



OIG

Office of Inspector General

U.S. Department of State • Broadcasting Board of Governors

ESP-15-06

Office of Evaluations and Special Projects

July 2015

Information Report: Review of Former Department of State Employee's Allegation of Improper Denial of Promotion

~~INFORMATION REPORT~~

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Summary of Review

The Office of Inspector General (OIG) conducted this review to assess a former Department of State (Department) employee's (complainant) allegations of an improper denial of promotion. Specifically, in September 2013, the complainant alleged that (1) the Department's Bureau of Human Resources (HR) fraudulently tampered with or manipulated six reconstituted promotion boards conducted in 2010 and 2011 and (2) HR fraudulently altered documents generated by these six boards to prevent the complainant from being ranked for promotion. OIG interviewed former board members and consulted with a forensics expert, and found that the evidence does not support the complainant's allegations.

BACKGROUND

Foreign Service Promotion Process

The Department's Foreign Service promotion process is governed by the *Foreign Affairs Manual* (FAM), the Foreign Service Act, and the Procedural Precepts for the Foreign Service Selection Boards—referred to as the procedural precepts. The Department's Foreign Service promotion system follows an up-or-out principle, under which failure to gain promotion to higher rank within a specified period in a single salary class leads to mandatory retirement for personnel in certain occupational categories.¹

As part of the promotion process, selection boards first screen all candidate files, and sort them into one of three categories: promotion, mid-rank, or low-rank. Next, each board member ranks each promotable candidate using a forced distribution scale of 1-10. Any time there is a discrepancy between board members of at least four points in the ranking of a given candidate, the members must discuss the case and, if the discussion results in any changes, adjust rankings accordingly to comply with the forced distribution requirement. Each board has a chairperson responsible for leading such discussions and helping to ensure that board procedures are followed. Once all candidates have been considered and ranked by each board member, the board chair consolidates the scores for promotable candidates into one ranked and ordered list. Once a final rank ordering is established, the board submits its final results as part of its official board report. HR officials then draw a "cut-off line" on the selection boards' ranked lists of candidates recommended for promotion based on the number of available promotion slots.

Foreign Service personnel have several options to seek relief through an established grievance process. In most cases, a grievance must be filed within 2 years of the occurrence causing it.² Personnel are encouraged to first attempt to resolve their concerns with their supervisor at the post or bureau level. Employees can also formally submit a grievance in writing to designated

¹ See, Department of State, *Foreign Affairs Manual*, 3 FAM 6213.3.

² See, Department of State, *Foreign Affairs Manual*, 3 FAM 4427.

agency grievance staff. An employee whose grievance is not resolved satisfactorily can also file an appeal with the Foreign Service Grievance Board (FSGB) no later than 60 days after receiving the agency decision. Foreign Service personnel can also file charges relating to prohibited personnel practices via the Office of Special Counsel at any point in the process.³ Grievants may also appeal a decision of the FSGB by filing a complaint in Federal District Court.

Reconstituted boards may be convened if HR officials or the FSGB determines that a candidate was not properly reviewed or that the candidate's official performance folder contained incomplete or inaccurate documentation of performance. Reconstituted board members are to be chosen, to the extent possible, on the same basis as members of the original selection board, and, to the extent applicable, are to observe the precepts and procedures for the original board. Reconstituted boards review, in addition to the employee under consideration, the files of the four individuals immediately above the cut-off line for promotion and the files of the three individuals immediately below the cut-off line. The reconstituted board ranks and orders the files under review from 1–8. If the employee for whom the board was reconstituted is ranked by the reconstituted board among the top four files, he or she will be considered ranked for promotion.⁴

Complainant's Previous Allegations

In each year of 2003, 2004, and 2005, the complainant applied for a promotion into the Senior Foreign Service. She was considered by annual promotion boards in each of those 3 years, but none of the boards ranked her for promotion. The complainant asserted that HR procedural errors occurred in each promotion board and she challenged the results of those boards in grievances before the Department.⁵ In 2006, HR conducted six reconstituted promotion boards to reassess the complainant's candidacy for promotion. None of those reconstituted boards ranked the complainant for promotion.

In July and August 2008, the complainant alleged to OIG and to the Department that HR tampered with her six 2006 reconstituted boards and falsified the boards' rankings. She claimed that the nearly identical results of the six boards were inexplicable given all the variables. She also alleged that HR had repeatedly displayed animosity toward her over a period of several years. A year-long OIG investigation did not obtain evidence to substantiate the complainant's allegations, in part because most of the board members from whom OIG obtained statements could not recall whether they had ranked the complainant for promotion. Further, OIG was unable to review any notes or score sheets generated by the 2006 boards because Department

³ There are 13 prohibited personnel practices, such as discriminating against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation; or requesting or considering employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics. These prohibited practices are defined and codified at 5 U.S.C. § 2302(b).

