

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

Foreign Service Grievance Board
Case No. 2013-046

July 6, 2015

And

Department of State

DECISION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Arthur A. Horowitz

Board Members:

Bernadette M. Allen
James E. Blanford

Special Assistant:

Joseph Pastic

Representative for the Grievant:

Andrew Large, AFSA

Representative for the Department:

Dorian Henderson, HR/G

Employee Exclusive Representative:

American Foreign Service Association

OVERVIEW

HELD: With one exception, grievant has not met his burden of proof with respect to the prejudicial nature of the Areas for Improvement (AFI) statements contained in his Employee Evaluation Reports (EERs) from 2009 through 2012, which he alleges were inaccurate, vague and unsupported by examples, and resulted in his 2012 low ranking. The grievance is denied.

CASE SUMMARY

Grievant, an FP-04 Diplomatic Security (DS) Special Agent, filed his agency-level grievance on June 17, 2013, claiming that the Foreign Service Selection Board (SB) violated the applicable Procedural Precepts and did not comport with standards established for review by low ranking him based upon a disciplinary letter and unsubstantiated AFIs that were vague, inaccurate or unsupported by specific examples. He argued that the Department failed to demonstrate that his performance record was deficient in any of nine enumerated bases for low ranking him. He questioned the balance of the SB's low ranking statement, noting brevity in the description of his accomplishments (including awards) in contrast to more lengthy derogatory language about his performance. He challenged his raters' credibility in the area of counseling his performance as required, and contended that one rater was hostile and biased against him. As a remedy, he sought redaction of AFIs from five of his EERs and reconstituted 2012 and 2013 SBs to review his Official Performance Folder (OPF) against those of his peers.

The Board found that grievant failed to prove the inaccuracy of all but one of the contested AFIs in his EERs. With the exception of one supervisor, the Board determined that grievant's arguments that his raters lacked credibility and, in one instance, displayed hostility and bias against him are without merit. While he provided several testimonials of support from colleagues who lauded his work, the agency included in the record comments from superiors in grievant's chain of command consistent with language found in the contested AFIs. At the time of the SB review, grievant's OPF included a disciplinary letter (issued in July 2011) that he acknowledged was justified. After the agency denied his grievance, he appealed to this Board not only challenging the AFIs in EERs covering 2009 – 2012, but also pointedly contesting the AFIs in his 2011 and 2012 EERs and the ensuing SB low ranking.

The Board is convinced that grievant was counseled on various aspects of his performance in his initial domestic assignment that he contends were never raised with him. While some of the counseling was informal instead of the formal written counseling that supervisors typically provide to a first-tour, untenured agent, certifications on the EERs reflect the dates that counseling did occur. Grievant contends that in his second assignment (abroad), he had a strained relationship with his supervisor. We find that the EERs were favorable in content and did not make reference to some of the performance deficiencies detailed in written counseling statements that grievant timely received. The detailed counseling statements criticized some aspects of grievant's performance of official duties and conduct, and were supported by statements from other superiors in his chain of command. We conclude that the SB's reliance on

the admittedly justified letter of reprimand taken together with credible AFIs allowed it to reach its judgment that grievant had not met the performance standards of his peer class. The Precepts for 2012 provide that “inadequacies in needed skills that lead to a low ranking must be documented by one or more examples of performance from the most recent five years.” The Board found that four AFIs were specific enough to satisfy the Precepts. For these reasons, the Board ordered any references to the one flawed AFI removed from the grievant’s OPF and from the LRS but denied the remainder of grievant’s appeal.

DECISION

I. THE GRIEVANCE

██████████ (grievant), an FP-04 Diplomatic Security (DS) Special Agent with the Department of State (Department, agency), grieves his low ranking by the 2012 Foreign Service Selection Board (SB). He challenges the low ranking¹ on three bases: 1) he argues that the Department failed to show his performance record was deficient in any of the nine enumerated bases listed in the Foreign Affairs Manual (FAM) as meriting low ranking; 2) he avers that the SB relied too heavily on a 2011 disciplinary letter; and 3) he questions the balance of the Low Ranking Statement (LRS), noting brevity in the description of his accomplishments, including awards he earned, in contrast to more lengthy derogatory language about his performance. He contends that the SB violated the 2012 Procedural Precepts by low ranking him, basing its conclusions on flawed statements made in the Areas for Improvement (AFI) section in five EERs covering the period 2009 through 2012. Grievant variously claims that the AFIs are not accurate; that he was not counseled with respect to alleged performance deficiencies contained therein prior to their inclusion in the EERs; and that some of the AFIs are unduly vague and lacking examples. He seeks redaction of the contested AFIs and requests reconstituted 2012 and 2013 Summer SBs to review his revised OPF among his peer group. He seeks attorney fees, if warranted, and other relief deemed just and appropriate.

