

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between



Record of Proceedings  
FSGB Case No. 2013-030

And

June 4, 2014

Department of State

**DECISION**  
EXCISED

---

For the Foreign Service Grievance Board:

Presiding Member:

Warren R. King

Board Members:

Jeanne L. Schulz

Harlan F. Rosacker

Special Assistant

Lisa K. Bucher

Representative for the Grievant:

*Pro se*

Representative for the Department:

Daniel M. Creekman  
Attorney Advisor  
HR/G

Employee Exclusive Representative:

American Foreign Service Association

## OVERVIEW

**HELD:** The amended relief grievant seeks is not within the Board's jurisdiction or authority, with the exception of one remedy for which he did not present evidence or argument. The appeal is moot and thus denied in its entirety.

## SUMMARY

While serving as [REDACTED] [REDACTED] grievant was placed on administrative leave after the report of the [REDACTED] [REDACTED] expressed concerns about his policy and security oversight. Grievant was reassigned from his [REDACTED] position to DG Overcomplement on February 19, 2013; and he remained on administrative leave from December 18, 2012, until August 19, 2013. He was informed on November 1, 2013, that the Department would not take disciplinary action against him, and he retired on November 30.

Grievant claimed in his appeal that the Department's actions against him were based on ill-founded conclusions by the [REDACTED] and that the Department made him a scapegoat as part of a politically-motivated damage-control effort. He asserted that his administrative leave was in effect a disciplinary action that was prohibited by regulation and that removing him from his [REDACTED] position constituted an involuntary curtailment that in implementation also violated regulations.

While not taking lightly grievant's claims of unjust treatment or his desire to restore a professional reputation that he believes has been unfairly impugned, the Board noted the statutory limits on the remedies it may order. While he had raised grievable matters, once he was retired most of the remedies grievant sought were not remedies the Board could grant and, further, would not reverse or remedy any errors that the Board might find. Grievant did not present any evidence or argument to support the one viable remedy he sought – to remove his final Employee Evaluation Report from his performance file and replace it with a standard gap memo. The grievance appeal was thus moot and denied in its entirety.

## DECISION

### I. THE GRIEVANCE

██████████ asserts that the curtailment of his assignment from a senior position in the Department violated Foreign Affairs Manual (FAM) regulations on involuntary curtailment and that his placement in indefinite non-duty status constituted disciplinary action, without affording him his rights provided in the FAM to be given notice and an opportunity to respond to the allegations against him.

In grievant's appeal he requested the following relief:

1. That the Department immediately reinstate [him] to [his] former position as ██████████
2. If this is not possible, that the Department immediately reinstate [him] to a position of comparable importance;
3. Extension of [his] TIC/TIS [time-in-class/time-in-service] to compensate for the period of time [he has] not had an assignment;
4. That the Department release a press report publicly clearing [him] of wrongdoing;
5. Attorney's fees and expenses;
6. All other appropriate relief.

In his Supplemental Submission, filed after he had retired, grievant presented an amended request for relief:

1. That the Department release a press report clearing [him] of all wrongdoing;
2. That the Board find that the Department violated 3 FAM 2440;
3. That the Board find that the Department violated 3 FAM 4323;
4. That the Board find that the Department's actions constituted disciplinary action;
5. That the Department remove [his] EER for the period ending December 18, 2012, from [his] official personnel file and place a standard gap memo in [his] file; and
6. All other appropriate relief.

## II. BACKGROUND

██████████ now a retired<sup>1</sup> career Senior Foreign Service Officer, was assigned as ██████████ ██████████ on August 25, 2011. In this position he was responsible for the ██████████ ██████████, comprised of the ██████████ desks; and for overseeing ██████████ policy activities.<sup>2</sup> September 21, 2012, was to be grievant's last day in the office, as he had decided to take voluntary retirement; his retirement had been paneled by the Department; and he was to begin the Job Search Program in October.

U.S. facilities in ██████████, were attacked on ██████████. A few days later grievant informed the Principal DAS that he could postpone his retirement if his services were needed. The Bureau requested that he remain in his position, and he agreed to stay in the bureau until March 2013 before beginning his pre-retirement courses.

