

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

Record of Proceedings
FSGB Case No. 2016-015

And

November 18, 2016

Department of State

DECISION

EXCISION

For the Foreign Service Grievance Board:

Presiding Member:

John M. Vittone

Board Members:

Bernadette M. Allen

Barbara C. Cummings

Special Assistant

Andrew D. Large

Representative for the Grievant:

Pro se

Representative for the Department:

Daniel M. Creekman
Attorney Adviser, HR/G

Employee Exclusive Representative:

Neera Parikh
American Foreign Service Association

OVERVIEW

Held: Grievant did not meet his burden of proof to establish that his 2013 Employee Evaluation Report (EER) contained inaccurate or falsely prejudicial statements or that the 2013 and 2014 Foreign Service Selection Boards (FSSBs, Selection Boards), in deciding to low-rank grievant, violated FSSB precepts.

CASE SUMMARY

Grievant appealed the Agency denial of his grievance claiming that his August 2013 EER contained inaccurate and falsely prejudicial statements that unfairly highlighted one-off incidents. Grievant alleged that his reviewing officer developed a bias against him after he requested to curtail from post to join his wife who had to be evacuated due to a high-risk pregnancy. Grievant believed that the reviewing officer's bias also affected his rating officer's assessment of grievant's performance. Grievant claimed that he had not been counseled on the deficiencies mentioned in his EER nor given time to improve his performance before the negative comments were included in his report. Grievant also sought to overturn two Low-Ranking Statements (LRSs) that he received from the 2013 and 2014 Selection Boards in which each cited his deficiency in foreign language communication skills and the effect that this had on his ability to perform his duties as a political reporting officer. The Board found that grievant had not met his burden of proof to establish that his EER contained inaccurate or falsely prejudicial statements or that he was not properly counseled during the rating period on the issues included in his evaluation. The Board also found that grievant's low-ranking by the Selection Boards was in compliance with FSSB procedural precepts and properly based on grievant's performance relative to his peers. The grievance was denied in its entirety.

DECISION

I. GRIEVANCE

Grievant, ██████████, appeals the denial of his agency-level grievance challenging his August 2013 EER¹ that covered an abbreviated rating period (October 22, 2012 – August 2, 2013) when he served as political officer in ██████████. Grievant also contested two low-ranking statements received from the 2013 and 2014 Selection Boards. As relief, he seeks to have his August 2013 EER expunged, the 2013 and 2014 Low-Ranking Statements overturned, his 2013 scorecard changed to mid-ranked, a one-year time-in-class extension, reconstituted selection boards for 2014 and 2015 promotion review, and any other relief deemed just and proper.

II. BACKGROUND

Grievant is a tenured political-coned officer who joined the Foreign Service in May 2009, and served his first tour as a consular officer in ██████████. He was next assigned to ██████████ as a political officer and, in preparation for the assignment, undertook the standard 28-weeks of French language training provided at the National Foreign Affairs Training Center (NFATC). Grievant's language studies were extended an additional 26 weeks in an effort to help him reach the professional level of proficiency needed for his onward assignment; however, after he still did not reach the requisite language proficiency for his onward assignment, in October 2012, grievant was sent to post on a language waiver. He was granted conditional tenure in December 2012, until he satisfied the requirement to get off of language probation, which he did several months after departing post (in February 2014).

¹ The grievant makes reference to an October 2013 EER in several places in his grievance submission. That appears to be an inadvertent typographical error, as the August 2013 EER is the document he wants expunged.

In February 2013, grievant's wife was medically evacuated from post due to a high-risk pregnancy. Grievant requested a compassionate curtailment² to join his spouse, which was approved and resulted in his leaving post in early August 2013.

Grievant's rating and reviewing officers prepared an EER that commended aspects of grievant's performance, but both the rater and reviewer commented on the difficulty grievant had in successfully performing some responsibilities as a political officer because of his deficiency in French language skills and certain other performance deficiencies they perceived. Neither the rater nor the reviewer recommended grievant for promotion.