¹ Low ranking criteria. **2012 SB Procedural Precepts - Section III. A.2.a.** - The Precepts establish the scope, organization and responsibilities of the SB and describe the criteria Boards use to reach their determinations. All career members of the Service reviewed for promotion shall also be reviewed for low ranking and possible referral to a Performance Standards Board (PSB). Except as provided, for all competition groups of 50 or more, the Boards are required to designate two percent of members as low ranked. Inadequacies in needed skills that lead to a low ranking must be documented by one or more examples of performance from the most recent five years. Boards may not rely solely on critical comments in the Areas for Improvement section unless supported by one or more examples there or elsewhere in evaluations from the most recent five years in the OPF. The AFI section is a mandatory requirement for all employees.

II. BACKGROUND

Grievant is a tenured FP-04 Diplomatic Security (DS) Special Agent who began his service with the Department of State in April 2007. His initial tour of duty was a two-year assignment in the [REDACTED]. In 2010, grievant commenced his assignment as the Assistant Regional Security Officer (ARSO) in [REDACTED]. In 2012, he began a tour of duty in [REDACTED]. Thereafter he was assigned to [REDACTED]. Grievant's OPF includes a group award, individual awards and several evaluations covering his tenure in the Department. He filed a grievance with the Department on June 17, 2013, challenging his low ranking by the 2012 SB. He contended that the low ranking he received was unjustified because the performance shortcomings noted in his AFIs simply were not true and, in any event, any such deficiencies were not brought to his attention as required. He questioned his low ranking in light of the group and individual awards he received over the course of his tenure. He claimed that the SB did not benefit from a balanced depiction of his performance and, in essence, low ranked him on the basis of erroneous and defective EERs and a 2011 disciplinary letter. He challenged several AFIs from raters at two posts, alleging both inaccuracy and lack of specificity. The AFIs he most vigorously contested were those written by his rater in [REDACTED] whom he alleges was biased and hostile towards him. Additionally, he questioned the credibility of AFIs provided by other raters, and stated that one rater he identified as a personal friend had intended the AFI he wrote to be a "throw away." After grievant's agency-level grievance was denied, he filed an appeal with this Board on November 12, 2013 and a supplemental submission on June 9, 2014. The agency responded to grievant's supplemental submission on July 10, 2014; grievant submitted a rebuttal to the agency's supplemental submission on August 29, 2014; and the Record of Proceedings (ROP) was closed on that date.

III. POSITIONS OF THE PARTIES

A. THE GRIEVANT

Grievant challenged the ratings he received for two assignments, one domestic tour of duty in the [REDACTED] and one overseas tour of duty in [REDACTED].

Citing the *Hillen* factors,² he questioned the credibility of one rating officer in [REDACTED] to whom grievant allegedly sent an unanswered e-mail stating that he had neither received a work requirements statement (WRS) nor three required counseling sessions.

Characterizing as “strained” his working relationship with one rating officer in [REDACTED] grievant alleges that the rating officer was hostile or biased against him.³

Overall, grievant argued that the AFIs in his EERs covering 2009 to 2012 are unsubstantiated and lack specific examples of his deficiencies. He contended that the AFIs are falsely prejudicial because they are “nothing but vernacular, including figurative and unspecific language” to describe his performance. He requested that the AFIs in his EERs from 2009 to 2012 be redacted accordingly. Grievant acknowledged that a 2011 disciplinary letter issued to him was justifiable, but contended that the SB violated the Procedural Precepts by relying too heavily on that letter to low rank him. He opined that his group and individual awards should have provided sufficient weight to prevent him from being low ranked among his peer group. He included testimonials from several colleagues at both assignments and contended that his performance record does not reflect deficiencies under any of the nine enumerated justifications in the FAM for low ranking.

