

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

██████████

Grievant

Record of Proceedings

FSGB No. 2013-036

And

May 9, 2014

Department of State

DECISION

EXCISION

For the Foreign Service Grievance Board:

Presiding Member:

Warren R. King

Board Members:

Barbara C. Cummings

William J. Hudson

Special Assistant:

Lisa K. Bucher

Representative for the Grievant:

Pro se

Representative for the Agency:

Dorian S. Henderson
Grievance Analyst, HR/G

Employee Exclusive Representative:

American Foreign Service Association

OVERVIEW

HELD: Grievant has failed to show by a preponderance of the evidence pursuant to 22 CFR § 905.1 that the omission of certain performance documents from his Official Performance File (OPF) prejudiced his chance for promotion to the Senior Foreign Service in 2012. The grievance is denied.

SUMMARY: Grievant appeals the Agency's denial of his request for a reconstituted senior threshold board to reconsider his promotion into the Senior Foreign Service (SFS). Grievant maintains that several documents were either not included in his OPF at the time his file was reviewed by the Senior Threshold Board (STB) in 2012 or were inserted into his OPF after the STB had begun its deliberations. Grievant argues these procedural errors were substantial factors in the 2012 STB's decision not to recommend him for promotion into the SFS in 2012.

The Board could find no probative evidence in the Record of Proceedings to support grievant's claims that the absence of one document and the late insertion of another into his OPF were substantial factors in the 2012 STB mid-ranking of grievant.

The grievance appeal was denied.

DECISION

I. THE GRIEVANCE

Grievant alleged in his Agency-level grievance that, at the time of his first review for promotion into the Senior Foreign Service (SFS) in 2012, his OPF was severely compromised because three key documents¹ were either not in his OPF or were inserted after the Senior Threshold Board (STB) had begun its deliberations. Grievant alleges that the absence of these documents was a material and prejudicial error that significantly diminished his opportunity for full consideration for promotion into the SFS in 2012. Subsequently, after several exchanges between grievant and the Department of State (Agency), in his appeal to this Board grievant amended his grievance, recognizing that one of the documents he originally claimed was omitted, his Superior Honor Award (SHA), was part of his OPF at the time of his initial review by the STB. He continued to fault the Agency for not including the other documents, and inserting his Evaluation and Training report covering his assignment to the [REDACTED] from August 2011 to June 2012 in his OPF after the STB had already started its deliberations. Grievant asserts that the late insertion of this Evaluation and Training report and the absence of his Master of Science degree hurt his chance for promotion into the SFS in 2012.

Grievant requests a reconstituted 2012 Selection Board to review his file; that if recommended for promotion, the promotion be retroactive to 2012; that he receive all appropriate back pay and interest; and any other relief deemed just and proper.

¹ These documents included a Superior Honor Award for service as DCM and Chargé at Embassy [REDACTED] an Evaluation and Training Report from the [REDACTED] and a certificate documenting grievant's receipt of a Master of Science degree with Distinguished Graduate designation.

II. BACKGROUND

Grievant, an FS-01 Regional Security Officer (RSO), entered the Foreign Service in 1997. During an assignment to [REDACTED] as RSO, grievant was asked to serve as acting Deputy Chief of Mission (DCM) and Chargé d'Affaires for a four-month period. Grievant's service in these positions was documented in a SHA. Upon completion of his assignment in [REDACTED] grievant was assigned to the [REDACTED]. At the end of his one-year assignment to the [REDACTED] grievant received an evaluation and training report as well as a certificate conferring a degree of Master of Science in National Security Strategy with a notation that grievant was a Distinguished Graduate. Subsequently, grievant opened his "window" for promotion into the SFS for the 2012 review process.² In his first review for promotion, grievant was mid-ranked by the 2012 STB.

Grievant maintains the absence of a document and the late insertion of another into his OPF after the STB had begun its deliberations prejudiced his chance for promotion into the SFS in 2012.

Grievant filed his original grievance on April 18, 2013. The Agency replied on June 3, 2013, denying his grievance. Grievant appealed to the Board on August 2, 2013. The Agency responded to the grievance appeal on September 9, 2013. Grievant provided a rebuttal on January 31, 2014. The ROP was closed on February 18, 2014.

