

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between



Grievant

Record of Proceedings
FSGB Case No. 2016-017

And

October 4, 2016

Department of State

DECISION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Arthur A. Horowitz

Board Members:

Barbara C. Cummings

Nancy M. Serpa

Special Assistant

Katherine D. Kaetzer-Hodson

Representative for the Grievant:

Pro se

Representative for the Department:

Margaret E. McPartlin
Attorney Adviser, HR/G

Employee Exclusive Representative:

American Foreign Service Association

OVERVIEW

Held: Grievant did not meet his burden of proving that the Area for Improvement (AFI) section of his 2013 Employee Evaluation Report (EER) was inaccurate, falsely prejudicial, or unsupported by example, or that he was not adequately counseled about the issue raised in the AFI.

Summary: While serving as General Services Officer in his first supervisory position, grievant received an EER that was largely laudatory but contained an AFI that advised him to seek more “buy-in” from his staff and to exercise greater patience with his subordinates. Grievant unsuccessfully challenged the AFI statement, and appealed the denial of his grievance to the Foreign Service Grievance Board (FSGB, Board). Grievant argued that the Department had erred in denying his grievance that the AFI statement in his 2013 EER was inaccurate, falsely prejudicial, unsupported by specific example, and came as a surprise because he was never counseled on the issue or given time to improve his performance.

The Board concurred with the Department that there was sufficient evidence to support the AFI criticism and that grievant had received counseling and feedback on his interpersonal skills during the rating period from both his rating and reviewing officers. Accordingly, the FSGB concluded that grievant failed to carry his burden of proof and denied the grievance in its entirety.

DECISION

I. GRIEVANCE

On November 24, 2015, grievant, [REDACTED], challenged the validity of the Area for Improvement section of his October 2013 Employee Evaluation Report. The Department denied the grievance on April 27, 2016, finding that grievant had not met his burden of proof that the AFI was inaccurate, falsely prejudicial, and unsupported by example, or that grievant had not been counseled adequately. Grievant appealed to the FSGB on March 31, 2016, claiming that the Department had failed to assess accurately the preponderance of the evidence presented. Grievant seeks expunction of the AFI section of his 2013 EER, a review of his revised Official Personnel Folder (OPF) by reconstituted Selection Boards for 2014 and 2015, an extension of his Time in Class (TIC) and Time in Service (TIS) by one year, attorney fees if applicable, and any other relief deemed just and proper. The Department filed a response dated April 27, 2016, and grievant filed his rebuttal on May 9, 2016. The Record of Proceedings (ROP) was closed on May 26, 2016.

II. BACKGROUND

Grievant is an FS-04 Management Officer with approximately six years of service in the Department of State. Prior to joining the Foreign Service, grievant was a manager at a Fortune 500 company for over 10 years and earned both MBA and JD degrees. During his first assignment as a consular officer in [REDACTED], he also volunteered to work in [REDACTED] as part of the team assisting U.S. Embassy [REDACTED] with the 2011 earthquake and tsunami aftermath. He received praise for his performance both as a first-tour consular officer and for his temporary duty in [REDACTED] and received four Meritorious Honor Awards during his first tour. Grievant's second assignment was as the General Services Officer (GSO) at [REDACTED]

█. As GSO, grievant supervised six employees and reported to the Post Management Officer. The Deputy Chief of Mission (DCM) was grievant's Reviewing Officer. According to the special circumstances described in grievant's EER, the post had recently doubled its number of employees and properties, added four new agencies, begun a New Embassy Compound (NEC) project, and begun implementing two new software systems in the Management Section.

Grievant's October 2013 EER, completed one year after his arrival at post, commended him on his excellent performance handling the numerous changes at post. However, on November 24, 2015, grievant formally challenged the AFI section of his October 2013 EER, claiming that it was inaccurate, unsupported by examples, and falsely prejudicial. Grievant also alleged that he had not received any counseling about the subject of the AFI, was surprised by the substance of the comment, and was not given an opportunity to improve prior to completion of the EER. Under the Specific Competency heading of "Interpersonal Skills", the AFI stated:

[Grievant] has made tremendous progress in this area but can still benefit from improving his ability to achieve buy-in for his concepts and ideas, especially with his LES [Locally Engaged Staff]. [Grievant]'s commendable desire to see his goals achieved needs to be tempered with the patience to let his staff do the work and the guidance to help them fully understand and believe in those goals.