² *Hillen v. Dept. of the Army*, 35 MSPR 453 (1987), a decision which sets forth the factors to be weighed in considering testimony from witnesses to resolve credibility issues in a dispute.

³ See ROP #001, page 24: One reviewing officer in [REDACTED] described as “cordial” the relationship between the rater and grievant. See ROP #001, page 46: A subsequent reviewer remarked that the relationship between grievant and his rater in [REDACTED] had “improved significantly over the course of the rating period, which is a tribute to their professionalism and dedication.”

B. THE DEPARTMENT

The Department contends that the SB low ranked the grievant in accordance with the Procedural Precepts. The agency credited grievant for the group and individual awards he earned, but determined that he merited the low ranking based on its evaluation of the contested ratings covering grievant's two assignments over a period of several years and statements from others in his chain of command with knowledge of his performance. The agency also properly relied on the unchallenged disciplinary letter and three-day suspension imposed on grievant for his mismanagement of a government credit card and the associated delinquency in his repayments, as referenced in the SB's low ranking statement issued to grievant. Further, the agency argued that the AFIs were not inaccurate or falsely prejudicial, and disagreed with grievant's opinion that his raters lacked credibility.

IV. DISCUSSION AND FINDINGS

The grievance does not involve a disciplinary action; thus, grievant must carry the burden of proving, by a preponderance of the evidence, that his grievance is meritorious.⁴ This Board concludes that grievant failed to meet his burden based on the record evidence in this case.

The two main issues raised in this grievance appeal are whether grievant was given adequate notice of and counseling with respect to his performance deficiencies during the rating periods in question, and whether the AFIs contained in his EERs were simply guidance for improvement in the future or met the standard of providing specific examples to identify the rated employee's performance deficiencies. As to the first issue, in light of the counseling dates that were certified on the contested EERs, as well as counseling session statements made available for this Board's review, we are convinced that counseling occurred. Regarding the second issue, as this Board has previously stated:

⁴ 22 CFR 905.1

The difference between an example and a general critical statement (or guidance) is a matter of specificity. Specificity is required so that the officer being criticized is given a fair opportunity to answer the criticism or to use it as a basis for self-improvement. The Board recognizes that specificity is a matter of degree, and whether a criticism is adequately specific will be a close call in some cases. The analysis is done from the perspective of a reasonable person – in this case, the reasonable rated person - as to whether the person is given adequate notice of a deficiency in performance so as to be able to respond to it.⁵

It is with these standards in mind that the panel reviewed the examples that the 2012 Selection Board chose from grievant's 2009 - 2012 EERs.

April 2009 EER

A career with DSS is fraught with disruptions and unanticipated travel demands. ██████ should devise ways to better organize his investigative caseload in such a manner as to maximize his effectiveness while not in travel status.

Certifications on the EER indicate that counseling occurred on November 11, 2008 and January 8, 2009 for period ending April 15, 2009, and that at least one session was documented in writing on the required counseling form. The Grievance Staff in the Bureau of Human Resources (HR/G) also contacted the rater to inquire about his counseling of the grievant. The rater responded that, due to his assignment in ██████ at the time of the HR/G inquiry, he had no access to the written documentation that would support his statements that he did counsel the grievant; however, he added that much of his counseling during the rating period was informal. We find that such counseling took place as the rater indicated, and that it provided grievant both sufficient notice and adequate opportunity to demonstrate improved performance before the end of the rating period when the EER was prepared and presented to grievant.

To rebut the criticism of his effectiveness and level of productivity, grievant argues that he had the second highest number of case closures in the office and impeccable statistics to prove

⁵ See FSGB Case No. 2001-017 (June 15, 2001)

it. He avers that he was never once counseled on any issues with regard to managing his caseload. The Department included the rater's statement insisting that he counseled grievant on several occasions on the lack of case closures. Grievant contends that his productivity never was flagged as a concern. The grievant's view of what amounts to case closure is at odds with the analysis the Department secured from another DS analyst familiar with the office's case tracking system. Discrepancies in the interpretations of the results generated from the office technology used to track case work rendered it impossible for this Board to draw a conclusion one way or another on what is considered to be a "closed" case. Since grievant has the burden of proving that the criticism of his productivity was inaccurate and therefore prejudicial to him, we conclude that he has failed to meet that burden and hence we must reject his assertion in this regard.

