

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between

  
Grievant

Record of Proceeding  
FSGB No. 2013-031

And

September 16, 2013

Department of State

**ORDER: MOTION FOR HEARING  
EXCISED**

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For the Foreign Service Grievance Board:

Presiding Member:

John M. Vittone

Board Members:

James E. Blanford  
William B. Nance

Special Assistant:

Joseph Pastic

Representative for the Grievant:

Nicholas Woodfield, Esq.

Representative for the Department:

Kathryn Skipper, HR/G

Employee Exclusive Representative:

American Foreign Service Association

## **ORDER: MOTION FOR HEARING**

### **I. THE ISSUE**

This order addresses the request of [REDACTED], the grievant, that the Board conduct a hearing on the issues raised in his grievance appeal filed on July 11, 2013.

### **II. BACKGROUND**

Grievant, a Foreign Service Criminal Investigator with the U. S. Agency for International Development, [REDACTED], asserts that his retirement annuity has been miscalculated in that the Department determined that his total compensation for annuity calculation purposes should be capped at the GS-15, step 10 level. Grievant asserts that he received special differential pay from about 2000 until his retirement in 2010, and that the special differential pay was not properly included as basic pay in the calculation of his annuity. Grievant seeks an adjustment to his annuity and back pay for the insufficient retirement annuity payments to date. In a decision dated May 10, 2013, the Department denied the grievance. Grievant filed his appeal with the Board on July 11, 2013.

On July 29, 2013, grievant filed a Motion Showing Good Cause for a hearing in this case. In his motion, grievant argues:

There should be a hearing because a legal question exists as to whether under either 22 U.S.C. § 4046 and/or 22 U.S.C. § 3972 a pay cap is properly used when calculating “basic pay”.

Grievant states that the two statutes are silent on whether the calculation of “basic pay” is subject to any cap. The Department denies that a hearing is needed and opposes the motion.

### **III. DISCUSSION**

A hearing on the record is mandatory at the grievant's request in limited circumstances involving disciplinary action or retirement from the service for expiration of time in class or failure to meet the standards of performance. 22 U.S.C 4136 (1)(A). In all other cases, the Board may order a hearing or oral argument if it decides that the matter can best be resolved by either means. See 22 U.S.C 4136(1)(B) and 22 C.F.R. 906.

This case involves the proper calculation of grievant's retirement annuity, and is not the kind of matter that requires a hearing under the statute or regulation. In support of the motion, grievant states that a "legal issue exists" as to whether a pay cap should have been applied to the calculation of his retirement annuity. This legal issue arises, according to grievant, because the statutes at issue are silent as to whether the calculation is subject to any pay cap. Grievant believes that the limited legal authority and documentation available suggest that a debate on the issue would assist the Board to resolve the issue.

The Department opposes the request for a hearing, and argues that any issue needing a debate can be done in written filings to the Board. Further, they note that grievant has not identified any factual issues in dispute or any questions of credibility, demeanor, or motivation that would require an in-person hearing before the Board.

We are not persuaded that a hearing on the record is needed or that it would be the best or more productive method of resolving this case. Grievant acknowledges that the main issue in this case is the resolution of the intent and interpretation of the statutes and the regulations governing the calculation of his annuity. He has not identified any factual issues or witnesses that are necessary for the proper understanding of that process. There

is no reason to believe that the parties will not be able to explain fully their arguments and positions in writing on the merits of the case. We also do not find that an oral argument will contribute to our deliberations. We look forward to the parties' explanations of their cases in more detail in their submissions as provided by the Board's Policies and Procedures.

**IV. ORDER**

The request for a hearing is denied.

**For the Foreign Service Grievance Board:**



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John M. Vittone  
Presiding Member



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James E. Blanford  
Member



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William B. Nance  
Member