

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between



Grievant

Record of Proceedings
FSGB Case No. 2015-052

And

May 5, 2016

Department of State

DECISION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Susan R. Winfield

Board Members:

Harlan F. Rosacker

William B. Nance

Special Assistant

Katherine D. Kaetzer-Hodson

Representative for the Grievant:

Pro se

Representative for the Department:

Elizabeth A. Whitaker
Grievance Analyst, HR/G

Employee Exclusive Representative:

American Foreign Service Association

OVERVIEW

Held: Grievant did not carry his burden of proving by a preponderance of the evidence that the EER he challenged included inaccurate, falsely prejudicial, or biased statements. He also failed to establish that the rating officer omitted significant accomplishments or descriptions of favorable circumstances, or that the EER lacked balance or contained insufficient examples. Grievant also failed to prove that the agency decision maker had a conflict of interest when she decided an earlier personnel request that grievant made and subsequently decided his grievance. The grievance is denied in its entirety.

Case Summary

Grievant served in a senior management position in the U.S. Mission to the [REDACTED]. He appealed the Department of State's denial of his grievance in which he challenged his April 2015 Employee Evaluation Report (EER) on several grounds. He claimed that the deciding officer at the agency should have recused herself from ruling on his grievance because she had earlier decided a personnel matter that affected the [REDACTED] office. The Board rejected grievant's claim that the deciding officer had a conflict of interest that precluded her from acting on his grievance.

Grievant argued that he and his rating officer had a strained relationship and that critical statements in the EER were due to the rating officer's bias toward him. He also argued that his rater omitted important accomplishments from his assessment and lacked objectivity and balance in describing his performance. Even in passages where the rater appeared to be offering praise, grievant claimed that the narrative was designed to insinuate otherwise and that the criticisms were insufficiently specific or unsupported by examples, making it difficult for him to understand the perceived deficiencies or to improve his performance in a timely manner.

Grievant also challenged several criticisms that pertained to his management of the HR section at [REDACTED] and his interpersonal skills – particularly his relationships with key offices in Washington and elsewhere. He also claimed that the Area for Improvement section of the EER is falsely prejudicial and that he was disadvantaged that there was no reviewing officer to provide additional input into the document.

The Board concluded that grievant failed to provide credible support for any of his claims that the EER contained inaccurate, unfair, or falsely prejudicial statements and will cause serious damage to his career.

I. THE GRIEVANCE

Grievant, an FE-OC officer in the U.S. Department of State (Department, agency) currently serving as Management Counselor in the U.S. Mission to the [REDACTED] [REDACTED] [REDACTED], appeals the Department's denial of his grievance in which he claimed that his Employee Evaluation Report (EER) for the rating period, December 8, 2014 to April 15, 2015, contained statements that are erroneous and falsely prejudicial; failed to mention significant accomplishments and special circumstances; and was flawed by the rater's bias and hostility. Grievant also asserts that the deciding official at the agency level should have recused herself due to a conflict of interest.

For relief, grievant requests that the EER be expunged in its entirety from his official personnel folder (OPF) and that he be granted attorney's fees and costs and all other relief deemed just and proper.

II. BACKGROUND

After serving in several Foreign Service (FS) positions overseas and domestically, [REDACTED] [REDACTED] grievant, assumed his position at [REDACTED] in July 2014. He and a staff of three FS and three Civil Service (CS) employees provide management support to five ambassadors and more than 150 employees of the Department and other agencies at [REDACTED] in [REDACTED] [REDACTED] and at [REDACTED] in [REDACTED] [REDACTED]. This support includes general services, human resources, financial management, information resource management and research and records management.

Grievant and his staff receive support and oversight from the Executive Office for the Bureaus of European and Eurasian Affairs and International Organization Affairs (Bureau, EUR-IO/EX) in the Department. Beginning in December 2014, grievant reported directly to [REDACTED] (Ambassador, rater), the [REDACTED] [REDACTED]. The Department determined that there was no appropriate reviewing officer.

Grievant filed his agency-level grievance on July 27, 2015 and the Department denied it on September 24. He appealed to the Foreign Service Grievance Board (FSGB, Board) on November 19, electing not to file a Supplemental Submission. The Department filed a Response to the appeal on December 14; grievant filed a Rebuttal on December 24; and the ROP was closed on January 5, 2016.