Grievant presented numerous letters of support from his American colleagues at post attesting to his excellent performance. He also presented several letters of support from his former employees in the General Services Section praising grievant's management of their office. In response to the grievance, the Department queried the rating and reviewing officers as well as the former reviewing officer (the drafter of the October 2013 review statement had only been in her position a month at the time the EER was due). The management officer (rater) and both DCMs (reviewers) all recalled that grievant had had problems with his supervisory responsibilities and his ability to get his staff's "buy-in" to his management changes.

On March 31, 2016, after the Department had denied his initial grievance and the Deciding Official had upheld the denial, grievant appealed to the Foreign Service Grievance Board (FSGB, Board). Grievant claimed that the Department had failed to assess accurately the preponderance of the evidence presented, particularly the letters of support from grievant's colleagues and subordinates at post regarding his performance.

III. POSITIONS OF THE PARTIES

A. Grievant

Grievant asserts that the AFI in his October 2013 EER is inaccurate and falsely prejudicial and that, contrary to the AFI criticism, the reason he was able to accomplish the significant changes in the GSO Section for which his rating officer commended him elsewhere in the EER was that he had achieved "buy-in" from his staff and demonstrated patience and offered guidance to his subordinates as the changes were being implemented. Grievant asserts that the EER is inconsistent in praising him for the same performance that is then inaccurately criticized in the AFI. He specifically points out that, elsewhere in the EER, the rater commended him on "interviewing staff and assessing multiple options" before implementing changes. The rater also noted in the EER that grievant had shown initiative in instituting "cross-sectional meetings . . . to develop greater teamwork" Grievant quotes another of the rater's EER comments regarding grievant's supervisory skills that he believes contradicts the criticism in the AFI:

Moreover, he worked closely with his staff to help them develop a greater understanding of their roles and responsibilities and, to strengthen his team, he encouraged professional development and training. He demonstrated commitment to professional development by allocating four hours a week for each staff member to focus exclusively on training.

To refute the AFI criticism, grievant cites several examples from the rating period of times when he demonstrated patience, guidance, and a willingness to seek "buy-in" from his staff: in directing his staff to revamp the petty cash process, working closely with the staff to

revise the duties of one of the procurement agents, and meeting weekly with his staff to find a way to streamline the billing and invoicing process for vendors and then training his staff in the new process. Grievant presented letters of support from five embassy colleagues--the end users of the services provided by the GSO Section--that commended grievant's team-building skills, inclusive management style, and conscientiousness in training and nurturing his staff. Grievant also presented letters of support from three of his then subordinates in the GSO Section attesting that grievant was a supportive manager who provided training and helped them in accomplishing their duties.

Grievant also provides his previous and subsequent EERs to demonstrate that, contrary to the AFI statement, his overall performance history establishes that he has strong interpersonal skills. Grievant notes that he received four Meritorious Honor Awards during his tour as a consular officer in [REDACTED], and from his temporary assignment in [REDACTED]. Grievant points out that his subsequent EER from the same rater and reviewer mentions grievant's "exceptional gains" and his "focus on team-building and customer service. . ." as "transformational."¹

Grievant argues that the Department, in denying his agency-level grievance, wrongly disregarded the supporting evidence he presented. He asserts that the letters of support from his colleagues and subordinates, as well as the specific examples of his performance that he provided to refute the AFI, constitute a preponderance of the evidence in his favor. The information collected by the Department was from second- and third-hand sources in contrast to the direct statements from GSO Section customers and employees that grievant provided. Grievant maintains that the comments by the Management Officer (his rater) and the two DCMs (the second of whom served as reviewing officer) were "vague and lacked the specificity to

¹ EER, February 1, 2014, p. 3.

allow for a defense of [his] management style.”² Grievant points out that the first DCM had very little contact with him or the GSO Section, and that the second DCM had only been at post for five weeks before having to draft the review statement. He asserts that neither was familiar enough with his day-to-day supervision of his staff to offer corroboration of the AFI comment regarding his interactions with his subordinates. He also asserts that one of the comments made by his former rating officer was demonstrably false—i.e., that a GSO employee had decided to resign because of grievant. Grievant points out that the rater’s own investigation had concluded that an allegation that the employee had resigned due to grievant was false. Grievant maintains that the employee’s decision to resign was unrelated to grievant’s management of the GSO Section.