Grievant was interviewed by the ██████████ (██████████) on November 20, 2012. According to grievant, after the ██████████ Report<sup>3</sup> was released on Tuesday, December 18, he met with Acting Assistant Secretary ██████████, at her request. She told him that while she had not yet read the classified report, she understood it was not complimentary to the Department, to the Bureau, or to him. Grievant stated that she further informed him that she had been instructed by ██████████ on the Secretary's staff to relieve him of his ██████████ position, that he was fired, and that he should

---

<sup>1</sup> Grievant filed his agency-level grievance and his appeal to the Board while on active duty. However, he retired on November 30, 2013; and in his Rebuttal of January 22, 2014, he amended his request for relief.

<sup>2</sup> The position was newly created. The range of grievant's responsibilities was stated in his EERs for the period of his assignment.

<sup>3</sup> The ██████████ Report is not part of the record of this grievance appeal.

remove all of his personal belongings from his office by the close of business that day. Receiving no further word that day, he placed his belongings in a paper bag and left at 6:30 p.m.

On Friday, December 21, as requested by the staff of Under Secretary for Management Patrick Kennedy,<sup>4</sup> the [REDACTED] Executive Director prepared a letter to grievant for the signature of Marcia S. Bernicat, DAS for Human Resources (HR). Bernicat's letter informed grievant that effective immediately and until further notice he would be on administrative leave -- in paid, non-duty status -- "to allow sufficient time for the Department to evaluate appropriate action." She also told him that he was "prohibited from entering any Department of State facilities or accessing any of its computer systems or networks" and instructed him to immediately surrender his State identification badge and office keys/equipment to the Bureau Executive Officer and "vacate the premises."

Grievant refused to sign the acknowledgement copy of the letter. On December 23 he sent an email message to several of the senior Department officials who he understood had instructed that he be placed on administrative leave and be excluded from the premises. He explained that to sign the punitive letter would be an admission of culpability, when in fact he had no involvement in security or the funding for security in [REDACTED]

On Thursday, December 27, Acting Director General Hans Klemm sent grievant a replacement letter that did not include the prohibitions on entering the building or using the Department's computer systems or networks. Grievant acknowledged receipt by

---

<sup>4</sup> The Department explained later, in its 11/1/2013 response to grievant's Discovery Request, that: "The Director General of the Foreign Service authorized, and the Secretary concurred with, your placement on administrative leave and your reassignment from your [REDACTED] position to 'DG Overcomplement.'"

email. The Department explained later that he continued to encumber his [REDACTED] position after being placed on administrative leave.

While the paperwork officially reassigning grievant from his [REDACTED] position in [REDACTED] to DG overcomplement<sup>5</sup> was dated February 19, 2013, he was still not permitted to return to work and had no assignment. Because of the uncertainty about his status, he cancelled his participation in a Retirement Seminar, the Job Search Program, and his request to retire on April 30, 2013, which had been paneled in September 2012 after he agreed to remain in [REDACTED]. On February 25, 2013, grievant asked DAS Bernicat to provide the factual and legal basis for his remaining unassigned. She responded on March 22:

You were placed on administrative leave pursuant to 3 FAM 4323a, to allow the Department to evaluate the appropriate action to take in response to the [REDACTED] report on the fatal attack against the [REDACTED]. The report indicated concerns about the policy and security oversight provided by senior leaders in the Department. The Department's evaluation has not yet been concluded.

Bernicat's letter also informed grievant of the Department's procedures for initiating a grievance.

[REDACTED] filed a grievance on April 3, 2013. On July 3, Melinda Chandler, Director of the Grievance Staff (HR/G), informed him that since the Department had not issued a decision on his grievance within 90 days, he was entitled to appeal to the Board. He filed his appeal on July 5; and on July 9 the Board agreed to the Department's request for an additional 30 days to respond to the grievance.

---

<sup>5</sup> Per 3 FAH-1 H-2425.8-11 (SOP B-16), FS employees may be assigned – with the approval of the DG or the director of HR/CDA – “to overcomplement status in a bureau for specified reasons of a temporary nature, rather than to a position in the Department. It is our intention that your status in overcomplement be limited to the minimum time period necessary to make you available for reassignment or separation.”

The Department denied his grievance in its entirety on August 8. With respect to his administrative leave, the deciding official, DAS Linda S. Tagliatela, informed him that:

Your case is currently under review and no decision has been made. . . . The fact that no decision has been made means that no decision has been made regarding pursuit of a disciplinary action. Your placement on administrative leave is not in lieu of a disciplinary action.