III. POSITIONS OF THE PARTIES AND DISCUSSION

Because there are so many different claims regarding the EER, grievant's relationship with his rater and the propriety of the agency's decision maker in deciding this grievance, we report the parties' positions vis-à-vis each claim immediately followed by the Board's discussion and findings. In all grievances other than those involving disciplinary actions, the grievant bears the burden of proving by a preponderance of the evidence that the grievance is meritorious. 22 CFR § 905.1. After carefully examining each of grievant's contentions on appeal in this case, the Board concludes that he has not met his burden of proof on any issue and, therefore, the grievance should be denied in its entirety.

A. CONFLICT OF INTEREST

Grievant

Grievant begins by claiming that Linda Tagliatela, Deputy Assistant Secretary for Human Resources (HR DAS), should have recused herself from deciding this grievance at the agency level because of a conflict of interest. He argues that before he filed this grievance, he once discussed with her HR problems at [REDACTED] and a request to hire an HR Technician.¹ Grievant claims that after she disapproved his requests, she was partial when she made the Department's decision on his grievance. He asserts: "[I]t has been my understanding that it is

¹ At the time of the agency level grievance, grievant was represented by counsel who made the arguments discussed herein. By the time of the grievance appeal, counsel no longer represented grievant; he was *pro se*.

against procedure for an individual involved in a matter leading to a grievance to then be the deciding officer.” He urges that the agency’s decision be overturned for this reason.

The Department

The agency asserts that grievant offers no evidence to support this claim. The HR DAS is designated in 3 FAM 4434.2 as the official responsible for reviewing grievances.² The Department argues that the fact that grievant had earlier approached her in another official capacity, hoping to gain her support for obtaining additional HR staff at [REDACTED], does not establish that she was unable to fairly or impartially do both jobs.

The Department posits that the decisions of federal officers are ordinarily entitled to a presumption of regularity. In support of this position, the agency cites *American Federation of Government Employees, AFL-CIO, et al., v. Ronald Reagan et al.*, 870 F.2d 723, 727 (D.C. Cir. 1989), in which the court stated:

We deem the familiar presumption of regularity decisive here. It “supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.” (Citation omitted).

The Department also cites FSGB Case No. 99-050 (November 17, 1999) in which the Board held:

Every public official is presumed to act in obedience to his duty, until the contrary is shown The presumption of regularity or integrity holds that “public officers perform their duties correctly, fairly, in good faith, and in accordance with the law and governing regulations.” *LaChance v. White*, 174 F.3d 1378 (Fed. Cir. 1999), quoting *Alaska Airlines, Inc. v. Johnson*, 8 F.3d 791 (Fed. Cir. 1993); *AFGE, AFL-CIO v. Reagan*, 870 F. 2d 723 (D.C. Cir. 1989).

² This regulation states:

The responsible officials of the agencies [to decide grievances] are:
(1) State - Deputy Assistant Secretary for Personnel

The Department argues that in the absence of “irrefragable evidence to the contrary,” the HR DAS who decided the agency level grievance in this case is entitled to a “presumption of regularity” that she was able to decide this grievance objectively notwithstanding the fact that she had previously discussed and ultimately disapproved grievant’s proposal to fill a position on the HR staff at ██████ *Id.* The agency asserts that grievant has not offered such proof beyond a mere allegation.

Ruling:

The Board finds that the Department’s reliance on a presumption of regularity for the decision of the HR DAS in the absence of “irrefragable proof to the contrary” imposes a higher standard of proof than the preponderance of evidence standard required by the Board’s regulations. *See*, FSGB Case No. 2012-066 (February 2, 2014):

... In an unpublished decision by the District Court for the District of Columbia in *William Shea v. United States, et. al.*, (Civ. No. 00-748, June 27, 2001), the court endorsed the Foreign Service Grievance Board’s contention that the presumption of regularity was inherent in its regulation (22 CFR §905.1) placing the burden of proof on grievants, thus acknowledging that the agency is presumed to have acted regularly unless a grievant proves otherwise *by a preponderance of the evidence*. The Board is aware of no other court decision analyzing the presumption of regularity within the specific context of appeals before the FSGB. It thus follows this decision.