In addition, grievant claims that he was never formally or informally counseled on the subject of the AFI, and that the first he learned of it was when his rater completed a draft of the EER. Grievant asserts that the rater never completed a formal written counseling statement as required by regulation. Grievant was, therefore, not given an opportunity to correct his performance prior to being surprised by the AFI criticism. Grievant also asserts that the AFI lacks a specific supporting example, and maintains that when he asked the rater for a specific example of the AFI criticism, the rater was unable to provide one. Grievant argues that the AFI, therefore, is invalid.

B. The Department

The Department asserts that the AFI comment that grievant has challenged is accurate, linked to a specific competency, and sufficient to have alerted grievant to the area of his performance that needed improvement. The Department notes that grievant considered the remainder of the EER excellent and replete with praise for his accomplishments during the rating

² Grievance Submission, ROP #001, p. 10.

period and does not challenge any of the other content of the report. In response to inquiries regarding the grievance, the rater confirmed that he detected a weakness in grievant's interpersonal skills when dealing with his staff. The rater offered an example from grievant's performance that demonstrated what he perceived as grievant's shortcomings during the rating period: when grievant introduced a new voucher and invoicing system, the rater believed that grievant failed to explain the rationale for the new system or to motivate his staff to embrace the new system as a team. The reviewing officer was also queried about the grievance and confirmed the rater's statements.

The Department maintains that the rating officer informally counseled grievant about his interpersonal skills and his interactions with his staff throughout the rating period. The Department cites Board precedents to argue that the lack of a formal counseling form is not dispositive if the grievant was, or should have been, aware of what the rater considered a deficiency in his performance.³ The reviewing officer also stated that, despite the fact that she was not required to do so, she too had counseled grievant on several occasions and encouraged him to work on his interpersonal skills vis-à-vis his subordinates as well as his colleagues. The reviewing officer disagrees with grievant's claim that she had had very little interaction with him or the GSO Section because of her brief time at post. Rather, she presented copies of an e-mail exchange with grievant seeking feedback from him about the review statement to show that she worked closely with grievant on the preparation of his EER. She also recalled having more frequent "on-the-spot" counseling sessions with grievant than she had with others in the mission, and attributes this to her perception at the time that grievant was having more difficulties with his interpersonal interactions.

³ FSGB Case No. 2003-048 (May 5, 2006); FSGB Case No. 2005-023 (October 7, 2005); FSGB Case No. 2005-068 (September 11, 2006).

The Department also queried the former DCM at post, who stated that he had observed that grievant “often exhibited an ‘argumentative relationship both with locally engaged staff and with American colleagues What came across to Americans as inflexibility was perceived by the locally engaged staff as disrespect for their local knowledge and years of experience working for the Embassy.’”⁴ The former DCM also confirmed that the rating officer had raised his concerns about grievant’s interpersonal skills directly with the grievant.

The Department discounts grievant’s assertion that his previous or subsequent EERs offer probative evidence that the challenged AFI is inaccurate. The Department points out that these reports are outside of the 2013 rating cycle. Grievant’s prior EERs from 2011 and 2012 reflect his work as an entry-level officer with no supervisory responsibilities. The commendation he received in his 2014 EER for his improved interpersonal skills reflects that grievant actually took his previous AFI into consideration and improved his interpersonal skills by seeking “buy-in” from his local staff and demonstrating more patience as a supervisor. Grievant’s earlier and subsequent EERs have no bearing on the validity of the AFI statement from his 2013 EER.

Finally, the Department maintains that the Deciding Official properly weighed all of the evidence presented. The Department notes that none of the letters of support that grievant presented was from anyone who actually supervised grievant, and of those written by his American colleagues, none was from anyone who even worked in the GSO Section. The rating officer was in the best position to assess grievant’s strengths and weaknesses and did so in drafting a largely laudatory EER and an accurate AFI. The Deciding Official acted within her discretion in assessing the relative weight of all of the evidence presented and accurately determined that the letters of support from individuals not in grievant’s chain of command did not outweigh the direct comments by grievant’s rating and reviewing officer(s).

⁴ HR/G Memorandum, dated April 27, 2016, ROP#004, p. 98.