The 2013 and 2014 Selection Boards low-ranked grievant citing his failure to demonstrate competency in foreign language skills and the resulting negative effect on his performance as a political officer in [REDACTED]. The Boards noted grievant was deficient in his communication skills relative to his peers.

On October 20, 2015, grievant filed an agency-level grievance challenging his August 2013 EER. He also contested two low-ranking statements received from the 2013 and 2014 Selection Boards. The Department denied the grievance on January 12, 2016, and on March 11, 2016, grievant appealed to the Foreign Service Grievance Board (FSGB, Board). The Record of Proceedings (ROP) was closed on August 26, 2016.

III. POSITIONS OF THE PARTIES

A. Grievant

Grievant asserts that the EER contains inaccurate and falsely prejudicial statements and unfair negative references to lone, isolated incidents that do not accurately reflect his performance. Grievant maintains that the reviewing officer was biased against him, stemming

² Grievant alleged that Post Management initially did not support his request, but changed its position after being contacted by the Department's Bureau of Human Resources (HR).

from his request for a compassionate curtailment to be with his wife who had to be medically evacuated because of a high-risk pregnancy. Grievant further maintains that he was never counseled on the deficiencies noted in the EER. Grievant also asserts that his low-ranking by the 2013 and 2014 Selection Boards was in violation of the FSSB's procedural precepts.

Grievant presented letters of support from other officers at post, and an Office of the Inspector General (OIG) report to show that the Deputy Chief of Mission (DCM), grievant's reviewing officer, had an abrasive personality and a "very belligerent and confrontational management style, regularly berating and bullying everyone from entry level officers to section heads regarding perceived inadequacies."³ In one of the corroborating letters of support, a colleague stated that the DCM's treatment of grievant "appeared to be a personal vendetta."⁴ Grievant asserts that the DCM initially opposed his request for curtailment, then appeared irritated after the Department approved the curtailment, and subsequently sought to keep him at post for as long as possible. Grievant alleges that the DCM's negative bias against grievant led her to unfairly choose isolated incidents to describe grievant's performance and also tainted the rater's assessment of his performance. Further, the grievant alleges that the reviewing officer's animus subjected grievant to an adversarial working relationship that resulted in an unfair, biased and inaccurate EER. Grievant cites Board precedent to argue that his EER, written in the context of this adversarial relationship with his reviewing officer, and containing false and inaccurate statements, should be expunged.⁵

Grievant objects to several references in the EER by his rater and reviewer regarding his lack of French language skills. Grievant asserts that because he was brought to post on a language waiver, his supervisors were aware that he had not tested at the required language level

³ Grievance Submission for Final Agency Review Memorandum, October 20, 2015. (ROP 001- p. 21)

⁴ Grievance Submission, Attachment G, ROP 001, p. 46.

⁵ FSGB Case No. 2009-016 (December 30, 2010); FSGB Case No. 2000-048 (November 28, 2000).

before his arrival. He asserts that his language proficiency improved after he made a concerted effort at post to improve his language skills by attending post language classes and by hiring a private tutor. Grievant claims that his reviewing officer undercut his efforts to improve his language skills by routinely requiring him to take on other assignments during his regularly scheduled classes. Despite this, grievant showed improvement in his language skills and ultimately was able to reach the required proficiency when he again tested in February 2014 after his return to the U.S. He points out that the rating officer commented in the EER on grievant's improved language skills over the rating period and the positive impact this had on grievant's political work. Grievant maintains, therefore, that his lack of French proficiency should not have been mentioned in the EER.

Grievant also objects to the reviewer's following statements in Section IX of his EER:

Although ██████ professed interest in political work, that eagerness was not always evident. For example, during a quarterly review of our assistance priorities led by the Ambassador, ██████ declined an opportunity to share his observations on democracy and governance.