On August 19, 2013, DAS Bernicat sent a letter to grievant stating:

Your period of administrative leave, which began on December 21, 2012 is hereby terminated and you are directed to report for duty at the [REDACTED] Executive Office on Tuesday, August 20, 2013 at 9:00 a.m.

On November 1, 2013, HR/G informed grievant that “[t]he decision had been made not to propose discipline against [him].”<sup>6</sup> Grievant filed a Supplemental Submission with the Board on November 25; and he retired from the Foreign Service on November 30. The Department filed its Response on December 23; and grievant filed his Rebuttal on January 22, 2014.

The Board requested additional documents from the Department on February 4, and the Department responded on February 25 with documents and a Declaration from Hans G. Klemm, the Principal DAS for HR and Acting Director General. Grievant informed the Board on March 18 that he would not respond. The Record of Proceedings was closed on March 19, 2014.

---

<sup>6</sup> In response to Interrogatory No. 12 in Grievant’s First Discovery Requests, dated September 18, 2013. Note: The Department did not indicate when the decision was made.

### III. POSITIONS OF THE PARTIES

#### A. GRIEVANT

Grievant asserts that on December 18, 2012, he was summarily curtailed from his assignment as [REDACTED] for [REDACTED]. Assistant Secretary Jones assured him that the Bureau would take care of him, that he could remain in [REDACTED] as a senior advisor, and that he need not “lawyer up.” However, for the next eight months he was not permitted to return to work, had no assignments, and had little official contact with the Department other than weekly meetings with the DG at which she promised “to restore [him] to normal status as soon as possible.”

While grievant is aware that assignments are generally not grievable, he avers that “an assignment decision that is contrary to law or regulation is grievable.” See 22 USC § 4131(b)(1). He contends that the Department’s summary curtailment of his [REDACTED] assignment violated the procedural protections in 3 FAM 2444(b) relating to involuntary curtailments.

In addition, he asserts the Department violated 3 FAM 4323 by “excluding [him] from the premises and not processing [his] case in an expedited fashion. . . . [His] curtailment and placement in indefinite non duty status constituted disciplinary action which was taken without affording [him his] right to notice and an opportunity to respond to the allegations against [him].” He notes that during the initial five months of his administrative leave he “was not even allowed to see the classified [REDACTED] report to know what crime [he] was being punished for.” He avers:

I have never been formally advised of what I did or did not do to warrant my public removal from my assignment nor have I been given the opportunity to defend myself against whatever it is the Department believes I did or did not do.

Although I continue to receive my salary, my reputation has been severely damaged both inside and outside the Department of State.

Grievant explained the personal impact on him and on his family:

At the daily press availability on Wednesday, November 19, the Department spokesman confirmed my name to the press as one of those who had been removed as a result of the [REDACTED] report release. Reports of my firing, followed by reports of my removal from the [REDACTED] position appeared in the press through the United States and abroad. . . . My name was cited and my photo was circulated. . . . My family in [state] and my wife's family in [three overseas countries] both suffered humiliation and embarrassment due to the inaccurate press coverage fueled by the Department's official confirmation.

Grievant contends that in placing him on administrative leave and removing him from his [REDACTED] position the Department was in fact curtailing him. Since he did not request voluntary curtailment, he asserts that he was curtailed involuntarily under 3 FAM 2444(b) and that the action taken did not observe its procedural requirements. This section of the FAM states:

- b. Bureau Assistant Secretary or designated deputy assistant secretary may request the curtailment of a Foreign Service employee assigned within the United States by addressing a memoranda marked "Personnel Sensitive" to the Director General. The memoranda should:
- (1) Include background information on any incidents that support the request;
  - (2) Confirm that the employee has been informed of the request and the reasons therefor; and
  - (3) Confirm that the employee has been advised that he or she may submit comments separately.

While the memorandum from [REDACTED] to DGHR on December 21, 2012, states that the request to place grievant on administrative leave had come from Under Secretary Kennedy's staff and "was for the needs of the service," grievant notes that there was no memorandum from the Undersecretary's Office, no background or any information on incidents supporting the request, no confirmation that grievant had been informed of the request and the reasons for it, and no confirmation that grievant had been

advised that he could submit comments separately. For these reasons, the manner in which the Department curtailed grievant violated 3 FAM 2444.

