

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

██████████

Grievant

and

Department of State

Record of Proceeding

FSGB No. 2014-034

August 11, 2015

DECISION

EXCISION

For the Foreign Service Grievance
Board:

Presiding Member:

Arthur A. Horowitz

Board Members:

Bernadette M. Allen
Harlan F. Rosacker

Special Assistant:

Lisa K. Bucher

Representative for the Grievant:

Pro se

Representative for the Department:

Holly T. Colburn
Grievance Analyst, HR/G

Employee Exclusive
Representative:

American Foreign Service
Association

OVERVIEW

HELD: Grievant has not met the burden of proving that his working environment was hostile, that his rater was biased or prejudiced, that statements in his ratings were falsely prejudicial, that he was not provided adequate counseling and time to improve his performance, or that the rater's recommendation against tenure was in retribution for comments grievant made to Office of Inspector General (OIG) inspectors. The grievance is denied in its entirety.

SUMMARY: Grievant, an entry level officer (ELO) in the Department of State, was not granted tenure by the Commissioning and Tenure Board (CTB). He claims that the rating officer in his second tour created a hostile work environment and that: his Employee Evaluation Reports (EERs) included statements that were unfounded, falsely prejudicial, and clouded by the rater's bias and prejudice; that the rater described his contributions with faint praise and ignored his significant accomplishments, did not provide adequate counseling or sufficient warning of shortcomings cited in his EERs, and unexpectedly recommended against tenure as retribution for comments he had made to OIG inspectors. He asserts that the criticism in his EERs of his interpersonal relations and supervisory skills -- cited by the CTB in deferring tenure -- stemmed from his supervision of a very difficult employee, and that his rater blamed him for the problem when in fact the employee was volatile, threatening, disrespectful, insubordinate, and felt accountable to no one.

The Board finds that grievant has not met his burden of proving that the working environment was hostile, his rater was biased or prejudiced, or statements in his 2013 EERs were falsely prejudicial. The ratings were balanced and criticisms were well-supported. While he faced supervisory challenges, they were not unreasonable for a second-tour ELO; nor was it inappropriate to hold him accountable for the tone he set in his counseling of the difficult employee. We also find that grievant was provided timely warning of weaknesses cited by his rater and that the rater devoted considerable time and effort to counseling him and enlisting other senior officers in the mission to assist him in addressing his weaknesses. Grievant has presented no evidence showing that the rater's recommendation that he not be granted tenure was an act of reprisal for his discussions with OIG inspectors or that he misled grievant about whether he would recommend him for tenure. The grievance is denied in its entirety.

DECISION

I. THE GRIEVANCE

██████████ (grievant), an untenured FS-04 officer in the Department of State (Department, agency) asserts that his working environment while serving as Public Affairs Officer (PAO) in the ██████████, was “relentlessly hostile,” and that there were continuing conflicts between his rater and reviewer over public affairs (PA) programming and management. He claims that he was not given timely or comprehensive feedback and counseling; and that his May 2013 and November 2013 Employee Evaluation Reports (EERs) were clouded by his rater’s bias and prejudice against him. He further asserts that his rater ignored significant accomplishments, made unfounded and falsely prejudicial criticisms, and relied on diluted, faint praise of his performance in order to make a negative assessment of his career potential. Grievant also states that while his rater had indicated orally that he would recommend him for tenure, he did not make such a recommendation in grievant’s November 2013 EER.

Grievant requests continuation of interim relief (IR) from separation during the pendency of his appeal; a one-year extension of his limited career appointment; removal of his May 2013 EER (or of the AFI therein) and his November 2013 EER from his Official Personnel Folder (OPF), a reconstituted Summer 2013 Tenure Board, a reconstituted Winter 2013 Tenure Board, and any additional relief deemed appropriate.

II. BACKGROUND

Grievant was appointed to the Foreign Service in the Department of State on March 1, 2009. While he was placed in the Public Diplomacy (PD) cone, his first two-year assignment (July 2009-June 2011) was to a consular position in the ██████████

█ In grievant's July 2010 and February 2011 EERs, two different raters indicated under Evaluation of Potential that: "Candidate is likely to serve effectively but judgment is contingent on additional evaluated experience." The rater in his June 2011 EER (covering a four-month period) recommended that he be granted tenure. The 2012 Summer Session of the Commissioning and Tenure Board (CTB) reviewed these EERs and concluded that it could not yet make a definitive assessment of grievant's "potential to perform effectively over a normal career span, up to and including Class FO-01," as mandated by precepts for the CTB. It noted that the 2010 EER had cited his difficulty in "responding professionally and courteously while adjudicating visas" and his need to "work on maintaining composure at all times during visas interviews . . . ," and that the 2011 EER cited a need to "strengthen his ability to better communicate with colleagues." The CTB also found that the four-month period covered by the June 2011 EER was "not enough to demonstrate sustained improvement in performance."

