

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between



Grievant

Record of Proceedings
FSGB Case No. 2015-057

And

August 24, 2016

Department of State

DECISION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

William Persina

Board Members:

Barbara C. Cummings

Gregory D. Loose

Special Assistant

Andrew D. Large

Representative for the Grievant:

Pro se

Representative for the Department:

Holly Colburn
Grievance Analyst, HR/G

Employee Exclusive Representative:

American Foreign Service Association

OVERVIEW

Held: Grievant did not meet the burden of proof to establish that the Department erred in not ensuring that a Meritorious Honor Award was included in grievant's Official Performance Folder (OPF) before the Selection Board met to review her file.

Summary: Grievant appealed the denial of her grievance claiming that the Department's delay in entering a Meritorious Honor Award into her performance folder before the Foreign Service Selection Board (FSSB, Selection Board) convened contributed to her not being promoted. The award had been delayed, in part, by the nominating officer's request to reconsider the amount of the accompanying monetary award. The Board concurred with the Department's argument that grievant did not meet her burden of proof to demonstrate that the delay was significant or unreasonable or likely to have contributed to grievant's failure to be reached for promotion. The Department established that the Selection Board had the opportunity to review grievant's most recent Employee Evaluation Report (EER), which mirrored, and even amplified, the laudatory comments from the award nomination about grievant's performance. The Board also concurred with the Department that grievant's relative ranking on the list of employees recommended but not reached for promotion was too low for the inclusion of the actual award to have altered the outcome at the promotion panel.

DECISION

I. GRIEVANCE

On October 5, 2015, [REDACTED], grievant, filed an agency-level grievance claiming that the Department's failure to ensure that a Meritorious Honor Award was included in her OPF before the Specialist Review Panel convened negatively contributed to her not being promoted. The Department denied the grievance on December 18, 2015, and on December 29, 2015, grievant appealed to the Foreign Service Grievance Board (FSGB, Board). Grievant seeks a reconstituted Selection Board to review her complete OPF, including the Meritorious Honor Award she received in May 2015. The Record of Proceedings (ROP) was closed on April 28, 2016.

II. BACKGROUND

Grievant is a tenured FS-03 Information Management Officer (IMO) who joined the Foreign Service at the Department of State in 2003. In recognition of her service as a Special Assistant to the [REDACTED], [REDACTED], grievant was nominated for a Meritorious Honor Award on March 30, 2015. The nominating officer, grievant's supervisor, recommended an accompanying cash award of \$1,000, but the Bureau awards committee reduced the amount to \$750 before approving the award on May 1, 2015. Upon learning of the committee's reduction in the monetary amount, the nominating officer requested that the awards committee reconsider its decision and award the requested \$1000. Following a subsequent review, the awards committee reconfirmed the approval of the \$750 accompanying cash award.

On June 1, 2015, upon notification that she had been approved for the award, grievant wanted to ensure that the award would appear in her OPF prior to the meeting of the promotion panel that would review her file, so she sent a message to the [REDACTED] Awards Program Coordinator expressing her desire to have the award posted to her Official Performance File (OPF) or, alternatively, requesting that she be given a copy so that she could input it into her file herself. On June 3, 2015, in response to an invitation to the Bureau awards ceremony, grievant again requested that the award be posted to her OPF "right away" in recognition that the promotion board was due to convene on that date.

The [REDACTED] Budget Officer received the award for input and signature of financial data on July 15, 2015, and returned it to the responsible office, the Bureau of Administration, Executive Office, Human Resource Directorate (A/EX/HRD), on the same day. The approved award was entered into grievant's official performance folder on July 20, 2015, which was after the Specialist promotion board had convened but prior to the completion of their review of all the files from grievant's cohort.¹

Grievant's OPF that was considered by the promotion board contained an Employee Evaluation Report (EER) with material substantially similar to the information contained in the award nomination and even more laudatory about grievant's accomplishments than the nomination that supported the award. The promotion panel recommended grievant for promotion to FS-02 but, due to the limited number of promotions available to Specialists in her skill code, grievant's standing on the promotion list was not high enough for her to be reached for promotion. Of the 87 candidates for promotion, 24 were promoted, and 63 were recommended but not reached. Grievant was ranked 39 out of those 63. Grievant maintains that the absence of

¹ The 2015 S-IV A Selection Board convened on June 3, 2015, and adjourned on July 24, 2015.

the award nomination may have contributed to her failure to be reached for promotion and requests a reconstituted panel to consider her entire OPF including the award nomination.

III. POSITIONS OF THE PARTIES

A. The Grievant

Grievant asserts that the omission of the Meritorious Honor Award from her OPF prior to the commencement of meetings of her promotion panel may have contributed to her not being promoted by the Summer 2015 Panel. Grievant unsuccessfully made repeated attempts to ensure that the award was included in her file in time for it to be considered by the promotion panel. Grievant notes that she has been recommended but not reached promotion four times (2011, 2012, 2013, and 2015), and she argues that had the award been included in her file in a timely manner, she would have reached promotion on this occasion.

B. The Department

The Department argues that grievant has not met her burden of proof to establish that the timing of the inclusion of the award nomination in her OPF substantially affected her competitiveness for promotion. The Department points out that the nomination was delayed when the nominating officer requested that the awards committee reconsider the monetary amount approved to accompany the award. Further, there is no regulation governing the amount of time the Agency has to enter awards into an employee's OPF and, in this case, the award was entered in grievant's file within a reasonable period. In fact, since the award was entered into grievant's OPF on July 20, 2015, it was added to her file while the promotion panel was still in session and prior to its July 24, 2015, dismissal. Grievant has not established that the promotion panel did not actually review the award nomination with the rest of her OPF.

