided such evidence.

The presumption of regularity or integrity holds that "public officers perform their duties correctly, fairly, in good faith, and in accordance with the law and governing regulations." *LaChance v. White*, 174 F.3d 1878 (Fed Cir. 1999), quoting *Alaska Airlines, Inc. v. Johnson*, 8 F.3d 791 (Fed. Cir. 1993); *AFGE, AFL-CIO v. Reagan*, 870 F. 2d 723 (D.C. Cir. 1989).

This “presumption stands unless there is ‘irrefragable proof to the contrary.’” Id.

The Board has consistently applied this presumption of regularity to the actions of SBs [e.g., FSGB Case No. 96-005 (December 16, 1996)]<sup>6</sup>; and it has required “specific evidence . . . to overcome the presumption” of regularity. FSGB Case No. 2005-015 (June 23, 2005) (citing *INS v. Miranda*, 459 U.S. 14, 18 (1952)).

The evidence grievant has presented does not meet the Board’s standards for overcoming the presumption of regularity. His allegations of [REDACTED] reputation for holding grudges are vague and unsubstantiated. An alleged “highly emotional response” in 2007 and an “unprofessional, sarcastic, and mean spirited email” from him in 2008 are insufficient to establish that he harbored animus against grievant or was sufficiently biased to influence his decisions as an SB member. The FSGB held in Case No. 2005-015 that SB members’ personal knowledge of matters involving grievant was not sufficient to rebut the presumption of regularity. In Case No. 1996-005 it held that in the absence of any other evidence a panel member’s having intended two years earlier to file a complaint about grievant’s performance was insufficient to rebut the presumption of regularity.

The evidence that the grievant in FSGB 1998-096 (May 26, 2000) presented included affidavits from two senior officials attesting to an ongoing “negative, biased, angry and hostile” adversarial relationship with a member of the SB which the Board

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<sup>6</sup> The date of this decision as cited in the Department’s submission was in error, based on an error on the Board’s website.

concluded was sufficient to rebut the presumption of regularity. The evidence presented by grievant in the instant appeal falls well short of the standard set in that case.

Statements by grievant's rating and reviewing officers at the time refuted his claims that [REDACTED] held grudges and let his objectivity be colored by them. Both indicated that grievant and [REDACTED] had a "cordial and professional relationship," and both specifically refuted grievant's claim that [REDACTED] held grudges or treated his subordinates unfairly. The reviewer said that [REDACTED] was always transparent and clear in his constructive feedback.

While the rater's and reviewer's recollection differed from that of grievant, the Department recognizes that grievant ultimately negotiated the AFI language with [REDACTED]. However, the Department does not find [REDACTED] involvement at all inappropriate, given his position in grievant's chain of command.

While the SB panel chair<sup>7</sup> did not recall grievant's specific file, he stated "categorically that [REDACTED] served professionally on the Board and did not reveal inadmissible evidence about any candidates, nor ask any Board member to disregard an OPF. On the contrary, the only material we looked at was the OPF." The Department finds no evidence that would constitute "irrefragable proof" to "rebut the presumption that the SB, and [REDACTED], in particular, carried out their responsibilities in any way contrary to the Precepts."

Grievant was mid-ranked by the 2012 SB, in the first year that he was eligible for promotion to FS-01. Of 227 security officers competing for promotion at that level, only 23 were promoted. Their average time-in-class was seven years, while grievant's was

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<sup>7</sup> The Department stated that the panel chair was [REDACTED]. According to the Department's announcement, the panel was chaired by [REDACTED].

three years. Their average length of service was 17.4 years while grievant's was 13 years. The fact that he was not promoted does not demonstrate that there was anything improper in the SB's review of his file.

Grievant has not proved by preponderant evidence that his grievance is meritorious. His grievance appeal should be denied.

#### **IV. DISCUSSION AND FINDINGS**

Under the provisions of 22 CFR 905.1(a), grievant has the burden of establishing by a preponderance of the evidence that his grievance is meritorious. We find that he has not met his burden.

As a procedural issue grievant contests the Department's assertion that having failed to request [REDACTED] recusal within two weeks of the announcement of SB members, he may not request his recusal after the SB has met and promotions have been announced. Since the Board finds that grievant has not met the burden of proving that the SB or [REDACTED] in particular violated the Department's regulations, we do not find it necessary to rule on this procedural issue.

In considering grievant's claims we have kept in mind the fact that all SB members swear to perform their roles in accordance with the Department's regulations. However, in FSGB 2012-066 (February 6, 2014) at p. 14, the Board clarified when a presumption of regularity applies, as follows:

We find that the invocation of the presumption in the context of most grievance appeals does not alter the evidentiary positions or burdens of either party and therefore does not change the Board's analysis in its assessment of the proof. In an unpublished decision by the District Court for the District of Columbia in *William Shea v. United States, et. al.*, (Civ. No. 00-748, June 27, 2001), the court endorsed the Foreign Service

Grievance Board's contention that the presumption of regularity was inherent in its regulation (22 CFR §905.1) placing the burden of proof on grievants, thus acknowledging that the agency is presumed to have acted regularly unless a grievant proves otherwise by a preponderance of the evidence. The Board is aware of no other court decision analyzing the presumption of regularity within the specific context of appeals before the FSGB.

There may be limited circumstances in which an evidentiary matter before the Board, e.g., a routine administrative undertaking that calls for no exercise of judgment or discretion, may be accorded the presumption of regularity.

However, the decisions made by SB members do not qualify as such routine actions. Ranking officers for promotion or low-ranking them requires that SB members make informed decisions that call for "an exercise of discretion and judgment. Therefore [their judgments are] not entitled to any presumption of regularity beyond that embedded in the Board's normal allocation of burden of proof." FSGB 2012-066 (February 2, 2014 at p. 15

We examine the merits of each of grievant's assertions in the order he presented them.