⁴ See, United States Government Accountability Office (GAO), GAO-13-654, p. 11-12 (July 2013).

⁵ In 2003, the employee alleged that her ranking statement violated the procedural precepts. In 2004, she alleged that her Official Personnel File (OPF) was incomplete and missing documents related to her service in Iraq when it was placed before the board. In 2005, she alleged that two group honor award nominations were absent from her file when the board reviewed it.

policy required treating them as working files; as such, they were destroyed once the rankings were finalized. As a result, OIG closed its investigation in August 2009.

The complainant also filed a new grievance with the Department on September 10, 2008, in which she contested the results of the 2006 reconstituted boards. In a decision issued on July 14, 2010, the FSGB determined that it could not credit the results of the complainant's 2006 promotion boards. The FSGB cited "serious deficiencies and irregularities" as the basis for its ruling, but concluded that there was no showing that the problems were intentional. Among other things, the FSGB's conclusion was based in part on the fact that without notes or score sheets, none of the ten former board members who appeared during the hearing were able to testify with any reasonable degree of certainty that the reported results represented the actual results of the board's ranking.

At the direction of the FSGB, the Department conducted an additional series of six reconstituted boards in 2010 and 2011. None of those six boards ranked the complainant for promotion. The complainant objected, raised concerns about the board members' score sheets, and requested production of the original records. The FSGB denied her request, stating that she had made no specific, credible, allegations of deficiency or irregularity.⁶ The complainant's employment with the Department's Foreign Service ended on December 16, 2011. For a more detailed chronology of the complainant's allegations, see Appendix A.

Complainant's September 2013 Allegations

The complainant contacted OIG by email in September 2013 and complained that HR tampered with or manipulated her 2010 and 2011 reconstituted promotion boards and fraudulently altered documents submitted to the FSGB. On November 20, 2013, staff members of the Senate Foreign Relations Committee requested information from OIG about the status of the complaint. OIG decided to review the complainant's allegations because of this congressional interest in the matter and because the Department agreed to provide OIG with access to the boards' original documents so that OIG could subject them to scientific analysis.

To evaluate the complainant's allegations, OIG contacted six former board members, one from each of the six reconstituted boards, and requested details about their procedures and deliberations. OIG obtained ranking memoranda, board member score sheets, and oaths of office from the six boards and submitted these original documents for analysis by an independent expert from the Department of Homeland Security's (DHS) Forensics Laboratory.

⁶ On August 18, 2011, the FSGB issued its final decision, concluding that the Department fulfilled its responsibility of proving that the complainant would not have been promoted during the years at issue even if the alleged procedural errors had not occurred. The complainant appealed to the Federal District Court and challenged both the FSGB interim decision (which resulted from its order to conduct the six final boards), and the FSGB final decision. The complainant filed a Federal appeal in U.S. District Court on January 7, 2011, which has now been temporarily suspended at the complainant's request.

OIG conducted this work in accordance with quality standards for evaluations as set forth by the Council of the Inspectors General on Integrity and Efficiency.

RESULTS

Witness Accounts Do Not Support Allegations that HR Manipulated Promotion Boards

Evidence OIG gathered from board members does not support the complainant's allegations that HR officials tampered with or manipulated the 2010-2011 reconstituted promotion board process. None of the six former board members contacted by OIG reported seeing or hearing anything that raised questions about the fairness of the proceedings. The board members also did not report any improper discussions concerning the complainant or that the promotion boards were being conducted in response to a grievance. Examples of board member accounts include the following:

- The chairperson of one of the boards stated that the process was handled in a straightforward and fair manner. He said the members read the folders, performed initial ratings, and then held the discussion that led to the final scores. Some of those scores were changed as a result of observations among various members. The chairperson stated that he believed all the members changed scores as a result of the discussion and adjusted ratings.
- Another board member reported that all the members were together in the same room and there was little, if any, discussion among them until everyone had finished reviewing the files. During the discussion, the board members focused on those candidates for whom there were more than a couple of points of variation, as the rules required.
- Another board member acknowledged that at the time of the board meeting she was familiar with the complainant's name from a media report that mentioned complainant's grievances, but she stated she did not speak of this knowledge to other board members.