Regardless of whether the panel actually reviewed the award nomination, the information contained in the nomination is substantially mirrored in grievant's April 2015, EER. The Department argues that not only does the 2015 EER document the underlying basis for the award nomination, but that the EER is even more laudatory about grievant's performance than the nominating language, and grievant's rating officer strongly recommended her promotion. The Department also notes that grievant's standing on the list of employees recommended but not reached for promotion was too far down the list for the inclusion of the award nomination to have made a significant difference in her likelihood for promotion. Grievant was 39th out of 63 candidates recommended, but not reached, for promotion by the 2015 Selection Board. An award nomination is unlikely to have raised grievant's ranking past all 38 of the other candidates in line for the next available promotion.

IV. DISCUSSION

In all grievances other than those involving disciplinary matters, the grievant has the burden of establishing, by a preponderance of the evidence, that the grievance is meritorious.² Based on the information and evidence presented, the Board finds that grievant has not met her burden of proving that the Department failed in its duty to ensure that employee OPFs are reasonably complete before the Selection Board begins its review. Grievant has also failed to establish that the timing of the award's inclusion in her file substantially affected the outcome of the selection panel's deliberations on her performance file.

As the Department pointed out, this Board has previously recognized that no regulations govern the length of time the administration has to ensure that an award is placed in an employee's performance file.³ Rather, the Board has found that the Department must act

² *See*, 22 CFR § 905.1a.

³ FSGB Case No. 2011-056 (February 12, 2013); FSGB Case No. 2011-061 (March 29, 2012).

reasonably to ensure that all OPFs reviewed by Selection Boards are as complete as possible. The record shows that the awards committee initially approved grievant's award on May 1, 2015, and forwarded it to the [REDACTED] budget office for approval and fiscal data -- the next step in the award process. At some point, although no date is given, the nominating officer then requested that the awards committee reconsider the reduced monetary award and grant the \$1,000 that he had originally requested accompany the award. The awards committee reconfirmed the reduced monetary award of \$750, although, again, the record does not give the date of this decision. The record shows that the next date in the processing of the award was Wednesday, July 15, 2015, when the [REDACTED] Budget Officer received the award for input of the financial data. The Budget Officer stated that he processed the financial data the same day that it was received and, in accordance with routine processing of awards, forwarded the paperwork to A/EX/HRD for their action that day. The award was entered into grievant's OPF on Monday, July 20, 2015.

The Board finds that whether the award was considered conferred on the date that the awards committee reconsidered and approved it (an unspecified date, but at some point between May 2, 2015, and July 15, 2015), or actually not awarded until the fiscal data was approved on July 15, 2015, the time that it took for the Department to enter the information into grievant's OPF was reasonable. If any delay occurred, it appears to be in part the result of the nominating officer's request for reconsideration. Once the fiscal data was approved, the Department appears to have moved with alacrity in ensuring that the award was entered into grievant's OPF, as it made it to her file within two working days.

The Board also notes that the OPF was updated with the award information on Monday, July 20, 2015, and the Selection Board reviewing grievant's file was not dismissed until Friday, July 24, 2015. Therefore, grievant's complete file was available for review for the final week

that the Selection Board was in session. Grievant has presented no evidence to establish that her complete file was not, in fact, reviewed by the Selection Board.

However, even if the Selection Board had completed its review of grievant's OPF and did not reconsider her file after the receipt of the award, the Board is satisfied that the Selection Board had an opportunity to review grievant's performance that prompted the award since it was adequately documented by her April 2015 EER.⁴ The Department pointed out that the award nomination and grievant's EER parallel each other in describing grievant's expertise in managing a broad portfolio, her management of a specialized writing course, her judgment and briefing abilities, and her work in cybersecurity; and in recommending grievant for promotion. The Board is satisfied that the Selection Board had adequate opportunity to review grievant's performance relative to that of her peers, irrespective of whether the highly laudatory comments were contained in an award nomination or an evaluation.

We further note that there were 87 specialists in grievant's skill code who were eligible for promotion, and only 24 were promoted. Of the 63 Specialists recommended but not reached for promotion, grievant was ranked 39th. Grievant has not shown that earlier inclusion of the award information in her OPF would have caused her to overtake those employees ahead of her on the rank order list.⁵

Based on the foregoing, the Board finds the grievant has not proven by preponderant evidence that her OPF was not completed within a reasonable time for the selection board review, and therefore there is no basis upon which to grant grievant's request for a reconstituted panel to reconsider her file.

⁴ See FSGB Case No. 2006-035 (February 21, 2008)

⁵ See FSGB Case No. 2010-047 (March 14, 2011).

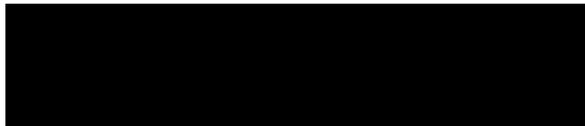
V. DECISION

The grievance is denied in its entirety.

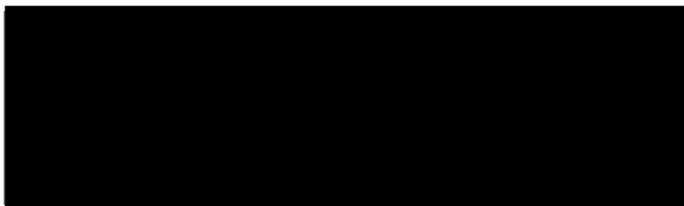
For the Foreign Service Grievance Board:



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