Even applying the lower standard, however, we conclude that grievant has not met his burden of showing by a preponderance of evidence that the deciding official’s familiarity with one staffing issue at ██████ presented a conflict of interest in her decision on his subsequent grievance. While grievant posits that the HR DAS’s role in deciding his grievance was “against procedure,” he does not cite any published regulations or rules that he claims were violated. Indeed, the applicable FAM regulation assigns the HR DAS as the deciding official and does not establish an exception in the event that she was previously involved in a personnel discussion.

Grievant also does not present any evidence that the issues that he would later grieve were raised in his discussions with the HR DAS about filling a vacant position at [REDACTED].

B. RATER BIAS

Grievant

Grievant avers that he had a strained and difficult relationship with the Ambassador and that her critical rating of his performance stemmed from animus toward him. He asserts that because the Ambassador was not objective, she used the EER and the negative rating that she gave him in reprisal for his having opposed two management decisions – first, to move a vacant HR technician position to the [REDACTED] political section and second, to have the HR section report directly to Bureau HR in Washington. He argues that his opposition irritated his rater who retaliated against him in the way in which she wrote this EER.

Grievant cites as evidence of the rater’s lack of objectivity her failure to discuss the first and most important task listed under Special Projects in his Work Requirements: i.e., to “[d]evelop options and implement programs to engage [REDACTED] staff to increase interaction and improve the morale at the Mission.” He argues that while the rater wrote that his “commitment to strengthening morale is irrefutable,” she implied that he meant well, but somehow failed to strengthen morale. He also points out that the Ambassador did not address any of the programs he initiated to raise morale among the [REDACTED] staff – the most important of his Special Projects. He contends that her failure to comment on the accomplishments that he described in the “Rated Employee” section of the EER “suggest[s] she does not agree” with his self-assessment. It “shows animus that permeates the EER and invalidates it for lack of objectivity and balance.”

He also contends that his rater's criticisms of his performance were not sufficiently specific or supported by examples to put him on notice of perceived deficiencies or to provide sufficient time for him to improve his performance.

The Department

The Department asserts that grievant offers no proof that he had a strained and difficult relationship with the rater or that she omitted important accomplishments from his evaluation based on animus or any other factor. The agency presents post-grievance responses from the Ambassador who denied that her interactions with grievant were anything other than professional. She further denied that there was ever any hint of rancor or incivility in their relationship or that she held any animus toward him. The Department reports that the rater noted that in her evaluation of grievant's performance, she cited all but one of the accomplishments that he requested in a memorandum of suggested items to include in his EER. She stated that the only one she did not include occurred before she assumed her duties at [REDACTED].

According to the Department, the rater added positive comments in the EER on topics that grievant had not suggested. The Department also argues that grievant received a completed draft of the EER and an opportunity to discuss it with his rater. He requested only one minor change, which the rater accommodated.

The Department disputes grievant's claims that his rater made "snide" comments in his AFI section, that she suggested that he did not achieve his goal of strengthening morale, or that she disagreed with the achievements that he described in the "Rated Employee" section of the EER. The agency argues that the rater intended precisely what she wrote when she stated that "grievant's commitment to strengthening morale is irrefutable." In addition, rather than comment on the accomplishments that grievant mentioned in the EER, the rater added to those

comments with additional evaluative statements based on suggestions that grievant provided to her. The Department contends that grievant's EER is quite positive overall and the statements which he finds to be critical raise concerns that were brought to his attention in counseling sessions.

Ruling

The Board finds that grievant presents no persuasive evidence that the rater was irritated by his arguments for augmenting his staff or his opposition to the transfer of direct supervision of the HR staff to the Bureau. He has not shown that the rater was biased against him or that the EER that she wrote was retaliatory. Grievant has also not submitted any statements by colleagues to corroborate his assertions of animus or a strained relationship. We conclude that grievant has not met his burden of proof to show rater bias toward him.