Forensic Analysis Does Not Support Allegations of Fraudulent Alteration

Based on forensic analysis conducted by a DHS expert, OIG could not substantiate the complainant's allegation that HR fraudulently altered documents associated with her 2010 to 2011 reconstituted promotion boards. Specifically, the DHS expert analyzed:

- the board members' original score sheets;
- a ranked and ordered memorandum for each reconstituted board listing the personnel files reviewed in rank order from highest score to lowest, signed by each board member; and

- a one-page oath of office form signed by each board member.

The forensic expert's physical, microscopic, and instrumental examination found erasures, cross-outs, and corrections on multiple score sheet documents. However, such erasures, cross-outs, and corrections are consistent with the accounts of board member witnesses who reported that such changes constituted a part of their group deliberation process. As board members discussed candidates and weighed each other's views to reach consensus, they adjusted their scores accordingly. The expert did not find any alterations on the ranked and ordered memoranda or on the oaths of office signed by each board member.

APPENDIX A: Detailed Chronology of the Complainant's Allegations

Complainant's Original Grievances and Appeals

In 2003, 2004, and 2005, the complainant placed herself in consideration for promotion into the Senior Foreign Service by six senior threshold selection boards. Each year she was placed before two boards; one was a conal board (a functional skill board) and another was a class-wide board (a generalist board). She was not ranked for promotion by any of the six boards over these 3 years.

Beginning in the spring of 2005, the complainant asserted that procedural errors by HR occurred in each of those 3 years and she challenged the results of those annual selection boards in grievances before the Department. In the grievance for 2003 she alleged that her ranking statement violated the procedural precepts; for 2004 she alleged that her Official Personnel File (OPF) was incomplete and missing documents about her service in Iraq when it was placed before the board; and, for 2005 she alleged that two group honor award nominations were absent from her file when the board reviewed it.

In 2006, HR conducted a total of six reconstituted promotion boards to reassess the complainant for promotion in each of those 3 years. None of those six reconstituted boards ranked the complainant for promotion.

During the course of the complainant's grievance proceedings, the Department directed that her file be placed before reconstituted promotion boards for 2003 and 2004, and the FSGB issued an order endorsing that relief. With regard to the complainant's 2005 grievance, the Department acknowledged that two award nominations had been absent from her file when it was reviewed and should also be placed before reconstituted promotion boards. These six reconstituted boards were conducted by HR and completed in June 2006. None of the six reconstituted boards ranked the complainant for promotion.

On September 10, 2008, nearly 2 years later, the complainant filed a new grievance with the Department in which she contested the results of the 2006 boards. The complainant's time in class had expired and her mandatory retirement date had been extended to September 30, 2008; however, on September 22, 2008, the FSGB granted the complainant interim relief which allowed her to remain employed by the Department pending the resolution of her case.

Among other things, the complainant's 2008 grievance alleged: (1) that HR suppressed or deliberately manipulated the results of the reconstituted promotion boards; (2) that the nearly identical results of the six reconstituted boards were inexplicable given the possible variables; and (3) that HR repeatedly displayed hostility toward the complainant over a period of several years.

The Department denied the complainant's grievance and she appealed to the FSGB on December 1, 2008. For approximately 10 months, the parties brought discovery and other matters before the FSGB which were taken up and resolved in a series of status conferences. A hearing on the complainant's case began on September 21, 2009, but the FSGB temporarily suspended it the following day to permit her to amend her complaint. The hearing resumed for further testimony on November 9 and November 12, 2009.

OIG's 2008 to 2009 Investigation

On August 1, 2008, slightly more than a month before the complainant filed her 2008 grievance with the Department, she sent an email to the Under Secretary for Management the Acting Inspector General, and the Assistant Secretary of the Bureau of Diplomatic Security, in which she complained that longstanding problems with current and former officials in HR would soon end her career. Her email expressed suspicions concerning what she termed implausible board results and she spoke of uncovering evidence of criminal conduct.

On August 4, 2008, the Acting Inspector General replied to the complainant that he had forwarded her message to the Assistant Inspector General for Investigations. On August 5, 2008, two OIG agents interviewed the complainant. She identified a former board member as a potential witness, and in subsequent interviews, the complainant identified two other former board members as potential witnesses. OIG conducted a face-to-face interview of the first witness identified by complainant, and obtained signed statements from the other two.

