

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

████████████████████

Record of Proceedings
FSGB No. 2014-044

And

April 13, 2015

Department of State

DECISION

EXCISION

For the Foreign Service Grievance Board:

Presiding Member:

Warren R. King

Board Members:

Barbara C. Cummings
William B. Nance

Special Assistant:

Joseph J. Pastic

Representative for the Grievant:

Sharon Papp, AFSA

Representative for the Department:

Dorian Henderson, HR/G

Employee Exclusive Representative:

American Foreign Service Association

CASE SUMMARY

Grievant appealed the Agency denial of his claim that he had been subjected to a wrongful disciplinary action and a hostile work environment while serving at a post abroad. The Department found that it lacked jurisdiction because there was no proposed disciplinary action, the grievant had not demonstrated that he had experienced any harm, and that the remedy sought was beyond the scope of the grievance process. The Board concurred with the Department.

HELD: Grievant has not established that he was the subject of a proposed disciplinary action or that he experienced any harm as a result of the alleged actions he encountered while serving abroad. The grievance is denied in its entirety due to lack of jurisdiction.

OVERVIEW

While serving as Project Director for several construction projects at an overseas post, grievant had numerous disagreements with the post management officer over the administration of the project contracts. After grievant returned to post from paternity leave, the management officer, then serving as Acting Deputy Chief of Mission (A/DCM) attempted to order grievant from post expeditiously and made allegations that grievant had been absent without approved leave (AWOL) and abused his leave. Grievant did not depart post until his regularly scheduled transfer and the allegations regarding leave were disproved. Grievant alleged damage to his reputation, sought an apology from the management officer, and requested that the Department address various regulatory violations grievant believed had been committed by the management officer. The grievance was denied as there had been no disciplinary action against grievant, the facts presented did not establish that he had experienced harassment or suffer any other harm, and the remedies he sought were beyond the scope of the grievance process. The Board determined, therefore, that it lacked jurisdiction.

DECISION

I. THE GRIEVANCE

Grievant filed his agency-level grievance on September 12, 2014, claiming that acts were committed against him by his previous post management officer between July 9 and August 19, 2014 that negatively affected grievant's professional reputation and personal well-being. Grievant sought the following remedies: 1) immediate and unconditional stop to harassment and reprisals by the management officer, 2) immediate and unconditional stop to transgressions by the management officer of grievant's chain of supervision and contracting authority, 3) monitoring of the post's checkout procedures for transferring employees, 4) a written admission from the management officer to grievant recognizing his transgressions, and 5) any other remedy deemed appropriate. On October 28, 2014, the Department denied the grievance.

On appeal to the Foreign Service Grievance Board (FSGB, the Board), grievant seeks: 1) to clear his name and reputation from the effects of the management officer's false accusations, 2) an order for the person who made the false accusations to issue a retraction, and 3) an order for the Department to act on grievant's revelations of regulatory violations committed at his former post. The Record of Proceedings (ROP) was closed on January 22, 2015.

II. BACKGROUND

Grievant, [REDACTED], has been an FP-04 Construction Engineer with the Department of State (Department, Agency) since May 9, 2010. From 2011 until August 2014, grievant served, first on a temporary assignment, and then on a permanent basis, as the Contracting Officer Representative (COR) and Project Director (PD) for two Bureau

of Overseas Building Operations (OBO) construction projects in [REDACTED].

Grievant's rating and reviewing officers were in the OBO domestic Office of Construction Management but grievant fell generally under the Chief of Mission authority as did all personnel at post. Grievant and the post management officer disagreed on multiple issues concerning management of the construction projects.

Grievant detailed numerous instances in which he believed that the management officer had violated regulations regarding OBO projects and employee standards of behavior. In early July 2014, while the management officer was serving as Acting Deputy Chief of Mission (A/DCM), grievant claimed that the A/DCM falsely accused him of misconduct on the job and ordered that Mission offices responsible for transferring employees begin facilitating grievant's transfer even without official travel orders. Grievant confirmed with OBO that he was to remain at post until his official travel orders were received.

Grievant did not transfer from post until his regularly scheduled transfer date but experienced several instances of what he considered harassment because the administrative offices at post had been instructed that grievant was immediately transferred. Grievant claimed that the A/DCM also attempted to charge grievant with absence without leave/derelection of duty but grievant was able to justify each of his absences and show that it had not been without authorization or excessive. Grievant's agency-level grievance claimed that when his previous post management officer attempted to order him from post it constituted an attempted disciplinary action. In addition, numerous regulatory violations by the management officer, and grievant's consistent attempts to counter them by adhering to regulatory requirements, created a

hostile work environment. Grievant claimed that the management officer's actions negatively affected grievant's professional reputation and personal well-being.