The AFI suggests that the grievant needed to better organize his caseload in order to maximize his efficiency. This commentary pointed to a specific example of a managerial deficiency that required improvement and the grievant took a proactive measure to better track his cases. Admittedly, at this early stage in the grievant's career, his supervisor could have used a series of more permanent and arguably more effective counseling techniques by formally documenting the performance deficiency with written counseling certifications of the sessions in order to further heighten the then-untenured officer's awareness of the area in need of improvement. We credit the supervisor's assertion that he prepared at least one formal written counseling statement but could not access it due to assignment to [REDACTED]. As to the other counseling sessions of an informal nature, we are convinced that grievant and his supervisor discussed the managerial deficiency because we have no reason to discount the grievant's certification in his EER statement that counseling occurred in November 2008 and January 2009, nor his statement that he had taken steps to better organize his caseload by learning to use

Microsoft Excel and applying it to his cases. While these statements appear in the EER itself, they tend to confirm that grievant was put on notice of his managerial deficiency months earlier and acknowledged taking steps in an effort to improve his performance before the rating period ended. With regard to counseling, the Board has held that "the absence of a counseling certificate does not in and of itself justify granting relief where the procedural error caused no harm and evidenced no other counseling inadequacies."⁶ In this case, the record did not reveal any harm to the grievant due to lack of formal documentation; that is, he was given adequate notice of a performance deficiency and sufficient time to demonstrate improvement.

That grievant understood and acted on the AFI comment is illustrated in his rated officer's statement: "I agree with the rating officer's assessment that I need to better organize my investigative caseload. I have taken steps to better organize my case load by learning to use Microsoft Excel and applying it to my cases." Consequently, we conclude that grievant has not shown that the AFI statement is inaccurate or procedurally defective and thus requires redaction.

February 2010 EER

██████ needs to work on keeping his supervisors appraised (sic) of significant activities such as reporting on cases he is working on while away from the office. He was made aware of this and knows this will help him as he moves into positions of higher responsibility with Diplomatic Security.

Grievant avers that the AFI alleging he did not keep supervisors informed of his activities and did not report on his cases while away from the office is vague and unsubstantiated with examples and never was a subject of counseling. He further claims that the AFI is falsely prejudicial. The Department included statements from the rater and reviewer affirming that grievant had been counseled about keeping his supervisor informed of his activities. We note that the rater essentially admitted to being lax in formalizing counseling sessions with grievant,

⁶ See FSGB Case No. 2010-046 (June 23, 2011).

reportedly because he was aware that grievant was going through personal difficulties at the time and he did not deem it necessary to counsel grievant formally. On the other hand, two of grievant's closest colleagues with whom he worked almost daily provided statements corroborating grievant's response that he did keep his supervisors informed of his activities and the status of his cases while away from the office. Although the reviewing officer (██████) endorsed the rater's AFI comments, his recollection of the counseling sessions is not definitive; he suggested that the rater could better respond to grievant's contrary assertions and added that he (the reviewer) only traveled from ██████ to ██████ on regularly scheduled oversight visits and therefore did not have day-to-day experience with the matters in question. Further, the reviewer commented that he must assume the counseling sessions were properly conducted. In light of the rater's admittedly informal approach to counseling and the reviewing officer's uncertainty regarding the matters counseled, as contrasted with the assurances in the testimonials of grievant's two colleagues with whom he worked most frequently that grievant kept his supervisors informed of his whereabouts and the status of his cases, we conclude that grievant has met the burden of proving that this AFI is falsely prejudicial and merits redaction from the EER and the LRS.⁷

June 2010 EER

██████ has done much to improve the Embassy's security posture and has provided sage advice. However, he will hesitate to speak out in meetings, particularly when his views differ from those presented. ██████ needs to speak out more authoritatively at meetings and recognize the value of his contributions.