Grievant received 45 weeks of intensive █ language training before becoming Public Affairs Officer (PAO) at the █ (post) in August 2012. While grievant had a brief rotation in the Public Affairs section at his first post, this was his first full PD assignment. He supervised two Locally Employed Staff (LES) -- a Cultural Program Specialist (CPS, employee) and an Educational Advisor. His rater in █ was the Consul General (CG), █, and his reviewer was the Country Public Affairs Officer (CPAO) in the █ -- initially █ and subsequently █. The Work Requirements in his Employee Evaluation Reports (EERs) at post stated that he reported directly to both his rater and his reviewer.

In evaluating grievant's potential in his May 2013 EER, his rater concluded that he was likely to serve effectively but needed more experience. After reviewing his file, the 2013

Summer Session of the CTB deferred a decision on his tenure, noting progress but citing his need to develop the skills to “prevent difficult conversations from escalating when dealing with locally employed staff.” It granted him a third review after another six months.

In November 2013 the rater again found grievant’s performance “satisfactory or better.” However, in assessing his potential, he concluded that grievant was “unlikely to serve effectively even with additional experience.” After reviewing grievant’s entire performance record, the 2013 Winter CTB declined to recommend tenure. Grievant was assigned to Washington, DC, in preparation for the May 4, 2014, expiration of his five-year Limited Career Appointment.

On April 22, 2014, ██████ filed an agency-level grievance, including a request for IR; and on August 28 the Department denied the grievance in its entirety. He filed a barebones appeal of the Department’s decision with the Foreign Service Grievance Board (Board) on September 12, 2014, and requested continued IR. The agency submitted its arguments opposing continued IR on September 23, and grievant responded on October 2. In accordance with the Board’s practice and precedents and based on the preliminary evidence before it, the Board denied continued IR in an order dated November 12, after finding that grievant had not shown a reasonable likelihood of prevailing in his grievance appeal on its merits.

Grievant forwarded his Supplemental Submission to the Board on April 23, 2015; the Department responded on May 26; grievant submitted his rebuttal on June 11; and the Record of Proceedings was closed on June 19.

III. POSITIONS OF THE PARTIES

A. THE GRIEVANT

In grievant’s Supplemental, he points out the challenges he faced as the PAO in ██████

[His] time in ██████ was marred by an overarching hostile work environment mainly at the hands of his rater. . . . [He] faced additional challenges in ██████ that, while not impossible, reasonably affected his performance and experience at post. These challenges included: [1] reporting directly to two officers who did not often agree, one of whom was an hour drive away, [2] receiving half the full time language training normally necessary for an officer to reach a 3/3 in ██████ [3] supervising staff that the rater conceded were challenging, and [4] serving in a position that is likely better suited for a more experienced officer.

Grievant contends that the Winter 2013 CTB's decision to grant him a third tenure review demonstrated "that his record, prior to receiving the falsely prejudicial EERs in ██████ was sufficiently meritorious that it could lead to tenure with additional evaluative experience." He emphasizes, however, that performance ratings must be accurate and unbiased. Grievant argues that the presumption that rating and reviewing officials have carried out their duty to evaluate performance and potential correctly and properly can be eroded by a showing that such an official harbors prejudice toward a subordinate. He contends that his being denied tenure stemmed from receiving two biased and falsely prejudicial EERs in 2013 from the CG in ██████ and that the rater's prejudice toward him was demonstrated by many flaws in these EERs.

In the May 2013 EER, grievant claims that the CG deliberately omitted some of his significant accomplishments and made a diluted assessment of others. For example, he did not point out grievant's excellent performance in running the Public Affairs (PA) office alone for five weeks when the CPS extended her leave unilaterally. He merely mentioned that grievant had coordinated the visit of the Poet Laureate of the United States and had received a thank-you note from a university dean. He did not cite grievant's elaborate logistical preparations or mention that the program succeeded in addressing the U.S. mission's goals of demonstrating diversity and women's empowerment and of reaching large audiences, particularly in the conservative ██████ ██████ Nor did he mention the university dean's praise of their

working relationship. A more complete account of his program activity would have countered the CTB's impression of shortcomings in his managerial and interpersonal skills.