In addition to the witness OIG interviewed personally, a total of 20 signed statements were obtained from other former board members. In total, 21 board members provided information as follows:

- 13 board members could not recall whether they had ranked the complainant for promotion.
- 6 stated that they did not rank the complainant for promotion.
- 1 ranked the complainant for promotion.
- 1 "believed" she ranked the complainant for promotion.

OIG and board member witnesses were unable to review any notes or score sheets generated by the 2006 boards because it was Department policy to consider them working files. As such, they were destroyed once the reports of the rankings were finalized. On August 14, 2009, OIG closed its file, reporting that no evidence was obtained that would substantiate the complainant's allegations.

Complainant's Testimony Before the FSGB

On September 21, 2009, the complainant's hearing began but was temporarily suspended the following day by the FSGB when her counsel advised the board that she wished to amend her allegations. Over the Department's objection, the FSGB permitted the amendment, but delayed the hearing to avoid prejudice to the Department. The hearing resumed on November 9, 2009,

and the complainant testified. Under questioning by counsel for the Department, the complainant acknowledged that she could not offer specific information concerning the manner in which HR personnel had physically manipulated her boards; however, she maintained that the results of those boards were preposterous and impossible. When asked what evidence she had for her belief that her 2006 boards had been manipulated, the complainant responded, "The bizarre results." The counsel's questioning continued as follows:

Q: (HR Grievance Counsel) ... but you've made a serious allegation that one of our career ambassadors (Name Redacted) directly or indirectly manipulated this board—

A: (Complainant) yes, that's right.

Q: —and I'm asking you for the basis for that belief. What do you have to support that?

A: (Complainant) Well, I think, as I've said multiple times now, that I don't think it's a secret that people in the senior ranks of HR who have rotated in and out continue to maintain reaches into HR and that she would have been one of the group of people who said no, we're not promoting (Complainant). Did she actually sit down and write these changes? Who knows? I haven't said how, and I've never given a lot of thought as to how that might have physically occurred, but I believe (that) she and (Name Redacted) and probably others were part of a group that decided this. Yes, I do.

Q: (HR Grievance Counsel) Decided what?

A: (Complainant) That these panels would be—would come up with preposterous results ...

Following further questioning by the counsel concerning any actions of other individuals named by the complainant, she acknowledged having no evidence regarding the manner of the manipulation she alleged:

How they made it happen, who actually sat down and did whatever it was they did, I have no—I mean, how it was done, I don't know. But these results are, as I said, preposterous. And they were decision-makers, whether in or out of HR, and so it happened.

After further extended questioning by the counsel about specific reconstituted boards and other individuals, including members of those boards, the counsel asked:

Q: So do you have, then, as we sit here today, any allegations specific to this board that they did anything improper?

A: Well, my response is going to be the same for all six (reconstituted boards). I'm unable to say, but the results are impossible with all six, taken as a whole.

The FSGB hearing concluded on November 12, 2009.⁷

FSGB Finds Deficiencies with All Six 2006 Reconstituted Boards

On July 14, 2010, the FSGB issued an interim decision in which it determined that the complainant had proven “serious deficiencies and irregularities in the operation of each of the six reconstituted boards” conducted in 2006, and that it could no longer credit their results. The FSGB stated: “The clear weight of the record evidence requires a finding that the presumption of regularity was rebutted for the six reconstituted boards in issue.”

Four primary factors contributed to the FSGB’s decision to set aside the boards:

1. Many of the underlying records, not only with respect to the internal deliberations of the reconstituted boards, but with respect to the preparation and approval of the reported ranking results, were destroyed.
2. The failure of any of the board members who testified to recall and confirm that the reported results accurately reflected the judgment of the reconstituted board as a whole.
3. Evidence that the boards were not conducted in a fashion that incorporated the safeguards contained in the regular selection board procedures which ensure that the reported results represent the actual consensus judgment of the selection boards.
4. The lack of evidence that the preparation of the ranking reports by HR was accomplished with sufficient attention to detail and represented the accurate consensus rankings of the boards.⁸

The FSGB went on to recommend safeguards relied on by regular annual selection boards:

- Board members should meet in person for their final deliberations and ranking, discussing any significant discrepancies in ranking candidates;
- Board members should each sign the official ranking reports, in person, at the site of the board meeting, doing their own mathematics and confirming that all board members concur in the rankings before they are reported as the results of that selection board; and,
- Board members should be instructed on the precepts and procedures governing the operation of the selection board, including the procedures for scoring.⁹

The Department Conducts Six New Reconstituted Boards

The six new reconstituted promotion boards ordered by the FSGB on July 14, 2010, were completed more than 7 months later on February 28, 2011. The results of the six reconstituted boards were reported to the FSGB on March 1, 2011. None of the boards ranked the complainant for promotion. On August 18, 2011, the FSGB issued its final decision concluding that the Department had fulfilled its responsibility to show that the complainant would not have

⁷ United States Foreign Service Grievance Board Hearing Transcript, November 9, 2009, 79-84 and 97-98.