Grievant dismisses as specious the Department's argument that:

1) 3 FAM 2440 on curtailment does not apply because his assignment as a [REDACTED] "was for an indefinite period of time as opposed to the typical fixed-duration assignment"; [and he] was serving "at the pleasure of Departmental leadership"; and

2) 3 FAM 2440 would apply only to the "shortening [of] an employee's tour of duty from his or her next assignment"; and since his assignment did not have a fixed end-date, it could not have been shortened.

He charges that:

It was made to appear that [he] had been "fired" from the [REDACTED] position and the Department was fully complicit in maintaining that public appearance, in a deliberate attempt to harm [his] reputation and to persuade members of Congress that the Department was taking decisive action to punish those being held "responsible" for [REDACTED] without making any direct charges of breach of duty and/or proposing any disciplinary action.

In response to grievant's request in discovery as to his status between December 18, 2012, and February 19, 2013 -- when he was assigned to DG Overcomplement -- the Department replied that he continued to encumber his [REDACTED] position but was on administrative leave. He asserts that the "transfer to HR Overcomplement was only for show and HR never handled any of [his] administrative requirements." Even after he received a letter on August 19, 2013, terminating his administrative leave and transferring him to the [REDACTED] Bureau, his time and attendance continued to be maintained by [REDACTED]

Grievant contends that procedures in 3 FAM 4323<sup>7</sup> permit the Department to exclude employees from the premises or curtail their assignments only in limited circumstances, none of which applies in his case. Grievant asserts that:

The Department . . . does not have a “reasonable belief” to conclude that my presence in any position in the State Department may “pose a threat to myself or others; result in loss of or damage to US Government property; or otherwise jeopardize legitimate US government interests. The unclassified [REDACTED] Report does not allege that I breached any duty or failed to perform my duties in a satisfactory manner. Thus, it does not provide any basis, let alone a reasonable basis, for placing me in a non duty status. I was finally permitted to see the portion of the classified [REDACTED] report that pertained to me. Later that day, the pertinent paragraphs of the classified [REDACTED] were downgraded to SBU.<sup>8</sup> The report said words to the effect that I failed to read the daily intelligence updates and suggested that somehow that omission had an influence on the deaths of our colleagues in [REDACTED]

Grievant offered “amplifications” to the allegations in the “now declassified” paragraphs of the [REDACTED] report:

. . . The reporting chain for security issues at State, on the regional bureau side, goes up through the Executive Office, led by Executive Director [REDACTED] That office who is overall responsible for staffing, budgeting, buildings and security, and the Executive Director reports directly to the PDAS, [REDACTED]

---

<sup>7</sup> 3 FAM 4323 EXCLUSION FROM PREMISES/CURTAILMENT states:

- a. At any time during the course of an administrative inquiry or disciplinary action, a management official may decide to exclude the employee from all or a part of the official premises based on a reasonable belief that the employee’s continued presence in the workplace may pose a threat to the employee or to others; result in loss of or damage to U. S. Government property; or otherwise jeopardize legitimate U.S. Government interests.
- b. Except as provided in 3 FAM 4360, if an employee is excluded from all or part of the official premises, he or she will be removed from duty status and placed on *nonduty* status with pay (or if he or she requests, annual or sick leave for which he or she qualifies) unless the agency chooses to assign the employee work in an appropriate restricted work location, either in the employee’s regular position or by assignment or detail to other duties.
- c. An employee who is excluded from all or part of the workplace, removed from duty status, placed on *nonduty* status with pay, and/or assigned to work in a restricted work location, will be so notified in writing. When any of these actions is taken, the agency will proceed with the processing of disciplinary action on an expedited basis.
- d. At any time during processing under 3 FAM 4300, an employee’s assignment may be curtailed in accordance with 3 FAM 2440. Involuntary curtailment is not a disciplinary action, and *must* not be substituted for disciplinary action. (Emphasis in original.)

<sup>8</sup> SBU - Sensitive but Unclassified.

██████████ ██████████ are seldom involved in decision-making discussions regarding security. On security issues, the ██████████ level in the regional bureau is not where the rubber meets the road.

While the ██████████ Report and the Department's submissions both refer to grievant's "policy and security oversight," grievant reiterates in his Rebuttal that he had no security oversight.