Grievant asserts that "despite circumstances with one difficult LE staff, with whom [he] always responded with calm and professionalism, [he] ran the Public Affairs Section very well during the last 20 months at post." The difficult staff member was the CPS, a local employee who had worked at the Consulate for several years. In October 2012 she took a three-day leave to [REDACTED] yet she was absent for 13 days and did not respond to messages from grievant. The post was unable to find a guest list for a major election-related program that the employee was supposed to have prepared and left in the files. The CG and grievant both needed it. It turned out that her extended absence stemmed from a medical problem. Grievant asserts, however, that in the meantime the CG asked him about the guest list approximately three times a day, in a manner which grievant found "bordering on harassment." While grievant told his rater that the employee was sensitive about being questioned, the rater insisted that grievant upon her return take the initiative in finding out where she had stored the guest list.

Grievant contends that he inquired about the CPS's absence and the missing guest list "calmly and with concern" and recounts that she became very upset and asserted that he could not find it because he had no knowledge of the shared drive. He recalled that she "started yelling and threatening to destroy all Public Affairs programming and to quit." However, grievant asserts, ultimately "it turned out [she] had not prepared the guest list at all." He states that after this encounter:

. . . I was alarmed with her behavior and so proactively went immediately to the Management Officer (MO) and [the CG] to discuss how the situation should best be handled. Initially, the rater supported my assessment and said, "In the Foreign Service you will find that some LE staff are very powerful and throw their weight around. She needs to be reined in." The [MO] asked the rater, "Does [grievant] have your full support?" He said, "Yes."

. . . A few days later, however, the rater asked me if he could speak with [the employee], to which I naturally responded ‘yes.’ Soon after, in November 2012, the rater called me in and blamed me for [her] behavior. . . . [He] did not support me until nine months later . . . [after the end of the rating period, when] he also experienced [her] unprofessional and insubordinate behavior. . . .

The CG’s failure to back him, grievant avers, “set a long pattern of the LES’s insubordination and in [her] choosing programs [she] preferred, rather than following [his] guidance with priorities according to mission goals.” The CG further undermined his authority by agreeing with the LES when she complained privately to him about a programmatic record-keeping system that grievant had instituted.

Grievant finds the rater’s lack of support, blame, bias and animosity evident in the AFI in his May 2013 EER, which was the only statement cited by the Summer 2013 CTB as a basis for deferring its tenure decision:

Managerial: Early in the rating period, [grievant] held a counseling session regarding an employee’s performance. The session ended with the **employee threatening to resign**. Afterwards [he] took several FSI Distance Learning courses on management, modified his management style, and has improved his working relationship with the employee. I am pleased to note his progress and know that he will further hone his skills **so as to prevent difficult conversations from escalating in the future**. [Emphasis added by grievant.]

Grievant asserts that this was not an accurate appraisal of his managerial skills, since it suggests that it was his manner of conducting the session that had prompted the employee’s threat to resign. The rater does not mention the employee’s “unprofessional, volatile and threatening behavior.” The issues portrayed as his managerial shortcomings were in fact attributable to an employee “who disrespected her supervisor, felt unaccountable to anyone and had the backing of the Country PAO.” Grievant notes that in responding to discovery, the assistant to the CG recalled in connection with another incident that: “[The CPS] felt her opinion . . . outweighed what the Consul General instructed her to do. . . . She had deliberately disrespected [the CG].”

A few weeks before his May 2013 EER was completed, grievant claims the rater had assured him verbally that he would likely recommend him for tenure. Yet the CG checked the box indicating that he was “likely to serve effectively but judgment is contingent on additional evaluated experience.” He also assured grievant that he would write a stronger EER the next time. He did not.

Grievant contends that the rater’s faint praise in his November 2013 EER was even more conspicuous by the use of phrases such as: “bravely delivered opening remarks in [REDACTED] and “[his] diligence in practicing his [REDACTED] was appreciated by many of our contacts.” He claims that the CG showed his bias and underlying prejudice by using “coded phrases” to focus on the performance and assistance of others, rather than on grievant’s own performance: e.g., “With the help of his Education USA Advisor”; “in conjunction with the CAO”; “[grievant] and his colleagues”; “responsive to feedback that I offered”; and “booklet drafted by a member of his staff.” This demonstrated the rater’s bias by implying that grievant’s performance was sub-par in comparison to that of his subordinates.

Grievant notes that the CG confirmed the problem in his response to an interrogatory:

. . . [The MO] and I had numerous conversations about the working relationship between [the employee] and [grievant], and I believe it was in the context of one of these conversations that she assessed that [the employee] felt unaccountable to anyone . . . I agreed with her assessment, and . . . that [the employee] felt little respect for [grievant].