The challenged AFI alleges that grievant hesitated to speak out in meetings. Grievant avers that he was never counseled on the matter, but adds that his rater was a personal friend who

⁷ That is, in the particular circumstances of this case, we find that grievant has successfully rebutted the normal expectation that his supervisors would be better positioned to determine the extent to which they were kept informed of his activities and case-related progress.

told him that he never meant anything negative by the statement and thought it was a “throw away.” Certifications on the EER form indicate that counseling occurred on March 30, 2010 and May 17, 2010 for the rating period that ended June 28, 2010. In response to HR/G’s inquiry on the matter, the rater responded that he stood by his AFI comments criticizing grievant’s lack of participation during meetings, and that he did not think it was a “throw away” AFI. He reported not having any saved e-mails from the post that was over two assignments ago to support his statements, but added that it was an easy AFI on which grievant could improve. The rater further stated that he did not think the AFI, coupled with the positive EER he wrote for the grievant, would result in a low rank for the grievant, but that is not the question before us. That grievant understood and acted on the AFI comment is illustrated in his rated officer’s statement: “I have taken steps to improve my interpersonal skills by speaking out more in meetings and contributing my ideas. I also believe my acting RSO time has helped me further these skills since I was required to attend more meetings and conferences and give my opinions on the subject matter.” In short, regardless how grievant thought the AFI may have been intended, it clearly was a subject of discussion between the grievant and his rater and an area where the rater wanted to see improved performance.

Thus, grievant has failed to prove that he was never counseled on the need to speak up during meetings, or that this was not a performance deficiency requiring improvement.

April 2011 EER

██████ *needs to get out in front of his areas of responsibility and look ahead for opportunities to improve programs. While he advocates strongly for the LGF, other programs would benefit from similar attention. Recently, however, ██████ has been showing signs of improvement in this area.*

Grievant objects to this AFI on the grounds that it was procedurally defective due to vagueness. He contends that the AFI is an unsupported criticism that lacks information about the areas of responsibility or programs on which he needed to improve. He adds that it violated

Department procedures because “it was included without counseling.” The Department highlighted a written counseling session (September 24, 2010) and a verbal counseling session (December 16, 2010) on this matter. The written counseling certification signed by grievant and his rater lauded the status of the LGF program, but concurrently raised concern about the amount of time that grievant was spending on the LGF program to the detriment of his other areas of responsibility. In the Board’s scrutiny of the certification, we are convinced that counseling sessions occurred on this matter. While it might have been more constructive for the rater to specifically document how the other programs suffered, availing the grievant of an opportunity to more strategically modify his performance, we are convinced that it came as no surprise to grievant that his supervisor expected him to pay more attention to other programs in his portfolio. Grievant argued that his other programs did not suffer as a result of his efforts to manage the LGF, but the reviewing officer (██████████) -- who described the relationship between the rater and grievant as “cordial” -- stated that she “fully endorsed” the rater’s fair and thorough assessment of grievant’s performance. In essence, she too agreed that grievant needed to be more attentive to his entire portfolio. Grievant’s own EER statement emphasized his one significant accomplishment, the creation of a local guard force protection team. His failure to expand on any other accomplishments lends credence to the rater’s contention that grievant’s other programs needed more attention. That grievant understood and acted on the AFI comment is illustrated in his rated officer’s statement: “I have taken steps to advance my Leadership skills by trying to improve all of my programs and give every one of them similar attention.”

Consequently, we find no basis for requiring redaction of this AFI.

January 2012 EER

██████ *needs to strive to not only complete tasks that are assigned, but also take the initiative to go beyond those tasks, looking for ways to improve programs and procedures in addition to his own performance.*

In addition, ██████ should be cognizant of appearances. Being responsible for ensuring rules and regulations are followed invites closer scrutiny by others, therefore, sound judgment (sic) and good decision making skills are critically important and ██████ should take this into account when making decisions.