Grievant argues that this was his first quarterly assistance meeting and that he considered himself to be the least knowledgeable person in the room. Thus, grievant affirms that he decided to forego giving his opinion because he was relatively new at post and out of deference to the more experienced participants in the room. Grievant notes that he "could have said something, and was intentionally silent because he found it wiser to allow more informed voices to counsel the Ambassador." He asserts that the DCM unfairly referenced this incident to demonstrate grievant's lack of eagerness for political work which is not accurate. Grievant points to statements from his rating officer, in response to an inquiry from Grievance Staff, that the rater did not recall any instance in which grievant demonstrated a lack of eagerness for political work, never recalled discussing this issue with the reviewer, or counseling grievant on his attitude in

this regard. Grievant argues that if this were, in fact, a deficiency in his performance, his rating officer would have noted it and he should have received counseling. The reviewing officer stated to the Grievance Staff that another example of grievant's lack of enthusiasm for political work was his failure to volunteer to accompany the Ambassador on in-country travel. Grievant asserts that it was impossible for him to volunteer for any of the three potential opportunities for him to travel with the Ambassador: a more experienced officer volunteered for the first trip, then grievant was "extremely busy" with other duties during the second trip, and grievant already had approved annual leave during the third trip. The reviewing officer also stated to the Grievance Staff that the Ambassador had noted that grievant fell asleep during meetings but grievant denies this ever occurred and questions the reviewer's credibility in making the following comment, in the reviewer's statement:

His note-taking was incomplete because he could not follow conversations, and his issue with note-taking at times extended to meetings where key parts of the discussion were summarized in English. As a result, his draft cables excluded key points made during meetings.

Grievant objects to this statement maintaining that note taking was a core function of his position and that he routinely was called upon for this task. Grievant points to commendation from his reviewing officer in an EER from his previous post for his effective note-taking skills and the "clear and complete memorandum" he produced as a result. Grievant also points out that his rating officer, in response to an inquiry from the Grievance Staff, indicated that he did not recall grievant exhibiting any note-taking deficiencies. Moreover, grievant asserts that the reviewing officer never expressed to him that she found his note-taking inadequate, requested another officer to take notes, provided grievant any coaching, or, if she really considered his note-taking a problem, gave him any opportunity to improve before she included this comment in his EER.

Grievant claims that he was never counseled on the deficiencies in his performance prior to inclusion of these issues in his EER in violation of established standards of fairness. He asserts that neither his rater nor reviewer was able to produce a copy of any counseling certificate form. He maintains that he was unaware that the isolated incidents magnified in his EER were considered deficiencies in his performance because he was never alerted to these by his supervisors or given an opportunity to improve. He points to the rating officer's statement to the Grievance Staff that his recollection of his counseling sessions with grievant were that they were focused on improving his understanding of bi-lateral issues, reporting opportunities and improving his language skills. Grievant asserts that the extent of the counseling regarding his language skills was praise for his progress in this area and not criticism for how his lack of language proficiency was affecting his performance as a political officer.

Finally, grievant asserts that the Selection Boards violated their established precepts when they low-ranked him because they based their decisions on the secondary consideration of grievant's lack of training in a foreign language. In addition, the 2013 and 2014 Selection Boards cited only grievant's 2013 EER which is a violation of the precept that low rankings "[s]hall draw on material preferably from more than one rating period and preferably from more than one rating official." Grievant maintains that both low-ranking statements should be overturned for these violations of the Selection Board precepts.

B. The Department

The Department asserts that grievant's 2013 EER is reasonable, fairly and accurately assesses his performance during the rating period, and complies with all procedural requirements. It also maintains that the 2013 and 2014 LRS were properly issued in compliance with applicable procedural precepts of the Selection Boards.