The rater’s prejudice is further shown, grievant asserts, by the fact that he did not give him appropriate counseling or timely notice that he was not performing at an acceptable level -- thereby violating 3 FAH-1 H-2326.2. There was only one counseling session -- on October 22, 2013 -- nine days before the end of the rating period. This did not give him a reasonable period in which to improve. Moreover, in this five-minute conversation, the rater voiced no criticisms and led grievant to believe that he would be recommended for tenure. While the Department

cited three dates of counseling in the November 2012-November 2013 chronology “allegedly drafted” by the CG, the CG himself only notes two counseling sessions, and only the October 22 meeting is noted on the EER. The chronology indicates only the topics of discussion and does not describe any counseling that took place. In any case, whatever “counseling” took place during the rating period dealt only with grievant’s interaction with one employee. Grievant was led to believe that in other respects he was doing well.

Grievant asserts that the OIG inspection in October 2013 changed everything. The rater’s decision not to recommend him for tenure constituted retaliation for statements he had made to the OIG. 1 FAM 053.2-5(c)(9) provides that employees shall “refrain from inappropriate activity, including retaliation that might inhibit employee or contractor or grantee employees from individual communication and cooperation with OIG personnel.”

Shortly before the inspectors arrived at post, the rater told grievant that he would more than likely recommend him for tenure, that he liked his work, that it was a “pleasure to work with [him]” and that “everything will be fine” -- favorable remarks he did not put down on paper. Because grievant was also bidding on his third tour, [the rater] offered to write positive 360s¹ on his behalf. The rater also told grievant that he thought he was handling the one difficult LE Staff colleague well and that he would ultimately tell grievant his decision on tenure after the OIG inspection.

Grievant describes his meeting with the OIG inspectors as follows:

I was specifically asked if the Public Affairs Section in [REDACTED] promotes democracy and human rights. I said, “No”, because I was verbally told by the rater not to do so. The OIG Inspector was alarmed and said she needed to report this “upstairs” immediately. She also asked me if the rater had mentored me, and I said “No.” When she asked me

¹ 360-degree references are a standardized set of questions that bureaus may use in evaluating the qualifications of applicants for positions in the bureau. Applicants may request such reviews from peers, subordinates, and supervisors.

“why not?” I explained it was because the [CG] appeared to take no interest in my career development and did not demonstrate interest in Public Affairs.

As a result of this conversation, grievant claims that:

[T]he day after the OIG team left, I was told I would never be recommended for tenure. Additionally, at that time [the rater] notified me he knew people in INR and in Lisbon, two assignments I was very interested in applying for my third tour, and that he would no longer recommend me for those 360 reviews -- and he was unable to explain why. . . .

. . . Such actions make clear that the decision to not recommend me for tenure was in retribution for the way in which I answered the OIG inspectors’ questions.

After the inspection, in grievant’s November 2013 EER, the rater wrote that “[in] particular, his performance as a supervisor has been uneven and punctuated by moments of interpersonal tension. Thus it is with profound reluctance that I am not recommending he be tenured.”

Grievant points out that the rater, in responding to HR/G, acknowledged having told him on several occasions that he “appreciated his efforts” and that he likely told him “it was a pleasure to work with him.” Yet the rater discounts these statements as “thanking him for his service as a leadership technique, not of endorsing the quality of his work . . . consistent with . . . efforts to build [grievant’s] confidence.” Grievant, however, interpreted the statements -- particularly given the paucity of other appropriate counseling -- as indications “that he was doing well and on track to being recommended for tenure.”

Grievant presents several colleagues’ responses to questions posed in discovery as evidence that “more likely than not, [the rater] did not supervise grievant as effectively as he claims.” A section leader described the CG’s interpersonal and leadership skills as “academic in nature:”

I feel that he very seldom demonstrated the emotional sensitivity or social acuity to frame his responses or adapt his behavior in ways that would build relationships of mutual affability, trust, and respect with every level of his team. . . . While I respect his ability to make difficult and potentially unpleasant decisions regarding personnel . . . these decisions could come with little to no warning or explanation and leave employees

confused about the problem and how to correct it. . . . [O]ur working relationship proved to be the most opaque with a direct supervisor that I have yet experienced in the Foreign Service. . . . I would report [the CG] to be detached and reserved in most of our interactions.

Another colleague of grievant's said that upon the CG's arrival:

. . . [he] did not have a completely accurate view of how the Consulate was functioning, who was doing what -- this may be related to his interpersonal skills, he did not seek out to know more, only from the very little he saw from his office.