III. POSITIONS OF THE PARTIES

The Grievant

Grievant argues that the basis of his grievance was misinterpreted by the Department when it denied his initial request for relief. He maintains that the nature of his grievance does, in fact, concern proposed disciplinary action because the management officer at post made false accusations against grievant, created a hostile work environment, transgressed numerous regulatory requirements, and threatened grievant with adverse consequences if he continued to contradict the management officer's authority. Grievant detailed each of the instances in which he considered the management officer to have violated established Department policy or procedures. Grievant also outlined the steps that grievant took to ensure that regulations were properly followed and he described what he considered the hostile work environment that he had to endure as the management officer engaged in acts of reprisal and harassment. Grievant pointed out that although he is no longer at post, he would continue to be required to work on the construction projects from his current assignment and would need, on occasion, to travel to post and continue to encounter the management officer. Further, his colleagues still at post are continuing to have to deal with the management officer's abuse of his position.

Grievant also maintains that the Department, in reviewing his grievance, applied an undue standard of proof regarding the harm grievant experienced. He argues that the effect on his professional reputation and career of the false accusations made against him

might not be manifest until long after the act and this should have been taken into consideration. He believes the Department erred in denying his grievance based on a finding of lack of harm to grievant because the Department limited its review to immediately apparent harm--an unduly strict interpretation of the concept of "harm." Also, grievant asserts that the hostile work environment he encountered as a result of the management officer's actions caused grievant personal harm that the Department did not adequately consider. Grievant believes that his personal security was jeopardized at post because he was excluded from security systems/practices by the management officer's directive. Grievant also experienced high blood pressure because of the undue hardship and stress caused by the hostile work environment. Moreover, the management officer's actions also led to undue stress on his staff making grievant's supervision of his section all that much more difficult.

The Department

The agency found that the grievance did not concern a proposed disciplinary action and that the burden of proof, therefore, was on the grievant to show that his grievance is meritorious.¹ Moreover, grievant did not demonstrate that he was harmed by the alleged actions of the management officer at post. The Department pointed out that grievant received positive Employee Evaluation Reports (EER's) and awards for the work he performed as PD at post. Finally, the Department found that it did not have authority to grant the relief sought by grievant and that grievant's complaints regarding possible regulatory violations in connection with the construction project might be more appropriately raised in other venues for possible redress.

¹ 22 C.F.R. section 905.1

IV. DISCUSSION AND FINDINGS

In all grievances other than those involving discipline, the grievant must prove by a preponderance of evidence that the grievance is meritorious. Grievant has argued that his case concerns a disciplinary action and, therefore, the burden has shifted to the Department in this case. The Board does not agree. "Disciplinary action" is defined by regulation as an "action against an employee in the form of a reprimand, suspension, or separation for cause."² Grievant presented no evidence that any form of disciplinary action was taken against him and has only indicated that the management officer at post attempted to initiate discipline against grievant by accusing him of unauthorized leave and abuse of leave. Grievant stated that he was able to disprove the allegations against him regarding his leave record. Therefore, no discipline was proposed or exacted against grievant, and the burden rests with grievant to establish that this grievance is meritorious. The Board finds that he has failed to meet that burden.

Grievant presented no evidence that his professional reputation was damaged, that he experienced difficulty securing an onward assignment, or that his competitiveness for promotion has been affected in any way. Grievant's claim that his physical well-being was affected by the management officer's actions is also unsupported by evidence. However, even had grievant presented medical evidence that his high blood pressure was the result of additional stress at post directly caused by the management officer's actions, the Board is hard-pressed to determine what remedy it could order--particularly since grievant is no longer at post or exposed to the management officer's allegedly stressful conduct. Grievant makes no allegations that would support a claim for a hostile work

² 3 Foreign Affairs Manual (FAM) 4312

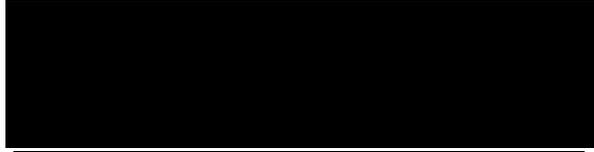
environment under Section 1101(a)(1)(H) of the FSA, which includes in the definition of a grievance “any discrimination prohibited by – section 717 of the Civil Rights Act of 1964.” Such a claim would include, *inter alia*, that the level of harassment was sustained and at a significant level, that grievant was a member of a protected class and that he was engaged in protected activity (suffered reprisal for filing grievance, for example). Absent such allegations the Board does not have jurisdiction over such a claim.

Finally, grievant seeks remedies that cannot be provided by this Board. The Board cannot "clear [grievant's] name" first, because there was no evidence that grievant's "name" was harmed in any way and second, because there is no mechanism available to the Board to accomplish such action. The Board has no authority to order the management officer to apologize or admit that he erred in his relations with grievant. With respect to grievant's allegations that the management officer violated numerous regulations in the conduct of his official duties, the Board concurs with the Agency in its decision that the grievance process is not the venue in which to address these actions. This Board concludes that we lack jurisdiction for this appeal since grievant is seeking remedies that fall outside the grievance process.

V. DECISION

The grievance appeal is denied in its entirety.

For the Foreign Service Grievance Board:



Warren R. King
Presiding Member



Barbara C. Cummings
Member



William B. Nance
Member