Grievant contests both of the above-quoted AFI statements. With regard to the first one, he highlighted his meritorious honor award (MHA) in his OPF and provided testimonials from colleagues with whom he worked to impeach the rater's implication that he lacked initiative. The Department's probe into this matter primarily focused on the MHA and revealed the rater's belief that the award only covered one aspect of grievant's overall responsibilities. The rater consistently raised a concern that grievant's attention was too narrowly directed at the LGF program. The reviewing officer chose not to speculate on the basis for the award since she was not at post when the MHA was submitted. While the Board finds the MHA commendable, we have no reason to challenge the rater's assertion that the award was in recognition of grievant's achievements with the LGF program primarily. In other words, there is no facial inconsistency between the receipt of an MHA and the concern expressed in the AFI about the grievant's overall performance which appears to have been heavily focused on the LGF program to the detriment of other programs in his entire portfolio. We find the grievant has failed to prove that the first AFI statement is inaccurate or otherwise requires redaction.

The second AFI statement addresses alleged deficiencies in grievant's judgment and decision-making. The August 3, 2011 counseling certification documents that a serious discussion of issues occurred, including issues related to grievant's difficulty maintaining, in his role as a supervisor, an objective supervisor/subordinate relationship. Grievant does not directly

address the AFI statement, but suggests that the Front Office valued his decision-making and judgment over that of the Regional Security Officer (RSO). The Department highlighted the rater's comments that several heads of section (or acting section heads) expressed a lack of confidence in grievant's judgments. The counseling certification indicates that the grievant initially was counseled verbally and subsequently in writing, with regard to keeping an objective relationship with subordinates, one that maintained a proper supervisor/subordinate separation. The specific incident in dispute involved grievant's decision to relax or lessen discipline that was to have been imposed on one LGF member for internet abuses; disciplinary action outlined in a memo agreed to by the rater, Deputy Chief of Mission and Human Resources Officer, and signed off by the Ambassador. Grievant's reduction of the discipline to be imposed, without consulting his chain of command, was discovered during the concerned LGF member's annual evaluation. Further, similar instances of reduced discipline for other staff members under grievant's charge were discovered upon review of their files, actions apparently taken without the proper consultation or coordination with his supervisor or others in his chain of command. Grievant's actions not only relate to his judgment and decision-making in connection with disciplining subordinates, but also touch upon one of the enumerated grounds for low-ranking individuals, namely "refusal to accept or carry out legitimate directives from properly authorized officials."⁸ In response to the foregoing criticism, grievant asserted an "unawareness" that he was going against the wishes of the RSO and declared that, in the future, he would clarify all instructions. We reject grievant's unsupported claim of ignorance, not only given his pattern of reducing the level of discipline imposed on his subordinates by others but also in view of the number of his

⁸ See 3 FAH-1, Exhibit H-2321.1A, Part III A.2.a.(5) Refusal to accept or carry out legitimate directives from properly authorized officials

superiors who agreed upon the discipline to be imposed on those subordinates before grievant reduced it.

Another of grievant's actions that borders on skirting a higher-level directive is described in the October 31, 2011 counseling certification. It was reported that the host country submitted a diplomatic note complaining about grievant by name (including his vehicle model description and diplomatic license plate number) for having violated local traffic law and having made an unsafe left turn onto a one-way street in front of the Embassy housing compound. Prior to the incident, the Embassy had issued two Management Notices (dated December 22, 2010 and September 6, 2011, respectively) informing Embassy employees that making an unsafe left turn onto the one-way street in front of the Embassy housing compound was a local traffic law violation. The same topic reportedly had been raised in a weekly RSO meeting. Despite the Embassy notices and a reported meeting that addressed this host country traffic law, grievant was later identified as having violated it by making that unsafe left turn onto the one-way street. He reportedly did not recall the specific incident referred to in the host country's diplomatic note.

A third action, which grievant did eventually address, related to contact reporting.⁹ A primary security function of the Post Security Office (PSO), especially in a criteria country, is to brief or remind American employees about the need to report contacts with host country citizens. The Board recognizes that this was grievant's first overseas posting, but he did receive security training in managing the more stringent requirements placed on American staff assigned to his host country. Moreover, when grievant was reminded of the requirement to submit contact reports, his initial response was that his prior supervisor had not required such reporting, but ultimately he submitted the requested contact reports.

⁹ See 12 FAM 262.

In light of the above that relate to grievant's conduct in carrying out the directives from properly authorized officials, the Board finds the second AFI statement in the EER is accurate and does not require redaction.