We disagree with grievant that the rater failed to mention any positive aspects of his performance. Instead, the EER is replete with praise for grievant's accomplishments in each skill category.³ We also conclude that grievant has offered no support for his claim that his

³ For example, the rater wrote in part:

LEADERSHIP: █████ took the lead in drafting the █████ Mission Resource Request, turning out a polished product fully cleared with all sections in a very short time. He did a particularly good job of describing how the absence of real growth in our operating budget has come at a cost to the Missions' ability to support staff development and training. ...

MANAGERIAL: The Mission's base budget has declined in real dollar terms and staffing levels have remained virtually unchanged over the last decade even at a time when U.S. engagement with the █████ and its membership in █████ █████ has exploded. Nonetheless, █████ succeeded in managing a robust US Mission end-of-year purchase program. ...

INTERPERSONAL: █████ has developed productive working relationships with colleagues in the International Organization Bureau's Executive Office and Bureau of Human Resources in the Department, and has been able to arrange the hiring, travel and housing for five permanent and temporary-duty █████ Ambassadors. ...

COMMUNICATION: ... █████ prepared a thoughtful memo on the challenges █████ faces in the areas of Human Resources; General Services; the █████ Housing Program; the Permanent Representative's Official Residence and Official Residence Expenses; our travel budget; General Services Administration building management; and the Research Unit's operational improvements

rating officer failed to include in the EER any discussion of the most important task under special projects in his work requirements statement. The first task, and the one that grievant states is most important, reads:

1. Develop options and implement programs to engage the [REDACTED] staff to increase interaction and improve the morale at the Mission.

In fact, his rater stated unequivocally in the AFI section:

[Grievant] is a supportive manager and is quick to show appreciation to staff in any section for a job well done; his commitment to strengthening morale is irrefutable. ...

Although she did not give examples relevant to this task in the AFI section or in other sections of the EER, she explained that she did not repeat the accomplishments that grievant included in the Rated Employee Statement, but instead covered all but one of the accomplishments that grievant asked her to include. Indeed, grievant reported several accomplishments that proved that he was a supportive manager and that he implemented programs to increase staff interactions and improve employee morale. He wrote that there was a lack of enthusiasm and comradery among the staff at the Mission; therefore, he initiated a monthly newsletter, expanded visits from food trucks to service the Mission and set up tables in the lobby so that his staff could eat and mingle together at lunchtime. He also wrote that he organized midday programs with guest speakers, invited a “prominent [REDACTED] [REDACTED] chef” to prepare and serve food, organized a Filipino Fair and sponsored weekly yoga classes.

in digital archiving. The memo was a good primer for the incoming Washington colleague, as well as a useful summary for our [REDACTED] Executive Office with regard to areas needing extra attention.

INTELLECTUAL/SUBSTANTIVE: [REDACTED] has experience across the full range of Management Cone areas, and successfully oversaw the housing program for Foreign Service Officers assigned to the Mission; the contracting and procurement programs; the transition from the legacy BlackBerrys to the BlackBerry 10 series; and the operation of our facility with General Services Representatives assigned to us. ...

Grievant also does not explain why he believes the statement that his “commitment to strengthening morale is irrefutable” was implicitly a criticism of his efforts. We see no basis for such a belief.

C. EER Challenges

Grievant

Grievant claims generally that his rater’s criticisms of his management of the HR Section at [REDACTED] are erroneous and falsely prejudicial. He contends that the EER as written will damage his career and promotion potential. His specific complaints pertain to the below cited issues and quoted sections in the challenged EER.

1. MANAGERIAL:

. . . He needs to devote greater attention and take a more proactive approach with regard to oversight of [REDACTED] human resources section, an area which falls under his supervision.

Grievant claims that this statement is inaccurate and falsely prejudicial. He states that he inherited an HR staff that was “historically weak” and asserts that he “cannot be blamed for its longstanding shortcomings.” Grievant avers that from the outset, he devoted more attention to these HR problems than to any other aspect of his portfolio, claiming that within one week of his arrival in late July 2014, he began working with the HRO to improve the section, establishing an action plan in August. To confirm this, grievant submitted a statement by the HRO.