The Department argues that grievant has failed to meet his burden of proof to establish that his reviewing officer was biased against him and that any comments in his EER were inaccurate and falsely prejudicial. It asserts that the evidence that grievance presented to show the reviewer's difficult personality and how it affected her management of the Mission at most indicated that she was difficult with many at post rather than evidence of a particular bias against grievant. The Department maintains that grievant has not shown that he was singled out by the reviewing officer for negative treatment. The Department discounts the observation of one of grievant's colleagues that the reviewing officer's treatment of grievant appeared to be a "personal vendetta" as vague, uncorroborated by any other evidence, and not probative of bias. The Department points to comments made by the reviewing officer to the Grievance Staff that she did not have negative feelings towards grievant. The Department also argues that the reviewing officer's initial reluctance to support grievant's curtailment request was due to her concern for a potential staffing gap, and not evidence of some form of bias against grievant. Grievant also asserted that the reviewing officer's insistence that grievant complete his portion of his EER before departing post was further evidence of the reviewer's animus towards him. The Department points out, however, that not only was grievant well-aware that action on his EER was overdue, but he also knew that completing all EERs before departure was standard post check-out procedure. Finally, in response to grievant's assertion that his reviewing officer's confusing his curtailment with another officer's curtailment from post under similar circumstances when recounting events to the Grievance Staff demonstrates her lack of credibility, the Department maintains that any such confusion was only due to her attempt to remember events that occurred over four years prior.

The Department argues that grievant has not indicated what statement in his EER regarding his lack of French language skills is inaccurate. The Department maintains that grievant cannot claim that because he was sent to post with a language waiver that his supervisors were precluded from commenting on his language deficiencies and how that affected his performance. Grievant's inability to communicate significantly affected his ability to perform the essential functions of his position, and the rater and reviewer were essentially required to address this in grievant's EER. The Department notes that grievant is not contesting that his rater and reviewer misrepresented his language skills or that his deficiency in French did not have a negative impact upon the performance of his duties. The comments about his lack of language proficiency were fair, accurate, and supported by example.

Grievant also argues that the reviewing officer demonstrated bias in choosing to comment on grievant's apparent lack of eagerness for political work and asserts that she based this comment on a lone, one-off incident that does not accurately portray his interest in the work. The Department notes that grievant does not deny that he declined to offer an opinion when asked to do so but merely gives an explanation of why he did not speak up. The Department also cites other examples provided by the reviewing officer that supported her decision to comment on grievant's apparent lack of eagerness for political work: the Ambassador's comments to her that grievant appears to fall asleep during meetings; the Ambassador's displeasure that grievant failed to respond to one of his direct questions; grievant's failure to volunteer to accompany the Ambassador during in-country travel; and the Ambassador's comment that grievant projected "boredom and disinterest" in meetings with outside contacts. The Department maintains that the reviewing officer had multiple examples from which to choose to support her statement that grievant's eagerness for political work was not evident and her choice of the example used was

not a sole, isolated incident. Grievant has not demonstrated that this statement in his EER was inaccurate or the result of bias or animus.

Similarly, the reviewing officer's comment about grievant's deficiency in note-taking was not based on a sole, isolated incident but, rather, based on several examples during the rating period. The Department points to the reviewing officer's statement that she observed that grievant took very few notes during meetings, even when the meeting had been conducted in English. She also noted that grievant tended to mirror her note-taking and only write something down when she had written something. As an example, the reviewer commented on a meeting that concluded with an English summary of what had been discussed in French and recalled her chagrin when she looked to grievant and noticed that he was not taking any notes of the summary. Grievant has not demonstrated that the comment regarding his note-taking deficiencies was based on a lone incident or unsupported by example.

The Department asserts that grievant was properly counseled on the deficiencies in his performance and was aware of the areas in which he needed to improve. Grievant's rater stated that he considered counseling to be an ongoing process and that he had ongoing discussions with grievant throughout the rating period in which he offered feedback and guidance. The reviewing officer also specifically recalled discussing with grievant that his demeanor in meetings was giving the impression that he was bored and not interested in what was being discussed. She also recalled specifically commenting to grievant about his note-taking on several occasions. Finally, the Department points out that grievant's EER indicates that he had formal counseling sessions during the rating period on at least two occasions: February 4, 2013, and June 3, 2013.