Security oversight was with the Bureau of Diplomatic Security and what small amount remained for ██████████ was with the EX Director ██████████ and the PDAS (██████████). Every time the Department insinuated in its Response that [he] had responsibility for "security oversight" it is simply repeating a lie, a lie that started with the ██████████ but one that was refuted under oath by each Department official who testified before the House Oversight and Government Reform Committee, per its report issued on September 16, 2013.<sup>9</sup> The Department's repetition of a lie does not make it the truth, no matter how many times or even how loud it is repeated.

Grievant recounts telling the ██████████ that he had stopped going to the morning intel binder reading. He remains puzzled that the ██████████ included this comment as a basis for criticism in its report without having sought "to understand or even draw out the full and proper context and significance of remarks . . . [or recall him] for a subsequent interview. . . . That said, several senior Department officials have stated and/or testified that there was no actionable intelligence the reading of which might have prevented the ██████████ attack."

Had grievant been given an opportunity, he could have explained that:

I stopped attending the daily morning ██████████ SCIF intel binder reading around June, 2012. Most of the reporting was circular or merely regurgitated Embassy reporting we already had access to through normal channels, so I did not find it very useful for my regional responsibilities. My supervisors, acting A/S ██████████ and PDAS ██████████ did read the intel binder every day, so anything that I may not have seen, they would have. . . . In any case, I was "read in" to two specific SCI-classified programs that had regional ██████████ significance. Whenever there was special or actionable intelligence, an analyst from INR would phone me and I

---

<sup>9</sup> The House Committee's report has not been submitted for the record in this grievance appeal.

would meet him in the SCIF for the reading. I also kept up with classified cables from my posts via classified OpenNet.

Grievant notes that in May 2013 the Department added a new provision to 3 FAM 3464.1-2 Conduct Related Excused Absence:

Excused absence may be directed **in rare circumstances** and when authorized as provided by 3 *FAH-1 H-3461.2* when an investigation, inquiry, or disciplinary action regarding the employee's conduct is pending, has been requested, or will be requested within 2 workdays, and the continued presence of the employee in the workplace may pose a threat to the employee or to others, or may result in loss of, or damage to, U.S. Government property, or may otherwise jeopardize legitimate U.S. Government interests. (Emphasis added by grievant.)

Grievant emphasizes that he was not a threat to himself or others and that his presence in the workplace did not result in loss or damage to government property and did not jeopardize any legitimate U.S. Government interest. He asserts: "Making [him] a scapegoat is not a legitimate government interest."

While 3 FAM 4323 directs the agency to process cases such as his on an "expedited basis," grievant noted in his appeal that he had already been curtailed for more than six months but had not yet received any proposal for discipline. He charges that the Department had not expedited its consideration of his case. While it claimed that HR and senior officials "reviewed, on at least a weekly basis, appropriate action to take," it admitted during discovery that while he was on administrative leave, he was not under investigation for "criminal or other serious wrongdoing; and that there had not been a referral "for possible disciplinary action in [his] case." He asserts that the Department has shed no light on the actions it was taking during his seven months of administrative leave.

Grievant points out that 3 FAM 4323 also provides that involuntary curtailments must not be substituted for a disciplinary action. Based on the circumstances, he avers that his curtailment constituted disciplinary action:

. . . I was identified in the press as someone who was fired as a result of [REDACTED]  
. . . I was summarily curtailed from my position; and I have been sitting at home without an assignment for over six months.

Grievant asserts in his rebuttal:

The biggest disappointment in all this for me is that Human Resources . . . should be the first bureau to protect the rights of the individual employee. Instead, the Bureau of Human Resources has become chief of the political hacks, willing to say or do anything required to shore up a poorly thought-through and shoddily executed damage control exercise. . . .

The Department asserts that my aim is “vindication and exoneration from the [REDACTED] conclusions.” Another lie. My aim, from the very beginning, has been to receive the due process to which any employee should be entitled. My decision to retire does NOT absolve the Department or the Bureau of Human Resources from that responsibility. . . . And the idea the Department suggests that its deliberations and subsequent actions have some legal, moral, or ethical foundation is more absurd than it is offensive.

## **B. THE DEPARTMENT**

The Department argues that the relief grievant seeks would not remedy the errors he alleges. His submission “is directed almost exclusively at seeking exoneration from the [REDACTED] conclusions,” and his assertions of agency error are incorrect.