Grievant argues that the Bureau alerted the Ambassador to the HR staff problems at [REDACTED] before she arrived at the Mission in December 2014; he discussed the problems with her during briefings; and she agreed to the action plan that was in place. He asserts that all objectives were achieved by January 2015, except for hiring new staff, which the Bureau had not authorized by the end of the rating period.

Grievant also challenges this statement on the assumption that it pertains to a situation where a Performance Improvement Plan (PIP) was to be developed for an employee in HR. Grievant states that the HRO issued a critical performance memorandum to this employee and ultimately prepared and submitted PIPs to the Bureau HR, awaiting approvals that never issued. Grievant contends that he should not have been criticized for the absence of a PIP for the employee at issue when he was not responsible for the inaction in Washington or the failure of Bureau HR to approve the submitted plan. Indeed, grievant argues that even after Bureau HR took responsibility for this employee, the PIP has still not been issued.

In response to the agency's contentions on appeal, grievant also disputes the rater's statement to the grievance staff that performance appraisals for 66 of 68 Civil Service employees at [REDACTED] were not submitted on time. He points out that the majority of evaluations for the 27 Civil Service employees who reported to his immediate subordinates were submitted on time, contrary to the Ambassador's assertion. Grievant also points out that the untimely submission of Civil Service appraisals at [REDACTED] was a problem of long standing and that compliance did not improve after HR responsibilities were transferred to the Bureau in the Department.

The Department

In response to grievant's claim that he should not have been criticized for the decades-long history of performance weaknesses in the HR section at [REDACTED] the agency asserts that the Ambassador did not refer to "longstanding shortcomings" in the HR section because her focus was properly on grievant's current performance. The Department contends that the aspects of grievant's performance that were criticized by the rater were all issues that were raised with him in counseling sessions.

The Department relied on a post-grievance submission by the Ambassador who explained that she had two specific problems in mind when she recommended that grievant pay greater attention to overseeing his HR section. The first problem was late submission of the 2014 appraisals for [REDACTED] 68 CS employees. While they were due by January 30, 2015, the Bureau apprised her on February 26 that most of them had not been completed and that grievant had been reminded of this. Later she learned that a number of these ratings had still not been completed by April 1, 2015, the end of grievant's rating period.

The second problem cited by the rater was the lack of timely implementation of a PIP for a CS employee who was not performing well. According to the rater, grievant had not ensured that a subordinate supervisor implement the PIP in an effective and timely manner. The Ambassador reported that grievant had assured her that both of these problems had been taken care of, when in fact they had not. She stated that her intention in writing the challenged sentence was to communicate that grievant should have taken a more proactive approach and held his staff accountable for ensuring that actions were completed in a timely manner. In response to grievant's assertion that the delay in implementing the PIP was caused by a lack of response from Washington, the Department explained that he was not being criticized for the failure to implement the PIP or the inaction in Washington, but for his failure to apprise the rater accurately of the status of the PIP and "to take steps in advance to resolve the issue."

Ruling

The Board concludes that grievant does not offer proof beyond his own statements that this comment was inaccurate or falsely prejudicial. Grievant conceded that there were some delays in preparing appraisals that should have been timely completed by his subordinates. He instead disputes the number of late appraisals and the fact that they should have been written by

his subordinates. Although he claims “longstanding” problems at HR, this did not prove the challenged statement to be false. In addition, grievant does not dispute that he reported to his rater that the PIP was in place for the problem employee, when it was not fully approved or in place. With respect to this statement, grievant did not meet his burden of proving that it was falsely prejudicial.

2. INTERPERSONAL:

[Grievant] has sought to develop relationships with more senior colleagues at Charleston Global Financial Services Center in South Carolina and should continue this outreach with other offices falling under the Under Secretary for Management.

Grievant

Grievant contends that the use of the word “sought” implies that he tried, but failed to develop these relationships. Similarly, the statement that he “should continue this outreach with other offices” implies that he did not do so. He cites FSGB Case No. 97-60 (February 24, 1960) in support of his argument that Board precedent holds that innuendo suggesting incomplete performance is impermissible in an EER. Grievant contends that in fact he developed excellent and active relationships with counterparts in both Washington and Charleston. He also notes that the rater did not provide any examples of poor relations.