1) [REDACTED] did not have "a reputation for unbiased judgment," which 3 FAM 2326.1-2(a)(4) requires for members of SBs.

In support of this contention grievant has submitted no evidence other than a summation of his own conversations with other DS agents and officials and his sense of [REDACTED] reputation. He has not provided any documentary evidence or signed affidavits from DS colleagues to support this assertion.

Grievant alleges that five years earlier [REDACTED] reacted in a "highly emotional" manner after being overruled on the range of grievant's responsibilities after transferring

to his position in [REDACTED] but he has provided no documentary evidence or confirmation from DS colleagues. While grievant suggests a number of ways in which [REDACTED] had kept him at a distance after the encounter, we do not find it unusual in an employee's relationship with a third-level supervisor -- the head of a large office in another city.

It is clear from the February 2008 email exchange between [REDACTED] and grievant [ROP 2013-027, p. 16] that operating guidelines had been established earlier on grievant's responsibilities for keeping his [REDACTED] supervisors apprised and for getting clearance on communications with third agencies. It is also clear that [REDACTED] was personally sensitive to what he perceived as grievant's habit of making commitments without clearing them with his superiors. [REDACTED] rather sarcastic email mentioned that grievant had once again failed to seek clearance. While grievant concedes that in this instance he did not obtain clearance when he should have, he also submits evidence of many instances when he did consult with them and keep them informed.

Grievant has not argued that the AFI which [REDACTED] had dictated was falsely prejudicial or that it was based on a shortcoming which had not been pointed out to him earlier. Rather he claimed that he had not been aware that there were shortcomings in this aspect of his performance before [REDACTED] reaction in February 2008 and that [REDACTED] insistence on inserting language in the AFI of his April 2008 EER was inappropriate. We find, however, that he was warned of the specific failure to seek clearance two months before the end of the rating period and was aware of the clearance requirements well before that.

While the intervention of a higher-level official in drafting an EER is somewhat unusual, we do not find it inappropriate for a third-level supervisor to insist that a subordinate's shortcoming be mentioned in his EER. We note that the EER was otherwise laudatory and that grievant was promoted in 2009 with the 2008 EER in his file.

The Board ruled in FSGB 1996-005 (December 16, 1996) that a SB member should have been recused when a difficult personal relationship with grievant had persisted over a considerable period "including an acute phase" when the SB member was considering him for promotion. Negative views of the grievant were expressed by this SB member to another senior official during the same time period when the SB was meeting. In the instant case grievant has presented no evidence other than his own impressions to support his assertion that [REDACTED] alleged animosity continued despite the fact that they had not worked in the same location in the four years preceding the convening of this SB.

2) [REDACTED] the SB panel's "principal DS member,"<sup>8</sup> did not rank grievant's performance based on relative merit, as required by 3 FAM 2326.1-3, but rather based on [REDACTED] grudge.

Grievant's assertion relies on the same arguments that he presented above. While he emphasized in his rebuttal that he was not suggesting that he should have been promoted, he repeatedly cites his otherwise outstanding file and suggests that his failure

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<sup>8</sup> While [REDACTED] was the highest-ranking of the three DS members of the SB panel, he was designated by the Department simply as a member. The chair of the panel was a Senior Foreign Service generalist officer, and there was one public member.

to be recommended for promotion stemmed from [REDACTED] bias. His argument is speculative and unsupported by evidence of a continuing grudge.

3) [REDACTED] did not adhere to the requirement in 3 FAH-1 Exhibit H-2321.1A(III)(C)(3) that “Boards will base their decisions of a member’s promotability only on material that is properly a part of the member’s Performance Folder.”

Grievant has presented no evidence to support his speculative comparison of his own performance record with that of another DS member who was promoted after having worked closely with [REDACTED]. We note again that [REDACTED] had sworn to carry out his role as an SB member in accordance with the Department’s regulations, which includes the requirement that only information in the Performance Folder be considered. The SB panel chairman emphasized that [REDACTED] had carried out his responsibilities professionally and not revealed inadmissible information on candidates.

4) [REDACTED] violated 3 FAH-1 Exhibit H-2321.1A(III)(C)(3)(f) which provides that:

When a Board member believes that s/he may be unable to render a fair and unbiased judgment of an individual, that member shall state that fact in writing and will be excused from further consideration of that individual.

As noted above, grievant has presented no evidence to support his assertion of animus other than a single short email message that [REDACTED] had sent him five years earlier and related criticism in the AFI section of his 2008 EER that [REDACTED] had instructed the rater to include. Grievant has also presented no evidence that [REDACTED] was aware in 2012 that he was considering requesting [REDACTED] recusal, let alone that this awareness influenced the manner in which [REDACTED] served as a SB member. Absent any evidence to the contrary we

conclude that [REDACTED] swore to abide by all relevant regulations in the belief that he would be able to “render a fair and unbiased judgment” of grievant’s performance record.

In challenging the Department’s investigation and denial of his grievance, he claims that the Department relied on a factually incorrect statement, placed undue weight on responses of officials who were asked to speak out against a powerful superior, and placed insufficient weight on documentary evidence of the SB member’s animus toward him. We appreciate the reluctance of officers to raise issues or present recollections which might provoke a negative reaction among higher-level officials. However, grievant’s speculation in this regard is not proof.

The burden of proof is on grievant and he has not met it.

## V. DECISION

The grievance appeal is denied in all respects.

### For the Foreign Service Grievance Board:



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Warren R. King  
Presiding Member



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William B. Nance  
Member



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Harlan F. Rosacker  
Member