The Department maintains that grievant's challenge to the 2013 and 2014 LRS is baseless. The Selection Boards did not low rank grievant because of a secondary consideration

such as a lack of language training. Rather, grievant had ample language training as demonstrated by his extraordinary 54 weeks of French training. The Selection Boards based their low-rankings in part because his "lack of language skills significantly limited [his] ability to effectively perform [his] duties as a political officer." The Department asserts that this was a legitimate basis for low-ranking, as skill in foreign languages and its use to enhance job performance is one aspect of Communication Skills--a desired competency for entry-level employees. Grievant also argues that the FSSBs erred in relying solely on his 2013 EER in deciding to low-rank him, but the Department points out that both LRSs also reference grievant's 2010-2011 EER as well as his 2013 report. Moreover, the precept grievant cites regarding FSSB procedures states that LRSs should "draw on material *preferably* from more than one rating period. . . ." (Emphasis added). The Department points out that this is a preference rather than a mandate as grievant asserts. There are no procedural errors in grievant's 2013 or 2014 low-ranking statements.

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.⁶ Based on the following discussion, the Board finds that grievant has not met his burden of proof to establish the merits of his case.

Accuracy of the EER

In this case, grievant asserts that his EER contains inaccurate and falsely prejudicial statements and highlights lone incidents from the rating period that give an unfair description of his performance. Grievant asserts that the negative comments were the result of personal bias

⁶ See 22 CFR § 905.1a.

against him by his reviewing officer that stemmed from his request to curtail when his wife had to be medically evacuated with a high-risk pregnancy. Grievant maintains that the reviewing officer's alleged bias influenced his rating officer to include negative comments about his performance as well. Before addressing grievant's allegation of bias, the Board looks to whether his EER contains inaccurate and falsely prejudicial statements.

First, grievant contests the inclusion of comments by his rater and reviewer that grievant's deficiency in French language proficiency negatively affected his ability to perform his duties as a political officer. The Board notes, however, that grievant admitted that even after he concluded his extended studies at NFATC he had not attained the requisite language proficiency for his onward assignment. He further admits that when he arrived at post he lacked a "business level proficiency" in French and that the host country operates exclusively in French and the level of English knowledge, even among educated elites, is extremely low. . . ."⁷ The Board notes that grievant's position and work requirements charged grievant with tasks requiring a business-level proficiency in French: specifically, analyzing and reporting "on fast-breaking political developments," and developing and maintaining "contacts in the government, political parties, civil society, and non-governmental organizations. . . ."⁸

In reviewing the EER, the Board finds the following comments by the rating officer about grievant's language ability and its effect on his performance:

[Grievant] did not attain the required 3/3 level of French language and this has limited his ability to function optimally in a Francophone environment where few interlocutors speak English. Therefore, this has limited my ability to fully assess his potential

Without the necessary 3/3 in French, however, [grievant] was restricted in his ability to elicit nuanced political information in a context in which English is rarely spoken. This in turn restricted his ability to build an extensive network of

⁷ Grievance Submission for Final Agency Review, October 20, 2015, p. 4

⁸ Section VI., Grievant's EER dated August 2, 2013, page 2 of 6.

██████ political contacts. [Grievant] continued to work on his French language throughout the rating period and showed improvement. As a result, he was able to begin providing more insightful contributions regarding political events as the rating period progressed. I have encouraged [grievant] to continue working on his French language in order to obtain a 3/3. Doing so will enable him to fully engage with French speaking contacts without LE [locally engaged] staff assistance and therefore, fully demonstrate his capabilities as a Political Officer.

The Board notes that the reviewing officer stated in her portion of the EER:

. . . [Grievant's] French language skills were inadequate for this position. This impeded both his ability to interact with ████████ and fulfill his responsibilities as a reporting officer. His note-taking was incomplete because he could not follow conversations. . . .

Based on grievant's own admission that his language skills were less than what the position required, the Board finds that the rater's and reviewer's comments to be an accurate assessment of grievant's performance, adequately supported by example. The Board is not persuaded by grievant's assertion that, because his lack of language skills was known to his supervisors prior to his arrival at post, this issue should not have been discussed in his EER. Grievant has not met his burden of proof to establish that these comments were inaccurate or falsely prejudicial.