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.⁵ In this case, there are two questions to be answered: 1) Did grievant meet his burden of proof that the AFI statement from his 2013 EER is inaccurate, unsupported by evidence, and falsely prejudicial?⁶ 2) Did grievant prove his claim that he was not given adequate counseling about the subject of the AFI? Based on the factors discussed below, the Board finds that both questions must be answered in the negative, and therefore, as discussed below, the grievance appeal must be denied.

Validity of the AFI

Grievant asserts that he could not have accomplished all that the EER commended him for achieving--in particular the “significant reformation” of the GSO section--if the AFI were accurate, and insists that other comments in the body of his EER demonstrate that the AFI criticism is erroneous. To support his argument, grievant points specifically to a passage from his EER that praised him for working closely with his staff and for fostering his staff’s professional development:

Moreover, he worked closely with his staff to help them develop a greater understanding of their roles and responsibilities and, to strengthen his team, he encouraged professional development and training. He demonstrated commitment to professional development by allocating four hours a week for each staff member to focus exclusively on training.

The Board is not convinced that this laudatory comment undermines the validity of the AFI statement. It appears consistent to the Board that grievant was capable of working closely

⁵ See, 22 CFR § 905.1a.

⁶ Since the foregoing accurately states the first issue to be decided by this Board, and since the Board’s role is to review each case *de novo*, we do not address grievant’s contention that the Deciding Official who denied his agency-level grievance erred in assessing the evidence he presented to establish that the AFI comment was unfounded.

with his staff and fostering their development to the point where they were able to implement the innovations he initiated, while at the same time, per the AFI, the rater considered that grievant still needed to develop his skills as a supervisor to create an understanding at the staff level as to why the changes were necessary. The fact that grievant received praise on aspects of his performance does not translate into a blanket endorsement for everything grievant did as a supervisor. It is clear that his rater perceived at least one area that needed improvement – such as what his rater viewed as a weakness in fully explaining the roll-out of a new voucher/invoicing system noted above.

Grievant challenges the accuracy of the AFI comments by presenting letters of support from colleagues who used the services of the GSO Section, and from several of his subordinates, to establish that he did, in fact, seek his staff's "buy-in" for operational goals and demonstrate patience as a manager. The Department provided statements from grievant's rating and reviewing officers as well as corroboration from the previous reviewing officer, who departed post shortly after grievant's arrival. All of these latter officers, who actually were in grievant's chain-of-command, confirmed that grievant exhibited shortcomings in his interpersonal skills when interacting with his staff. The AFI is the rater's assessment of the rated officer's need to improve a performance deficiency and, all other things being equal, it is the rater's perspective that deserves deference. The Board finds that the statement from the rating officer about the basis for the AFI, combined with the corroborating statements from the two reviewing officers, is sufficient to establish the accuracy of the AFI criticism. Conversely, while no doubt well-intentioned and sincere, the views of those who did not supervise grievant, and therefore were not able to observe the day-to-day interactions with his staff, cannot be given the same weight and significance.

Grievant also argues that the AFI lacks specificity and maintains that when he asked the rating officer for an example of where his performance fell short, the rating officer was unable to provide one. When queried by the Department, however, the rating officer offered the following example to support the AFI: when grievant implemented a new accounting and procurement system, he “either could not or would not explain the new system to his LE [locally engaged] staff and the reason why the move from paper to electronic processing was needed.” The rating officer thought that grievant’s performance in this instance could have been improved with stronger interpersonal skills--and urged him to use “his intelligence and sense of humor to positively affect his LE staff,”⁷--which is why the rater chose to highlight this as the area that grievant needed to improve. While the AFI does not cite this specific example, it does give grievant specific guidance on where to focus his efforts in improving his performance--specifically, to “achieve buy-in for his concepts and ideas, especially with his LES.” The AFI also provides specific advice on what the rater thought grievant could do to gain the interpersonal skills his previous performance lacked: he could temper his focus on accomplishing goals with “patience to let his staff do the work,” and he could guide them “to help them fully understand and believe” in the goals he established.

This Board has previously discussed the importance of specificity in AFI statements:

The difference between an example and a general critical statement is a matter of specificity. Specificity is required so that the officer being criticized is given a fair opportunity to answer the criticism or use it as a basis for self-improvement. The panel recognizes that specificity is a matter of degree, and whether a criticism is adequately specific will be a close call in some cases. The analysis is done from the perspective of a reasonable person--in this case, the reasonable rated person--as to whether the person is given adequate notice of a deficiency in performance so as to be able to respond to it.⁸

⁷ *Ibid.*, p. 97.