An entry level officer (ELO) noted that:

[The CG] was my reviewing officer Several times throughout the rating period I mentioned to both my rater and the [section chief] that I wished [the CG] would take a more active interest in the ELOs at post According to the [section chief], [the CG] stated that he was in frequent communication with the Consular Section Chief (weekly meetings were held on the operations of the section) and that this feedback was sufficient in order to assess the performance of the ELOs in the section.

Grievant asserts that these statements support his position that the CG "did not set the standard for integrity and workplace behavior. His approach was demeaning and his disrespect was palpable."

B. THE AGENCY

In its decision on [REDACTED] grievance, the Department found that he had not satisfied his burden of proving that his May 2013 and November 2013 EERs were falsely prejudicial, that his rater retaliated against him for his participation in the OIG inspection of the post, or that his work environment was hostile.

The Department noted that the rater explained -- in an e-mail to the Grievance Staff (HR/G) -- that "[he] had long had serious concerns about [grievant's] interpersonal skills and had tried to draw attention to them in [his] May 2013 EER." He said that "[grievant's] interactions with peers, supervisors and professional acquaintances often conveyed an impression of volatility, a lack of self-awareness." In the certificate documenting a counseling session that

grievant had dated April 17, 2013, but did not sign and that the rater signed on May 2, the rater observed that “[grievant] has continued difficulties in supervising the [CPS].” In documenting counseling on September 13, 2013, the rater stated that “[grievant’s] supervisory role vis-à-vis the [CPS] remains a challenge.”

When HR/G asked the CG for additional background on his suggestion in the May 2013 AFI that grievant hone his supervisory skills, he responded that in his first draft he had cited deficiencies in both grievant’s interpersonal and managerial skills -- both previously documented on the DS-1974 counseling form. Grievant asked him to remove “interpersonal skills,” and he “agreed to do so in the hope that [his] performance would improve during the following rating period and that I might be able to recommend him for tenure.” The rater observed, however:

Tensions between [grievant] and [the CPS] were a recurrent problem during his time here at the Consulate, and within months of [his] arrival at Post required attention from the Front Office of both the Consulate and Embassy [REDACTED].

On or about November 1, 2012, [grievant] met with [the CPS] for a counseling session. ([He] believed she had gone on extended leave without leaving him certain electronic files that he needed access to while she was away; [she] claimed that she had placed the files in a shared drive prior to her departure and suggested that [he] lacked the technical skills to find them on the shared drive.) The session went poorly, and ended with [the CPS] leaving [his] office in tears and threatening to resign.

The CG noted that, on the same day that the meeting took place, grievant reported [the employee’s] “insubordination” to the post Management Officer. The MO then requested that the CG meet with her and grievant to discuss what had happened. Grievant repeated that he intended to write up the CPS for insubordination. At the end of the day the CG called grievant to his office and suggested that he think about the issue over the weekend. He pointed out that it was a serious matter, the CPS appeared to be talented and motivated, and issuance of a Performance Improvement Plan (PIP) so soon after grievant’s arrival might damage their

relationship irreparably. A few days later, grievant told the rater that he would not proceed with a PIP and that their working relationship was back on track.

The CPAO in [REDACTED] called the CG several days later and followed up with an e-mail on November 7 reporting several concerns about grievant's performance. They included a concern that grievant appeared to be under stress that was "inordinate and disproportionate to the actual situation," and that he had anger-management issues -- "lashing out inappropriately and then seesawing into what seems like excessive contrition." The CPAO noted that he had personally observed the latter behavior.

The CG later met individually with each of grievant's employees. In his meeting with the CPS on November 20, the latter expressed her concerns about grievant's emotional volatility and seeming inability to grasp basic PD terminology/concepts.

In a counseling session with grievant on November 28, the rater presented him with a "written counseling certification with specific recommendations for developing his interpersonal/managerial skills as well as his substantive knowledge." The CG said he had also asked the Management Officer to keep an eye on the atmospherics in the PA section (in offices next to hers) and to coach grievant as appropriate. The rater also asked other experienced PA officers who were assigned in the capital to assist in mentoring him.

The CG noted that, during the rest of the rating period, grievant's relationship with the CPS "was a bit of a roller coaster." While the CPS was not without fault, he sensed that some of the tensions stemmed from the fact that grievant's employees were better at their jobs than he was at his own, and that "they had better rapport with their colleagues in [REDACTED]." The CG further observed: "Managing that situation was made more complicated by [grievant's] tendency

to seesaw between anger towards the CPS and excessive praise of her and of their working relationship.”