² A Foreign Service Officer (FSO) at the 01 level may request to be competed for promotion into the Senior Foreign Service (SFS). An FSO is afforded six reviews for promotion into the SFS. A member who is not promoted during this "Senior Threshold Window" as the result of six or fewer STB reviews will be retired mandatorily in accordance with 3 FAM 6216. (3 FAM 6213.8a)

III. POSITIONS OF THE PARTIES

A. GRIEVANT

Grievant originally alleged that an individual SHA, a Master of Science degree in National Security Strategy, and an Evaluation and Training Report covering his assignment to the [REDACTED] were omitted from his OPF during the 2012 review of his file by the STB. Grievant maintains that omission of any of these documents was a serious material error that prejudiced his chance for promotion into the SFS in 2012. After several exchanges with the Agency, on appeal to this Board grievant changed his grievance, maintaining that while the SHA was in his file for consideration of the STB, the certificate documenting his receipt of a Master of Science degree in National Security Strategy, with a notation as a Distinguished Graduate, was not in his file during the STB's 2012 review and was not included in his OPF until February 22, 2013. Grievant also alleges that his Evaluation and Training report covering his performance at the [REDACTED] was not included in his OPF until June 18, 2012, well after the convening and beginning of deliberations of the 2012 Selection Board on June 7, 2012. He argues that by the time his Evaluation and Training report was included in his OPF, the STB had already begun its deliberations and therefore did not consider his 12-month stint at the [REDACTED] in its considerations. Grievant maintains the late inclusion of this report and the missing certificate constitute an error by the Agency that harmed his chance for promotion into the SFS in 2012. Grievant maintains these omissions in his OPF were particularly significant because his promotion review board is extremely "competitive for DS agents as the promotion rates are not overly large."

B. THE AGENCY

The Agency denies grievant's claim that his SHA was not in his OPF for consideration by the 2012 STB. The Agency points out that with the exception of the approval dates and accompanying certificate, there were two copies of the 2011 SHA in grievant's OPF when the STB began its deliberations. Moreover, the Bureau of Human Resources Office of Records and Information Management (HR/EX/RIM) confirmed that the SHA approved by the Chief of Mission on August 11, 2011, was in grievant's OPF on April 19, 2012. The SHA approved by the Area Awards Committee on October 27, 2011, was included in grievant's OPF on January 11, 2012, well in advance of the STB's review of grievant's file for promotion into the SFS.

The Agency notes that the STB began its work on June 6, 2012, and that the first three days of the Board's time were taken up with training. The STB did not begin deliberations until June 11, 2012. The Agency maintains that grievant's [REDACTED] Evaluation and Training report was included in grievant's OPF on June 18, 2012. However, it confirms that the certificate recording grievant's Master's in National Security Strategy, with Distinguished Graduate designation, was added to grievant's OPF on February 22, 2013, well after the 2012 STB had completed its work, and was not available for the STB's review in 2012.

The Agency agrees with grievant's assertion that his STB was particularly competitive for DS agents. It noted that in 2012 only 12 promotion opportunities existed for 52 DS FS-01 Security Officers recommended by the STB for promotion from FS-01 to FE-OC. The Agency notes that grievant was mid-ranked and not recommended for promotion. It maintains that inclusion of grievant's Master's degree certificate would not have been sufficient to move grievant into the top 12 Security Officers promoted that year.

IV. DISCUSSION AND FINDINGS

The core of this appeal rests on grievant's claim that the late insertion of his Evaluation and Training Report from the [REDACTED] into his OPF several days after the STB had begun its deliberations, and the absence of grievant's certificate documenting his receipt of a Master of Science Degree with Distinguished Graduate designation, were materially prejudicial to his consideration for promotion into the SFS in 2012. Under 22 CFR § 905.1(a) the grievant has the burden of proof in establishing, by a preponderance of evidence, that his grievance is meritorious. After carefully reviewing the ROP in this appeal, the Board concludes that grievant has not established that a procedural error occurred of such a nature that it may have been a substantial factor in the 2012 STB's decision to mid-rank him.