Alleged Bias and Hostility of [REDACTED]

Grievant contends that his rater in [REDACTED] ([REDACTED]) was biased and hostile towards him. The reviewing officer for his April 2011 EER ([REDACTED]) characterized the relationship between grievant and his rater as "cordial." The January 2012 reviewing officer ([REDACTED]) described the rater-grievant relationship as "having improved significantly." [REDACTED] [REDACTED] affirmed that grievant was formally counseled on incomplete taskings and the need to model his behavior in a manner appropriate for leadership of the PSO. She added that she was involved in the rewrite of grievant's EER to ensure that he was satisfied with the final product. While the Board is convinced after close scrutiny of the record on this matter that the grievant-rater relationship was strained, we are not convinced that the meaningful counseling provided by the rater equated to bias or hostility. Grievant did rebut some of the commentary in the rater's counseling certification with testimonials from other colleagues at post, but other credible commentary about the grievant's performance cannot be minimized. Further, in discovery it was revealed that the rater had accused grievant of subverting her authority by making negative comments about her to the local staff, to which accusation grievant stated that he had made such negative comments only in private and only to American (but not LES) employees. Whether grievant's negative comments about the RSO were made initially to local staff or to career officers misses the essential point of the counseling criticism. Grievant conceded that he undercut the RSO's status by making negative comments about her to others; those comments (intended or not) later became widely known at post.

This Board concludes from the grievant's responses cited above that his supervisor in [REDACTED] made him fully aware of his performance shortcomings and that such negative counseling statements were fact-based. Further, while grievant submitted several letters of support from colleagues into the record, we find it significant that none of them accused grievant's rater in [REDACTED] as being biased against him. To the extent that the working relationship between grievant and [REDACTED] may have been "strained," it is to be expected that, during a career in the Foreign Service, some assignments will flow more smoothly than others. However, grievant has failed to prove that his rater was biased against him, which is of an entirely different and greater magnitude than a merely difficult or strained relationship.

Alleged SB Violation of Procedural Precepts

Grievant charges three violations of the SB's Procedural Precepts: the LRS was unbalanced; grievant did not exhibit any of nine itemized shortcomings that would justify a low ranking; and the SB low-ranked grievant "based solely upon a disciplinary letter". Upon a thorough review of the record evidence, this Board does not agree.

With respect to the claim of imbalance, we note that, unlike an EER's documentation of a period of performance, the purpose of an LRS is to explain to a low-ranked individual why their performance compared unfavorably with their peers. The SB noted that during his five years of service, grievant had earned a group meritorious honor award while in [REDACTED] and an individual meritorious honor award in [REDACTED]. Further, the SB acknowledged that grievant had demonstrated the ability to perform well some of the functions of a Diplomatic Security Officer and sought to help him with its observations on those skills he would need to develop in order to meet the performance standards of his class. We are persuaded that the SB clearly understood the extent of grievant's accomplishments and took them into consideration when reviewing his

OPF, based upon its mention of his skills and the group award and individual awards he received. Accordingly, we find no basis for criticizing the LRS prepared by the 2012 SB due to imbalance.

In his second contention, grievant relies on the fact that the Precepts list nine significant deficiencies that, in and of themselves, could merit low-ranking and/or referral to a Performance Standards Board. That reliance, we hold, is misplaced. As the agency points out, the precepts state,

In addition to inadequacies in needed skills and performance (emphasis added), and/or potential, weakness in one or more of the following may be grounds for a low ranking or for direct referral to a PSB: [nine specific deficiencies]

The precepts clearly provide the nine as specific individual grounds for low ranking or referral for selection out, not as a prerequisite for low ranking. We find that the SB followed its precepts when it itemized several inadequacies it found in grievant's skill and performance. The SB made note of the disciplinary letter, as it was permitted to do inasmuch as the letter was part of the OPF submitted for its review, but the SB further elaborated on its conclusion to low rank him by citing examples from grievant's AFIs from several EERs. The SB concluded that "grievant failed to demonstrate the breadth of specialized skill in communication, interpersonal, leadership and managerial skills commensurate with his peers." Grievant has not shown that the SB was required to identify one of the nine fundamental enumerated weaknesses in order to support its low ranking. The 2012 Precepts provide that "inadequacies in needed skills that lead to a low ranking must be documented by one or more examples of performance from the most recent five years." The SBs in the case of grievant did not cite "examples" outside of the AFIs to support its decision, but we have concluded that the AFIs themselves are specific enough to provide the requisite "examples."