In responding to HR/G, the CG concluded that: “Nevertheless, [grievant] failed to thrive both as a Foreign Service Officer and as a supervisor. At a Post with more than 200 employees, he was the least effective officer on my staff and was my primary personnel concern for the remainder of his time at Post.”

The AFI in grievant’s November 2013 EER stated:

[Grievant] had difficulty supervising an employee in his section. I counseled [him] to include post’s Management Section in any counseling sessions he held with the employee in question, and to conduct meetings with that employee on neutral ground (rather than in her work space or his office) to facilitate open communication. Moving forward, [grievant] would benefit from continued refinement of his interpersonal and managerial skills.

The CG explained to HR/G that in this abbreviated rating period, grievant “had again encountered friction in his relationship with [the CPS.]” The CG recalled hearing from grievant that she “had ‘told everyone’ that she couldn’t stand working with him.” When the rater stopped by their office, the CPS appeared stricken, and grievant appeared agitated. Grievant’s relationship with the Educational Advisor was “also less than ideal,” according to the CG. She later told the rater that she had found working for him difficult because of his “confusion and panic” and would not want to work for him again. Based on the detailed background information the rater provided to HR/G, the agency asserts that the content of the two AFIs was “appropriate and fully supportable.”

The rater told HR/G that he disagreed with grievant’s claim that some of grievant’s significant accomplishments had been omitted from the May 2013 EER. He asserted that grievant’s suggestions on accomplishments to cite included events that were significantly less successful than grievant described them, in one case due to grievant’s confused preparations.

While grievant hoped that his “strong interpersonal skills” would be praised, the rater cited this as an area for improvement.

In response to grievant’s claim that he had only one very brief counseling session during the May-November 2013 rating period, the rater submitted a chronology that mentioned his discussions with grievant about his difficulties with the CPS -- including meetings on July 27, in mid-to late-August, and on September 17. The latter was documented in a certification that both the CG and grievant signed. The Department asserts that it is clear from the record that the rater had been counseling grievant on these issues over the course of two rating periods and that grievant received timely counseling that allowed him a reasonable amount of time to improve performance prior to the end of the May-November 2013 rating period.

Grievant challenges the repetitiveness of the rater’s chronology of counseling -- i.e., claiming that all of the criticism he received pertained only to his interaction with one staff member but to no other aspects of his work. He asserts that this led him to conclude that by continuing on the same path he would be recommended for tenure. The Department asserts that there was no reason for grievant to make such an assumption.

The Department asserts that, contrary to grievant’s allegations, the rater’s feedback on grievant’s interpersonal skills was neither biased nor falsely prejudicial. Rather, his “interpersonal skills and communication with colleagues has been a problem area for him since his first assignment, and because [he] was not able to adequately improve these skills within the allotted time period, he can no longer be a member of the Service.”

In response to grievant’s claim that, before the OIG inspectors arrived at post in October 2013, the rater had thanked him for his work and told him he “would more than likely recommend [him] for tenure,” the CG noted that he had tried to put grievant at ease about the

upcoming inspection and told him that it would be fine. However, he said he did not endorse the quality of grievant's work. While he told grievant in October 2013 that he was wrestling with a decision on whether to recommend him for tenure, he did not say that it was likely that he would recommend him. The CG also emphasized that he was never informed of questions the OIG inspectors might have posed to grievant or how grievant responded, and that he never sought to obtain such information concerning grievant or anyone else.

While grievant claims that he was disadvantaged by serving in a position likely better suited for a more experienced officer and noted that his replacement was a mid-level officer, his predecessor -- like grievant -- assumed the position as an FS-04 ELO.

Grievant also charged that his supervisor "did not set the standard for integrity and workplace behavior. His approach was demeaning and his disrespect palpable." Yet grievant offers no evidence to support this claim; and others who worked for the CG "confirmed the opposite." The CG was described as a "great mentor"; an officer who "treats me with the utmost respect and dignity"; and "professional and friendly." That there were differing perspectives "is indisputably common among both supervisors and colleagues in the workplace."

The Department asserts that the content of grievant's May 2013 and November 2013 EERs is fully supportable, thus proving that the material reviewed by his Summer and Winter 2013 CTBs was not flawed or falsely prejudicial. His grievance appeal must be denied.

IV. DISCUSSION AND FINDINGS

In all grievances other than those concerning disciplinary actions, the grievant has the burden of establishing, by a preponderance of the evidence, that the grievance is meritorious. (22 CFR § 905.1a) In order for grievant to prevail on his claims, "he must present persuasive material evidence or independent corroboration of his claims. Expressions of belief and

viewpoint without supporting facts do not provide the required showing -- i.e., the burden of proof by a preponderance of the evidence.” FSGB Case No. 2007-035 (August 6, 2008) at 18.