Grievant claims that submission of his [REDACTED] Evaluation and Training report on June 18, 2012, after the STB had begun its deliberations, resulted in the STB not considering his performance at the [REDACTED] in its consideration for promotion.

The Board could find no evidence in the record to support grievant's allegation. Although grievant maintains that 10 days passed when the STB could have reviewed his file without the [REDACTED] material, grievant provides no proof that it actually did so. Indeed, while the STB did convene on June 6, 2012, the first three days of its session were spent in training. Thus the STB did not begin its assessment of candidates' files until June 11, 2012. The STB had been reviewing files for only five work days by June 18, when grievant's Training and Evaluation report was included in his OPF. The Board notes the STB concluded its deliberations in July 2012, providing more than a month and a half to review its files. It is unclear to the Board on what basis grievant claims that his file was among those reviewed by the STB within

those first five days. Grievant has the burden of showing that the Evaluation and Training report was not considered by the STB when it reviewed his file; however, he made no effort, through the discovery process, to determine whether that in fact was the case. To simply allege that his file was reviewed before his Evaluation and Training report was in his file is insufficient evidence to carry his burden of proof. With no evidence to support his claim, the Board finds that grievant has not established that his file was reviewed before the [REDACTED] material was included in his OPF on June 18.

As to the missing certificate documenting grievant's receipt of a Master of Science degree in National Security Strategy with a Distinguished Graduate designation, the Board agrees with both parties that this document was not in grievant's OPF when the STB reviewed his file for promotion. Nevertheless, the STB would have been aware of grievant's achievements, which are well documented in his Evaluation and Training report, in which the rater lauds grievant's performance by noting:

[REDACTED] is an exceptional diplomat who is blessed with an abundance of intellectual, substantive, communications and leadership ability, as was made clear by his finishing the academic year as a **Distinguished Graduate**, and winning the [REDACTED] Award.

[REDACTED] selection as one of the top ten percent of the [REDACTED] Class of 2012 is no surprise.

(Emphasis added.)

The Evaluation and Training report, which was in grievant's OPF, documented his excellent performance and achievements at the [REDACTED] despite the absence of his Master of Science degree certificate. It is true that there is no mention in the Evaluation and Training Report of grievant's Master of Science degree with distinguished performance awarded

in National Security Strategy. This could, in other circumstances, be considered a material omission, but in this case (see below) the grievant has not met his burden of proof.

Grievant argues that he has “opened [his] window and [is] seeking to cross the senior threshold, a specifically narrow and competitive group of promotions that is even harder to achieve in [his] specialty as a DS agent.” Given this competitive environment, grievant asserts that the late addition of the [REDACTED] Evaluation and Training report and the missing Master of Science degree certificate could have prejudiced his chances for promotion.

The Board does not agree. While there was apparently negligent management of grievant’s OPF by the Agency when it did not include grievant’s Master of Science degree in time for STB review, in the Board’s view, this error did not create a substantial factor in this particular case. There is no evidence presented by grievant that the STB did not consider his [REDACTED] Evaluation and Training report in its evaluation of grievant’s file, which, except for not mentioning, specifically, grievant’s MS degree in National Security Strategy, was effusive in praising grievant’s intellectual, leadership and communication skills, placing him in the top 10 percent of his class.

According to the 2012 Foreign Service Promotion Statistics, of the 73 DS FS-01 Security Officers reviewed for promotion, 52 were recommended for promotion from FS-01 to FE-OC. Only 12 promotion opportunities existed for the 52 DS agents recommended for promotion. The Board can find no basis to conclude that had grievant’s Master of Science certificate been included in his file, the STB’s mid-ranking of grievant would have changed, propelling him into the top 12 DS agents actually promoted.

Based on the foregoing, it is the Board's view that grievant has failed to meet his burden of proof to establish that delayed inclusion of his Evaluation and Training report from the [REDACTED] [REDACTED] after the STB had begun its deliberations and the absence of his Master of Science certificate in his OPF may have been substantial factors in the 2012 STB's decision to mid-rank him.

V. DECISION

The grievance is denied.

For the Foreign Service Grievance Board:

[REDACTED]

Warren R. King
Presiding Member

[REDACTED]

Barbara C. Cummings
Member

[REDACTED]

William J. Hudson
Member