Grievant next asserts that his reviewing officer unfairly chose isolated incidents to characterize grievant's performance as negatively as possible. Grievant challenges the reviewer's inclusion of two comments: one stating that although grievant expressed "interest in political work, that eagerness was not always evident," and another that grievant's note-taking and written products were incomplete because of his French language deficiency. The reviewer cited as an example of grievant's apparent lack of eagerness for his job the fact that he declined to offer an opinion during a meeting when he was called upon to do so. Grievant has confirmed that he did not speak up during the meeting but offered a reasonable explanation as to why he chose not to comment--that it was his first quarterly meeting and he considered himself junior to others in the

meeting and deferred to their expertise on the topic under discussion. While this explains why grievant did not speak up, it does not render the reviewer's impression of grievant's failure to offer his opinion any less valid an observation. In addition, when asked by the Grievance Staff, the reviewer offered other supporting examples that demonstrated to her that grievant's eagerness for his work was not always apparent: she recalled at least two occasions in which the Ambassador had noted that grievant fell asleep during meetings in which he was serving as note-taker, stated that the Ambassador expressed displeasure when grievant appeared to fall asleep during a country team meeting and did not respond to a direct question posed to him by the Ambassador and her impression that grievant appeared bored with the subject being discussed when grievant accompanied her to meetings. Grievant denies that he fell asleep in meetings. The Board notes, however, that the reviewer referred to more than one such incident and stated that the matter had been brought to her attention by the Ambassador. Accordingly, grievant's apparent lack of eagerness for his work had risen to the attention of the Ambassador, so it is reasonable that the reviewing officer would include a comment regarding this aspect of grievant's performance in his EER.

The reviewer also offered that grievant did not volunteer to accompany the Ambassador for one of his in-country trips. Grievant explained that a subject-matter expert volunteered for the first opportunity and that the other two possible trips did not fit with grievant's workload or leave schedule. Again, while these are reasonable explanations on grievant's part, they do not undercut the impression that his failure to step forward left on the reviewer that grievant did not always exhibit eagerness in undertaking political work.

The reviewer's comment regarding grievant's "eagerness for political work" was not based on a one-off incident but, rather, based on her observations throughout the rating period

and supported by multiple examples even though only one was chosen for illustration in his EER. In fact, the example cited in the EER seems to be one of the least harsh of the possible examples that the reviewer could have chosen to support her criticism of grievant's performance in this respect. Grievant points to his rating officer's comment that he did not recall noticing a lack of eagerness for political work on grievant's part. The Board does not find that grievant has, however, met his burden of proof to establish that the reviewer's comment was inaccurate or that it was falsely prejudicial. In contrast, the reviewer has provided her detailed recollection of other more damaging examples upon which she drew to conclude that grievant's interest in political work was not always evident.

Grievant also challenges the reviewer's comment that grievant's note-taking suffered because of his lack of French language skills and that even when the meeting was conducted in English, grievant did not seem to have taken adequate notes to fully document the meeting. The reviewer cites as an example a meeting that concluded with an English summary of what had been discussed in which grievant did not take complete notes and then left key information out of a cable summarizing the meeting. Grievant, in Part X Optional Statement by Rated Employee in his EER, admits that the examples his reviewer used to support her comments are "technically true" and specifically commented on leaving information out of his draft that he did not consider relevant.