We find that grievant has not met his burden of proof.

In considering this grievance appeal, we have taken into consideration the entire record, which includes evidence and arguments offered by the parties both before and after the Board issued its order denying continued interim relief.

Grievant asserts that his service in [REDACTED] “was marred by an overarching hostile work environment mainly at the hands of his rater.” It is clear from the record that the assignment was challenging. However, grievant has not presented any evidence that the manner in which the rater supervised him created a hostile atmosphere. Some of grievant’s colleagues reported that the CG was somewhat aloof and prone to forming strong opinions about employees’ performance based on limited or second-hand information. But none of them suggested that he was hostile toward grievant or any other employee.

Grievant also contends that his May 2013 and November 2013 Employee Evaluation Reports (EERs) were clouded by his rater’s bias and prejudice against him. This, he asserts, led the rater to ignore his significant accomplishments, make unfounded and falsely prejudicial criticisms, and rely on diluted, faint praise of his performance in order to make a negative assessment of his career potential. Grievant suggests that the rater had dismissed him as sub-par by noting that his subordinates were better at their jobs than he was at his. However, he has not presented persuasive evidence that his rater had any preconceptions about him personally or professionally or that he displayed any personal animus toward him. The record shows that whatever the rater found troubling about grievant’s accomplishments and potential was based on his own observations of grievant’s performance. We find that the rater’s comparison of

grievant's skills and those of his staff was a conclusion he reached rather than a prejudice that he had from the outset. Furthermore, it is undisputed that the CG, his rater, asked grievant's colleagues to mentor and assist him in dealing with his workplace difficulties. This is hardly an approach that would be expected from a biased supervisor who is intent on denying a subordinate tenure.

Grievant also cites his strained relationship with one of his employees and the rater's having blamed him in large part for it. He notes as well the initial disagreements -- between the CG in [REDACTED] and the CPAO in the capital city, [REDACTED] -- regarding the person to whom he would report and by whom he would be rated. He asserts that there were continuing disagreements between the two senior officers over managerial and programming matters. However, he has not described the nature of the latter disagreements or their impact, if any, on his ability to carry out his responsibilities.

As the Board has noted, a mere showing that a grievant experienced "a work environment that was difficult, and possibly even unpleasant" is not sufficient in and of itself to establish that he was subjected to a hostile work environment. FSGB Case No. 2007-035 (August 6, 2008).

When criticisms in EERs are challenged, the Board carefully considers the balance between criticisms and praise. We find that the positive observations in grievant's 2013 EERs far outweigh those that are negative and that the criticisms are supported by examples. While grievant contends that the rater failed to mention some of the significant accomplishments that he had suggested, we note the rater's response that some of these programs were considerably less successful than grievant described them.

Grievant objected in particular to the number of times that the rater qualified his appraisal of grievant's accomplishments by noting that he had performed these roles in collaboration with

his staff or with colleagues. The record makes very clear the extent to which the small public affairs staff at the Consulate depended on the program resources of the Embassy in [REDACTED]. As section chief, grievant could expect to be rated on how well he coordinated and collaborated. As section chief, he may appropriately be given credit or blame for the performance of his staff. However, it would have been inaccurate for the rater to suggest that all of the accomplishments grievant claims were solo performances. Grievant has not shown that any of these references were inaccurate. While the rater may not have described grievant's positive accomplishments as effusively as he would have liked, we are satisfied that the words he chose were based on his objective observation of grievant's performance.

As for the rater's mention of grievant's brave efforts to speak [REDACTED] making any public statements in a language as difficult as [REDACTED] is a significant accomplishment for an officer who has only been trained to the S-2/R-2 proficiency level. We do not find the rater's comment to be an instance of "damning with faint praise" as grievant would have us conclude.

We have looked with special care at the rater's observations on how grievant handled the recurring difficulties in his relationship with his staff in [REDACTED] -- and particularly the CPS, since that was the basis for the weaknesses his rater found in grievant's managerial and interpersonal skills and the major reason for the Summer 2013 CTB's deferral of a decision on granting him tenure. The circumstances surrounding this aspect of grievant's performance are very complicated, and the record does not include third-party observations of key interchanges -- particularly the first meeting at which grievant inquired about the missing guest lists.