In responding to grievant’s Supplemental Submission, the Department contends:

[Grievant] does not request reinstatement to the Department, let alone his former [REDACTED] position. Indeed, Grievant has already voluntarily retired. Instead, in his Supplemental Submission, Grievant requests: an order directing the Department to release “a press report publicly clearing [him] of wrongdoing;” a finding that the Department improperly curtailed him; a finding that the Department improperly excluded him from the premises; a finding that the Department’s actions constituted disciplinary action; and the replacement of his 2012 Employee Evaluation Report (EER) with a standard gap memo. None of these requested remedies seek to rectify an improper curtailment. This Board has made clear that it does not act upon “grievances that do not allege and seek to rectify individual

injury or concrete or distinct harm.” FSGB Case No. 2001-026 at 4 (Dec. 5, 2001); *see* FSGB Case No. 2011-010 at 5-6 (June 16, 2011). Through these requested remedies, Grievant is effectively seeking exoneration from the [REDACTED] conclusions, not the remediation of an individual injury or concrete or distinct harm.

First, grievant’s assignment as a [REDACTED] was not curtailed. 3 FAM 2442 “defines a ‘curtailment’ as ‘the shortening [of] an employee’s tour of duty from his or her assignment.’” During grievant’s previous assignment as an Office Director in [REDACTED] he had a specified tour of duty from September 2009 until September 2011. However, in his assignment as a [REDACTED] he had an indefinite tour of duty, which cannot be “shortened” because there is no fixed duration. A declaration by the Acting Director General explained the reasons and implications of an indefinite tour of duty in this case. “Because of the crucial nature of duties involving major policy formulation and senior management functions, FS [REDACTED] serve at the pleasure of senior Departmental leadership.” This permits an Assistant Secretary to “assemble his/her preferred and trusted deputies and senior leadership team to better effectuate the A/S’s vision, direction, and goals for the bureau. . . . Once it is determined that an FS [REDACTED] should not continue in his/her position, he/she is so informed by senior Department leadership.”<sup>10</sup> The Department states that it “determined that [grievant’s] [REDACTED] assignment should end after the [REDACTED] released its finding regarding his lack of proactive leadership.”

The Department points out that grievant continued to be assigned to the [REDACTED] position after being placed on administrative leave on December 18, 2012. On February 12, 2013, he was reassigned to DG Overcomplement -- another assignment with an indefinite tour of duty. While he was later given duties to perform in [REDACTED] he was never formally assigned there. The Department claims that this was “due in large part to the

---

<sup>10</sup> Declaration of Hans G. Klemm, Acting Director General, February 25, 2014.

uncertainty surrounding his announced intention to retire and the date of that impending retirement.” It asserts that [REDACTED] continued maintenance of his “time and attendance” resulted from an administrative oversight.

The Department’s decision to place grievant on administrative leave pursuant to 3 FAM 4323(a) allowed it “to evaluate the appropriate action to take in response to the [REDACTED] Report’s concerns about the policy and security oversight provided by Grievant. Policy and security oversight are legitimate government interests.” While a standard clause for exclusion from the premises was included in the Department’s notice putting grievant on administrative leave, that provision was rescinded six days later, and two of those days were over a weekend.

Grievant claimed that the Department in placing him on administrative leave violated provisions in 3 FAM 4323 that such cases “should proceed with the processing of disciplinary action on an expedited basis.” The Department responds that the FAM does not define “expedited basis,” and timeliness is a relative concept that must be assessed on a case-by-case basis. It explains:

Grievant's case was a high-level, complex matter relating to a fatal attack on U.S. personnel abroad. While, unfortunately, it may not have been unprecedented, it was far from ordinary or routine. The consideration of this matter was not undertaken lightly and consisted of officials in the HR Front Office and senior Department officials reviewing, on at least a weekly basis, appropriate actions to take. In addition, the matter bridged the transition between Secretary Clinton and Secretary Kerry, which further prolonged the deliberations as a new leadership team commenced its review of the matter. In the sense that Grievant's case was a top priority, it was certainly expedited as it received constant and consistent attention from senior HR and Department officials. This was not an easy matter with an easy and obvious resolution. Therefore, it took some time.

Placing grievant on administrative leave and reassigning him from his [REDACTED] position allowed the Department time to decide its course of action. However, “they

were not, in and of themselves, disciplinary actions, nor were they in lieu of disciplinary action. The definition of “disciplinary action” in 3 FAM 4312 . . . does not include administrative leave as a form of disciplinary action.” The Department ultimately decided not to initiate any disciplinary action against grievant and gave him duties in [REDACTED] Executive Office.