In response to grievant's assertion that this was a one-off occurrence, the reviewing officer stated to Grievance Staff that she often noticed that grievant was not taking notes in meetings and, on occasion would mirror her and only write down information when she did so. The reviewing officer stated that she mentioned the need for thorough note-taking to grievant on several occasions. In response, grievant offers a reference from one of his previous EERs from a

former post in which he was commended for his note-taking and the memorandum he prepared after the meeting. He also argues that had his note taking been a problem, the reviewer would not have continued to take him to meetings. Finally, he points to his rating officer's statement to the Grievance Staff that he did not recall a problem with grievant's note taking. While grievant may not have been aware of the impression he was making on his reviewing officer during meetings that they attended together, apparently, she was observing his note-taking, or lack thereof, throughout the rating period. Grievant has not established that this was a singular incident that was unfairly chosen to discredit his performance during the rating period. Rather, he has admitted that he omitted information he deemed not relevant for reporting in the example cited by his reviewer. Nevertheless, the reviewer has detailed other note-taking incidents that caused her to comment on this deficiency in grievant's EER. The grievant has not met his burden of proof to establish that the reviewer's comment regarding his note-taking was inaccurate or falsely prejudicial.

Having determined that the comments in the rating and reviewing portions of his EER are accurate and properly supported by example, the Board finds that the grievant has not demonstrated that there was any bias against him resulting in the inclusion of false or prejudicial statements in the EER. Moreover, in our review of the record as it relates to post management's (the DCM and Ambassador) initial reluctance to support grievant's request for a compassionate curtailment, grievant acknowledges that the day following his initial curtailment request that "the Front Office did in fact support" his curtailment, but noted intention to retain grievant at post for a period longer than he wanted, a decision that appears to be due to staffing concerns. In our examination of the record, we did not discover any examples of bias or animus directed specifically against the grievant. We note a number of testimonials, as well as an Office of the

Inspector General (OIG) report that characterized the DCM's management style as abrasive. The following excerpts from testimonials and an OIG report illustrate that characterization. One officer who was not a direct report to the DCM wrote:

[DCM] created an overall atmosphere that was hostile to junior officers and even senior officers as well. I witnessed [DCM] leave a senior Foreign Service Officer – who was very competent and composed at all times- in tears after blaming this officer for an unsuccessful meeting with a host government official. [DCM's] unpredictable moods, penchant for yelling at others, and constant finger pointing was a regular occurrence that left many in a state of unease and discomfort.”

A second officer who worked for USAID wrote:

In meetings over which [DCM] presided, I observed that she had a repetitive tendency to be very judgmental and harsh in her appraisals.... I had a personal run-in with her I found so disturbing I decided to minimize my contacts in the brief time remaining to me in [post]. . . . I did not think this was a proper way to treat an older, more experienced officer (though I am and was no longer in the foreign service, but serving as the equivalent of a WAE).⁹

A third officer wrote:

. . . [DCM] acted in what I consider an unprofessional manner towards other COM personnel. The first incident involved her raising her voice to and berating her OMS for a scheduling conflict. After the incident was over, I saw her OMS crying on the way to the restroom. The second . . . involved an incident in which [DCM] lost her temper and yelled at/berated the Pol section chief.¹⁰

The OIG report notes, as it relates to poor morale at post:

Reasons included dissatisfaction with living conditions . . . and with the DCM's interpersonal style.” . . . [S]taff perceived the DCM as unpredictable and prone to being abrasive with or raising her voice to employees she deemed as underperforming.

We did not find “considerable evidence” of disagreements between the DCM and grievant to meet the standard that this Board requires to demonstrate animosity or bias.¹¹ On the contrary, given the grievant noted that the DCM called on him to accompany her to meetings on

⁹ See 3 FAM 4171 a. Annuitants returning to work on temporary appointments on an intermittent basis are commonly referred to as While Actually Employed (WAE) personnel.

¹⁰ Chief of Mission (COM); Office Management Specialist (OMS); Political (Pol).

¹¹ FSGB Case No. 2002-020 (July 16, 2002), 17-19, and FSGB Case No. 2011-013 (May 3, 2012), 17-18.

a number of occasions for note-taking, together with the reviewer's remarks that she "spent more time with [grievant] than any of our other 18 first and second tour officers," the Board is not persuaded that the DCM would have spent as much time with grievant as she did if she had animus or bias against him. We do find that the record reveals a strained relationship between the parties, but our overall assessment of the situation at post is that the DCM was a challenging or difficult supervisor for many employees at post, not specifically targeting the grievant. Save for the one testimonial that alluded to an appearance of personal vendetta against the grievant, the other testimonials do not substantiate the grievant's claim of bias.