Grievant finds it inappropriate that the rater's criticism and suggestions for improvement focus on the manner in which he had conducted the meeting with the CPS without mentioning how difficult the employee was to deal with. The rater expected grievant as the section chief and

supervisor to find out where the guest list had been saved, even though grievant had warned him of the employee's sensitivity. It was a challenging task for a first-time supervisor, but not an unreasonable one. We have no reason to dispute the rater's conclusion that grievant, as the section's supervisor, was responsible for setting the tone and making his inquiries in a way that would not provoke the employee. We note that while grievant asked for advice after his inquiries prompted an outburst, there is nothing in the record suggesting that he sought counsel beforehand on how to approach the session.

Foreign Service officers serving up through the FO-01 level can expect to supervise LES employees during their overseas assignments. In some cases this opportunity and the accompanying challenges may come early, as they did for grievant. Many officers may eventually supervise large numbers of LES employees. Evaluation of the skills required in effective supervision -- i.e., the manner in which officers carry out their supervisory role -- is an important consideration in evaluating their overall potential. Grievant has not shown that these challenges were unreasonable for an untenured officer on his second overseas assignment.

We do not agree with grievant's assertion that the rater focused excessively on his deficiencies in managerial and interpersonal relationship skills. Given the strong misgivings that the rater expressed in responding to HR/G, we find what he wrote in the EERs to be rather understated. In both 2013 EERs the rater carefully examined the broad range of grievant's performance, accomplishments, and potential, providing appropriate examples. That said, the record shows that both the rater and reviewer were concerned about grievant's shortcomings and discussed them with other senior officers in the Consulate and Embassy. Based on their observation of grievant's performance, these senior officers had the same concerns as the rater and reviewer. While several of grievant's colleagues sent supportive testimonials to the agency's

deciding official and responses to HR/G questions, they offered little that might dispute the rater's conclusions about his performance or potential.

In response to grievant's claim that he had only one very brief counseling session shortly before the end of the May-November 2013 rating period, the rater submitted a chronology that mentioned his discussions with grievant about his difficulties with the CPS -- including meetings on July 27, in mid- to late-August, and on September 17. The latter was documented in a certification that both the CG and grievant signed. It is clear from the record that he had been counseling grievant on interpersonal and supervisory shortcomings over the course of two rating periods. He never suggested that the deficiencies had been overcome. It is also clear that grievant received timely counseling that allowed him a reasonable amount of time to improve prior to the end of the May-November 2013 rating period.

While Department regulations require that employees be given timely warning of unacceptable performance, the CG did not rate his performance as unacceptable. There is no requirement that employees be warned that they might not be recommended for tenure. Nor is there a requirement that raters provide 360 reviews to be used in employees' quest for new assignments. We are not persuaded in any case that grievant was disadvantaged by not having 360 reviews from a supervisor who had just recommended that he not be tenured.

We have examined grievant's assertion that the rater's recommendation against tenure was in retribution for criticisms he had expressed to the OIG inspectors. His claim is speculative. The burden of proof is on grievant, and he has offered no evidence that the inspectors informed the Consul General that grievant was the source of any criticism. The rater has explained that he had tried to bolster grievant's confidence as the OIG inspection drew near, but he denies having told grievant that he would most likely recommend him for tenure. Rather,

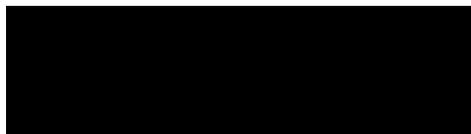
he told grievant that he was agonizing about whether to recommend him for tenure and that he would let grievant know what conclusion he had reached after the inspection was over. The rater denies that he knew anything about what grievant might have told the inspectors or that his decision was prompted by findings in the inspection report. Based on the discussions rater says he had with other senior officers about grievant's potential and his difficulties as a supervisor, we conclude that the rater's decision not to recommend grievant for tenure was reached after careful deliberation and was not a quick change-of-mind after his own leadership or the post's performance had perhaps been criticized by the inspectors. Grievant has not proven that he was misled about his tenure prospects.

We find that grievant has not met his burden of proving that his rater was hostile, biased or prejudiced; that statements in his 2013 Employee Evaluations Reports were falsely prejudicial; or that he was not given timely or comprehensive feedback and counseling on deficiencies that were cited in his EERs.

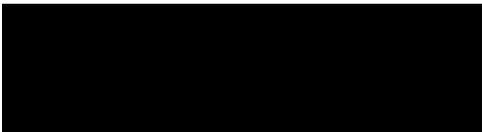
V. DECISION

The grievance appeal is denied in its entirety.

For the Foreign Service Grievance Board:



Arthur A. Horowitz
Presiding Member



Bernadette M. Allen
Member



Harlan F. Rosacker
Member