The Department concludes:

[E]ven if the Department erred at some point in the handling of Grievant's case, he is not pursuing a remedy for any such error. He has voluntarily retired and is not seeking reinstatement. He has failed to articulate the relevance to his claims of the 2012 EER he wants replaced and the remainder of his requested remedies are not remedies at all. They are, instead, attempts at vindication and exoneration from the [REDACTED] conclusions. As such, Grievant's grievance appeal should be denied.

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

In all grievances other than those concerning disciplinary actions, grievant has the burden of establishing by a preponderance of the evidence that the grievance is meritorious. (22 CFR § 905.1(a)).

Grievant claims that the Department violated its regulations – specifically, 3 FAM 2444(b), relating to involuntary curtailments, and 3 FAM 4323, relating to exclusion from Department premises -- in placing him on administrative leave, briefly excluding him from the premises, and reassigning him, following the attacks in [REDACTED]. In his supplemental submission, filed following his retirement from the Department, grievant requested the following relief:

- That the Department release a press report clearing [him] of all wrongdoing;
- That the Board find that the Department violated 3 FAM 2440;
- That the Board find that the Department violated 3 FAM 4323;

- That the Board find that the Department's actions constituted disciplinary action;
- That the Department remove [his] EER for the period ending December 18, 2012, from [his] official personnel file and place a standard gap memo in [his] file; and
- All other appropriate relief.

The Board finds that with one exception, the remedies grievant seeks in his post-retirement Supplemental Submission are either not actual remedies or are not within the Board's authority. We also find that none of the remedies requested would reverse or correct the violation of regulations by the Department that grievant alleges.

Grievant presents his claims in the context of a general assertion that the Department's actions against him were part of a politically-motivated, damage-control effort to make it appear to the Congress that it was taking decisive action to punish officials whom the ██████ had found responsible but without taking disciplinary action. We do not take lightly either grievant's belief that he has been treated unjustly or his efforts to restore a professional reputation that he believes was unfairly and inaccurately impugned. However, the Board is limited by statute as to the issues it may address and the remedies it may order.

The Board described its role in FSGB Case No. 2001-026 (December 5, 2001):

. . . Our specific role is to adjudicate grievances. The Foreign Service statutory grievance process we administer is a forum for nullifying unlawful adverse impact on the individual grieving. As we held in FSGB Case No. 97-98 (March 10, 1998):

In considering whether the Board has jurisdiction, the Board must first determine if grievants' allegations raise a grievable issue that the Board may entertain under . . . (the Act). Next the Board must determine if the grievants have suffered any harm, been denied a right or entitlement, either grounded in law or regulation, or if they have demonstrated that there is a clear threat of irreparable harm.

In that same decision we went on to hold that an actionable grievance must identify both an erroneous or improper agency action alleged to have caused harm to a grievant and the harm itself. . . . We limit our jurisdiction to granting remedial action that is necessary and appropriate to correct some harm experienced by a particular grievant.

Grievant's request that we find that the Department violated 3 FAM 2440 and 4323, as well as his request that the Department's actions constituted disciplinary action, are not remedies, *per se*, but rather would be an inherent part of a decision on the merits were the Board to rule in his favor on the merits in this case. That leaves only two proposed remedies: that the Department be directed to issue the press release, and that grievant's 2012 EER be expunged from his file.

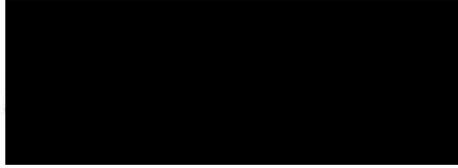
It is not within our authority to order the Department to issue a press statement clearing grievant of wrongdoing. Grievant's request that his final EER be removed from his official performance file would be a viable remedy and within the Board's authority. However, we have no basis upon which to consider this request, since he has not submitted a copy of the EER as evidence or presented any argument as to why it should be removed.

In that no viable remedies have been proposed that would address the alleged harm, the Board does not reach the merits of these issues, the case is moot, and the grievance appeal is denied.

## **V. DECISION**

The grievance is denied in all respects for mootness.

**For the Foreign Service Grievance Board:**



---

Warren R. King  
Presiding Member



Harlan F. Rosacker  
Member



Jeanne L. Schulz  
Member