Sufficiency of Counseling

Grievant alleges that he was surprised by the criticisms in his EER because he had not received any counseling on the issues raised before reading the comments in his evaluation. Grievant maintains that he was never given an opportunity to improve his performance in the areas criticized in his evaluation and, therefore, the EER lacks the fairness required by the Department's instructions on completing EERs.¹² Grievant points out that the Department could not produce a copy of the required Counseling Certification Form (DS-1974) and that even though his EER states that he had at least two counseling sessions with his rating officer, the critical comments in his EER were not addressed during these sessions.

The Board notes that both grievant's rating and reviewing officers stated that grievant was counseled throughout the rating period on the issues concerning his lack of foreign language skills, and his reviewing officer confirmed that she had spoken to grievant numerous times about his note-taking and the impression he gave that his eagerness for political work was not always evident. The Board further notes that grievant, who carries the burden of proof in this case, did not produce a copy of the Counseling Certificate which he would have had a copy of as well, to

¹² See Form DS-5055i, section entitled "Ensuring Fairness."

establish that these issues were not discussed during his two formal counseling sessions. We are left, therefore, with having to determine if grievant was aware, or should have been aware, of the problems in his performance as viewed by his supervisors. With regard to grievant's difficulties communicating in French and the negative affect it was having on his performance as a political officer, it is evident that grievant was aware of this issue. Grievant stated that he aggressively sought to improve his language skills by taking part in the post language program and even studying after-hours with a private tutor. Grievant's rating officer noted the improvement in grievant's language skills in the EER and grievant's French improved enough that he was ultimately able to demonstrate 3/3 level proficiency and get off of language probation several months after his return to the U.S. The rater's and reviewer's comments about the effect of his language deficiency on his performance cannot, therefore, have been a surprise to grievant.

The Board is equally satisfied that the reviewer, although not technically required to provide counseling to grievant, did so on numerous occasions to guide him in his development as a political reporting officer. The reviewer's detailed recollection of the different ways in which she attempted to counsel grievant to improve his note-taking skills indicates that grievant was or should have been aware that he needed to work on this area of his performance. Grievant himself admitted that the critical feedback he received from the cable he drafted after one meeting served as a "teaching moment". The Board finds that grievant has not met his burden of proof to establish that he was not properly counseled on the issues raised in his EER.

Low-Ranking Statements

Grievant argues that the 2013 and 2014 Selection Boards violated their procedural precepts by improperly relying on the secondary consideration of his lack of language training in their decisions to low-rank grievant. The Board disagrees with the grievant's argument. The

record shows that grievant received almost double the regularly offered length of study in a world language such as French (54 weeks compared to the usual 28-week program). As the Department noted, the FSSBs based their low-rankings on grievant's lack of language skills and the limitation this placed on his ability to perform effectively in his position as political officer, rather than solely a lack of language skills. The Board recognizes that the FSSBs, in citing the core competency of Communication Skills in their respective determinations that grievant was, relative to his peers, less competitive, acted in compliance with their requisite procedural precepts.

Grievant also argues that the Selection Boards erred in relying exclusively on his 2013 EER rather than drawing from more than one evaluation prepared by more than one rater. As the Department points out, both the 2013 and 2014 LRS reference grievant's 2010-2011 EER as well as his 2013 report. Moreover, the FSSBs are not proscribed from relying primarily on one EER as the precept that grievant himself cites states that the LRS should "preferably" be based on information from more than one rating period and more than one rating official. The Board agrees with the Department that this preference is not a mandate and that both the 2013 and 2014 LRSs that grievant received were issued in compliance with required FSSBs procedures.

V. DECISION

Based on the factors discussed above, the grievance is denied in its entirety.

For the Foreign Service Grievance Board:



John M. Vittone
Presiding Member



Bernadette M. Allen
Member



Barbara C. Cummings
Member