⁸ FSGB Case No. 2001-017 (June 15, 2001).

We find that the AFI was sufficiently specific concerning grievant's performance deficiency, and that grievant was (or should have been) well aware before the end of the rating period as to how he could improve his performance in that area.

The grievant asserts that the praise he received from the same rater in his next EER for his "exceptional gains" in team-building and customer service demonstrates that the 2013 AFI was inaccurate. The Board finds, however, that rather than demonstrating that his subsequent EER establishes that the 2013 AFI was inaccurate, grievant's improved performance supports a finding that the criticism he received in the 2013 AFI was sufficiently specific for grievant to respond to it, adjust his behavior, and improve his performance.

Based on the foregoing, the Board is satisfied that the record of grievant's performance, including the AFI comments in his 2013 EER, is accurate, detailed, and specific. The Board finds that grievant has not established that the AFI in question is inaccurate, erroneous, or unsupported by specific example.

Adequacy of Counseling

Grievant claims that he was not counseled in any way--formally or informally--that he was not achieving "buy-in" from his staff or demonstrating patience when dealing with his subordinates. He maintains that he was surprised by the AFI comments because the first time he learned of this criticism was when the rating officer gave him a draft of the EER. He alleges that he never received a formal written counseling statement as required, and that he was, therefore, unable to correct this perceived deficiency during the rating period. In response to the Department's inquiry, however, the rating officer recalled several counseling sessions with grievant well within the rating period about his interpersonal skills and how he was interacting with his staff and others in the mission. Grievant does not dispute that such counselling sessions

occurred, but rather that they were insufficiently formal to put him on notice of his performance deficiencies in this area. The reviewing officer also specifically recalled having counselling sessions with grievant in which she urged him to improve his interpersonal skills, although grievant denies that they occurred after the reviewer arrived at post during the last five weeks of the applicable rating period. The Board notes that the 2013 EER, on page one, indicates that the rater and the rated employee (grievant) held counseling sessions on July 9, 2013, and August 17, 2013, and that, according to Section I “CERTIFICATION - WORK REQUIREMENTS AND COUNSELING,” “at least one of them was documented in writing using the Counseling Certification Form (DS-1974).”⁹ Grievant and the rating officer both signed, certifying that the counseling had been completed as required. A review panel chairperson also signed the EER, certifying that the report had been prepared in accordance with all applicable regulations. Therefore, it is acknowledged that grievant did receive the counseling required. Moreover, the record indicates that all three of grievant’s direct supervisors had noticed grievant’s difficulties in dealing with his staff. The rater stated that grievant “alienated” his staff and recalled having to “constantly mediate” between grievant and his subordinates. The reviewing officer recalled having “frank discussions” with grievant and urging him to work on his interpersonal skills vis-à-vis his staff and others in the mission. The reviewing officer’s predecessor recalled grievant’s “argumentative relationship with . . . the locally engaged staff and . . . American colleagues.”¹⁰

The Board concludes, therefore, that grievant was adequately counseled on the subject of the AFI. If he was surprised when he actually read the comments regarding his lack of “buy-in” from his staff or lack of “patience” in managing, it may have been because the earlier messages conveyed via regular counseling on his interpersonal skills were not getting through to him.

⁹ Grievant’s EER, 10-26-2012 to 10-25-2013, ROP #001, p. 45.

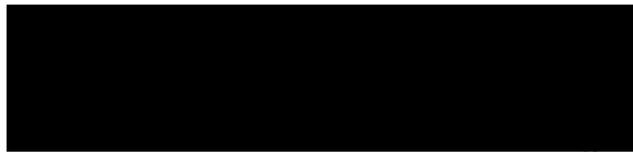
¹⁰ Department’s Decision Letter, February 1, 2016, ROP#001, p. 81

According to the rating officer, he chose the subject of the AFI because he had had several counseling sessions with grievant on the topic of interpersonal skills and had noticed improvement in this area, but still considered that grievant had work to do to improve his performance in this area. All of these factors support the conclusion that grievant was, in fact, adequately counseled on his interpersonal skills.

V. DECISION

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

For the Foreign Service Grievance Board:



Arthur A. Horowitz
Presiding Member



Barbara C. Cummings
Member



Nancy M. Serpa
Member