⁸ United States Foreign Service Grievance Board Findings, July 10, 2010.

⁹ *Id.*

been promoted into the Senior Foreign Service (SFS) during the years at issue had the procedural errors not occurred. On December 16, 2011, the complainant was retired from the Foreign Service.

Complainant Contacts OIG regarding 2010-2011 Boards

The complainant contacted OIG by email on September 30, 2013, and complained that HR had fraudulently tampered with or manipulated her six reconstituted promotion boards conducted in 2010-2011, and fraudulently altered documents it submitted to the FSGB to make it appear she had not been promoted into the SFS. As a result of the Foreign Service's up-or-out system, she had been forcibly retired. On November 20, 2013, staff members of the Senate Foreign Relations Committee requested information from OIG about the status of the complaint. OIG's two most senior investigative professionals, the Assistant Inspector General of the Investigations Division and her Deputy, reviewed OIG's 2008-2009 investigation of the complainant's allegations.

In separate replies to her email dated July 3 and July 18, 2014, OIG advised the complainant that in the absence of new or additional issues, OIG planned to take no further action. However, on August 25, 2014, based on follow-up email communications between the complainant and OIG's Deputy Inspector General, OIG scheduled a meeting for September 3, 2014, and followed up with a second meeting on September 8, 2014.

Complainant's Allegations of Altered Documents

In meetings with OIG on September 3 and September 8, 2014, the complainant advised that the documents she alleged were fraudulently altered consisted of score sheets from the six 2010-2011 reconstituted promotion boards. She complained of alterations and white-out on board member scores. The complainant advised that two handwriting experts, who had examined the redacted photocopies of the score sheets agreed that they had been altered. Her efforts to obtain the original non-redacted versions of the score sheets and other promotion board documents were unsuccessful both before the FSGB and in the U.S. District Court.¹⁰

The FSGB denied the complainant's request for access to the original documents on June 24, 2011. The complainant explained to OIG that she thereafter chose to focus on the appeal of her case filed in Federal Court on January 7, 2011. On April 27, 2012, the complainant moved the District Court for an order granting her access to the original score sheets and for additional discovery. A hearing on her motion was conducted on April 3, 2013. On June 4, 2013, the Federal Court also denied the complainant's request for access to the original records. Six weeks after the court's denial of her motion the complainant requested a stay, or temporary pause, of the District Court proceedings and the request was granted on July 17, 2013. The stay has been periodically renewed through the present.

¹⁰ As discussed previously, OIG obtained the original score sheets and submitted them to a DHS forensic analyst. Based on this analysis, OIG could not substantiate complainant's allegation that HR fraudulently altered documents.

Complainant's Account of Longstanding Animosity with HR

During OIG's September 3, 2014, meeting with the complainant, she described circumstances dating back to 2000 that she contends contributed to HR animosity against her over the succeeding years. Her account of these events, also set forth in detail in the complainant's second amended complaint filed in U.S. District Court on December 2, 2011, centers on her contention that current and former members of senior HR management carried longstanding animosity against her following a series of personnel disputes originating during and after her Department assignment to work on detail in the U.S. Senate from 1998 through 2000.

The complainant described becoming engaged in efforts to set up the first Department liaison office on Capitol Hill. After the complainant learned of, and protested, plans by HR's acting director to reassign her to the Department without notice to the Senator for whom the complainant was working, the Senator wrote a letter to the Secretary of State requesting the complainant remain, causing the Department to cancel her reassignment.

The complainant further alleged that as the result of those events, the HR acting director wrongfully, and without cause, took steps to have her placed on leave without pay. The complainant further stated that the decision to take that action was reversed by a new incoming assistant secretary.

In addition, the complainant stated that for her to remain working on the Senate project she had chosen to give up a senior overseas assignment as a Deputy Chief of Mission. Later, however, when the liaison office project was fully functional, the complainant alleged that HR staff instructed her to accept an assignment with significantly reduced responsibilities and, according to her Federal complaint, "threatened her with involuntary retirement if she did not accept it. HR withdrew its threat only after the U.S. Senate placed all Department nominations on hold until the complainant was given an appropriate assignment."

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