The Department

In response to grievant’s complaint about the statement that he “sought” to develop relationships, implying that he failed to achieve that goal, the Department asserts that the entire paragraph is quite positive, though suggesting areas for further professional improvement. According to the agency, the rater intended to indicate that grievant had engaged Charleston colleagues; however, given his senior position, she had repeatedly encouraged him to develop his own M Bureau contacts, rather than requesting Front Office assistance. She also suggested that

he make trips to Washington to accomplish this. The issue, as she saw it, was not “poor relations” but an “absence of contact.”

The Department argues that the use of the word “sought” was not “damning,” especially in light of the rater’s explanation that she only intended to convey that for his future development as a senior FS officer, grievant should become acquainted with additional senior contacts.

Ruling

The Board finds that grievant has not offered persuasive evidence that the rater’s use of the word “sought” indicated unsuccessful attempts to develop relationships with more senior colleagues, or that the words “should continue” suggest that he did not do so. Grievant has not disputed the counseling which the rater describes. We find that the statement is not falsely prejudicial.

3. AFI Section

[Grievant] is a supportive manager and is quick to show appreciation to staff in any section for a job well done; his commitment to strengthening morale is irrefutable. However, he needs to jump in more quickly and proactively to counsel staff when performance is lacking. [Grievant] should also focus on working to prevent and resolve personnel problem [sic] in a more timely manner.

Grievant

Grievant argues that the AFI statement insinuates that he was a negligent manager and that he failed to timely resolve one or more personnel problems. He asserts that the AFI is invalid due to its lack of specificity. Grievant asserts that he is unable to determine or rebut “the bases for the criticisms” because the Ambassador did not identify any in her statement. Moreover, without examples, he cannot use them as a basis for self-improvement.

Speculating that the rater may have been referring to his counseling of the HRO, grievant explains that after arriving at post, he quickly paid attention to the HR section and asserts that he

should not be blamed for inheriting “a staff comprised of longtime career civil servants whose performance could only improve minimally.” He also posits that the word “problem” in the rater’s statement appears to be a grammatical error and was intended to be “problems,” suggesting that there was “a consistent deficiency throughout the rating period.” If so, he states, the criticism is “overly broad and misleading” and thus invalid.

With regard to a conflict that arose between a unit chief and the HRO, both of whom grievant supervised, grievant asserts that he addressed the conflict promptly, but the Department fails to understand or take into account the complexity of such matters and the time it takes to resolve them. He asserts: “Anyone [who] has experience with employee counseling would recognize that I resolved a very difficult matter and if it took 20 days[,] or even 40 days[,] I did the job.”

Grievant also hypothesizes that if the rater was referring to an instance in which a new employee was not paid because she did not submit a timesheet, this was not his fault or that of the [REDACTED] HR section. The new employee was apparently unaware of the need to submit a timesheet. When grievant learned what happened, he arranged for the employee to be paid manually by the central payroll office in Charleston.

The Department

The agency contends that the AFI statement was intended to be constructive criticism for grievant to improve his performance in an important skill area (Managerial Skills) and the rater did not insinuate that grievant was “a negligent manager.” The Department reports the rater’s explanation about her statement, “he needs to jump in more quickly and proactively to counsel staff when performance is lacking.” According to the Ambassador, this was a reference to the fact that according to EUR-IO-EX, the majority of CS employee appraisals were overdue. In

addition, the rater explained, her comment that grievant “should focus on working to prevent and resolve personnel problem(s) in a more timely manner” pertained to an instance when an employee did not receive a paycheck and the rater had to counsel grievant both by email and telephone on how to handle the situation quickly and directly. She also stated that she intended to raise a concern about the lack of timely implementation of a PIP for the former HRO. The Ambassador stated that she had several discussions with grievant about this employee’s performance and thought grievant should have counseled the employee on the lack of timely appraisals as part of his PIP. Lastly, the rater explained that she also intended to reference grievant’s failure to adequately address interoffice friction between the same HRO and another supervisor in another section.

As for the issue of friction between two of the section chiefs, the Department points out that this was mentioned in grievant’s Counseling Certificate, dated March 19, and it was still not resolved twenty days later when grievant signed the Counseling Certificate without comment. The Department states that there were three formal counseling sessions during the four months covered by the EER, during which grievant received sufficient notice of each of the perceived performance deficiencies.