Contrary to grievant's third claim that the SB based its conclusion solely on a disciplinary letter, the SB cited the letter and five AFIs, only one of which we find should be redacted. The remaining four AFIs, as we have noted previously, involved matters on which grievant had been adequately counseled and contained within themselves examples of the performance deficiencies grievant was urged to improve. Grievant has failed to demonstrate that the SB departed from the established rules, procedures and criteria when given instructions to rank grievant and his peer group members. All things being equal, even if the disciplinary letter and three-day suspension were the sole differentiating factor in the SB's low ranking of grievant in contrast with the other peer group members (and we have concluded that it was not), that in and of itself would not equate to a violation of the Procedural Precepts. The letter and three-day suspension could properly have been the tipping point in the SB's decision to low rank grievant when his OPF was compared with the OPFs of all the other members of his peer group

The Board also does not find it unreasonable for the SB to have concluded that grievant's mismanagement of his government credit card and the related delinquency in his payments were indicative of flawed managerial skills. It would not be unreasonable for the SB to view the actions on which grievant's disciplinary letter and three-day suspension were based as negligence and an indicator that his managerial skills were not on par with those of his peers. Despite the challenging circumstances that grievant stated he was facing, the SB's low ranking statement highlighted as a management deficiency grievant's failure to adhere to a repayment plan with the bank after his government travel charge account was 120 days past due with an outstanding balance of several thousand dollars.

Grievant contested the AFIs in several EERs after he had received the SB's low ranking statement, EERs that apparently were solid enough to earn him tenure. With respect to the

grievant's argument that his AFIs were insufficiently specific in terms of providing examples where the grievant's performance needed improvement, we find that the applicable standards have been met¹⁰. Grievant has not shown by a preponderance of the evidence that the challenged AFIs were defective. In light of the certifications in the EERs and/or counseling session forms that provide insight about the dates grievant was counseled and the timeframe available for the grievant to make improvements, he has not established that the criticisms he received in his EERs came as a surprise to him or that he was denied a reasonable opportunity to improve his performance in the areas deemed deficient.

This Board determined that the AFI included in grievant's February 2010 EER was insufficiently documented. Technically, however, we find that it was valid; that is, it was specific enough for grievant to have replied to it and to have acted on it. We found that the remaining AFIs also provided examples in themselves and should not be redacted. Even absent the redacted AFI, the disciplinary letter and four valid AFIs support the SB's low ranking decisions and fulfil the requirement that it document its low ranking with one or more examples of performance from the most recent five years.

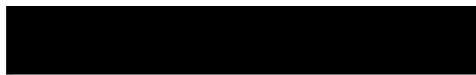
Finally, while grievant's EERs were viewed as sufficiently strong to earn him tenure, that in and of itself does not lead one to conclude that grievant demonstrated the breadth of specialized skills commensurate with his peers. The SB was tasked to make that determination and, after reviewing the OPFs of grievant and his peers, it arrived at the decision to low rank grievant. This Board has no basis to question the SB's judgment in weighing the skill levels of the respective members of the grievant's peer group.

¹⁰ See FSGB Case No. 2006-039 (February, 7, 2007); FSGB Case No. 2002-047 (May 1, 2003); and FSGB Case No. 2001-017 (June 15, 2001).

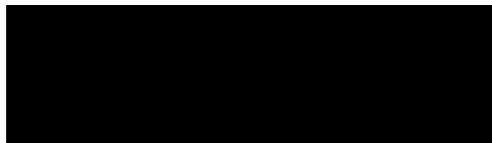
V. DECISION

This Board found only the AFI in the February 2010 EER merits redaction. The Board orders all references to the identified AFI redacted from the 2010 EER and from the Low Ranking Statement. With those exceptions which do not alter the conclusions reached by the 2012 SB in its discretion, the grievance appeal is otherwise denied.

For the Foreign Service Grievance Board:



Arthur A. Horowitz
Presiding Member



Bernadette M. Allen
Member



James E. Blanford
Member