Ruling

The Board notes that rating officers are required to draft areas for improvement in every EER. In the challenged EER, the rater prefaced her comments with praise for grievant’s success in other areas. Neither in isolation nor in the context of the entire document do we find that the rater suggested that grievant was a negligent manager.

The Ambassador’s explanation to the grievance staff of what she sought to point out in this section confirmed grievant’s speculation that his rater believed he failed to resolve certain

personnel problems in a timely manner. Grievant initially stated that he was uncertain about which personnel issues the rater had in mind when she wrote the AFI section; however, once the Department reported the rater's stated intent, grievant did not deny that he was counseled about those personnel issues, nor did he assert that he had no idea how to address them. On the record presented, we conclude that the specific problems the Ambassador had in mind and the standards of customer-service she expected were made clear to grievant during the rating period in regular staff meetings, counseling sessions and other one-on-one exchanges.

With regard to the new employee not receiving a pay check, grievant acknowledged in the "Rated Employee Statement" in the EER that an outline had been created for "how to do it better next year following a more precise and caring plan." This confirms that he was apprised during the rating period of this particular concern and the need for improvement. With respect to grievant's efforts to address friction between two of his section chiefs, again, grievant did not deny that the rater asked him to settle the matter.

The Board finds that grievant has not shown that the AFI section of the grieved EER contained false or falsely prejudicial statements. In addition, because grievant was apprised during the rating period of the rater's concerns, he therefore knew what he could do and had sufficient time to improve.

4. LACK OF A REVIEWER

Grievant

Grievant contends that not having a reviewer exacerbated the impact of the rater's omissions since there was no other officer to balance the performance evaluation or to cite or praise his accomplishments. He protests "the lack of a reviewer who could correct errors and provide balance" and requests that the EER be removed in its entirety for this reason.

The Department

The agency cites the instructions for the preparation of EERs which state:

Every effort should be made to ensure that employees have a reviewer. If this is not possible, the employee should be informed in writing at the beginning of the rating period that there will be no reviewer.

The Department points out that grievant was made aware at the beginning of the rating period in question that he would not have a reviewer because the next higher official is the U.S. Permanent Representative to the U.S. Mission to the [REDACTED] [REDACTED]. The Ambassador serving in that position reviews the performance of only one Foreign Service employee --, a staff assistant whose rating officer is a non-career Deputy Chief of Staff for Operations. In that case the Permanent Representative has daily contact with the FS employee whose performance she reviews.

Ruling

The Board finds that grievant has not presented any plausible argument as to who the reviewer should have been or why it was error for the agency not to provide him with a reviewer. The absence of a reviewer is a circumstance, though not ideal, that is contemplated in the regulations, conditioned on notice to the employee at the start of the rating period. Grievant does not dispute that he was advised that there would be no reviewer. He does not establish what more was required. In addition, for the reasons previously stated, it does not appear that the challenged EER was unfair, inaccurate or unbalanced. Accordingly, grievant does not prove how he has been harmed by the absence of a reviewer.

5. DAMAGE TO GRIEVANT'S CAREER

Grievant

Grievant contends that the inaccurate, unfair and prejudicial EER will cause serious damage to his career and prevent him from moving on to a more responsible position with promotion potential.

The Department

The agency argues that grievant's fears are exaggerated. It points out that with this generally positive appraisal of his performance during a four-month period in his file, the 2015 Foreign Service Selection Board mid-ranked him. The Department states that the challenged EER "is but one EER among many."

Ruling

The Board finds that grievant's claim of potential harm to his career is speculative and in the absence of procedural error, inaccuracies, lack of balance, or falsely prejudicial information, the perceived anticipatory career damage is not demonstrated by probative evidence. As stated previously, we find no procedural errors, inaccuracies, lack of balance or falsely prejudicial information.

IV. DECISION

The Board concludes that grievant did not carry his burden to show by a preponderance of the evidence that his grievance is meritorious. His grievance is denied in its entirety.

For the Foreign Service Grievance Board:



Susan R. Winfield
Presiding Member



Harlan F. Rosacker
Member



William B. Nance
Member