

TO: 2011 TENURE BOARD

FROM: Marvin Green

RE: Denied Tenure based on a flawed EER

INTRODUCTION

I was denied tenure on the basis of an EER that was formulated right after we had a dust up about Tim deleting overtime that I had worked while he was gone on Christmas vacation and that the MO had already approved.

BACKGROUND

Before coming to DOS I worked 18 years in the private sector and 12 years for DoD. My DoD evaluations were all “exceeds” and one outstanding—this last EER Tim gave me is the poorest and only bad evaluation I have received in my entire career.

In Freetown my IMO and I disagreed about the overtime regulations and I got the MO to order him to have her sign all overtime—which he didn’t like. But it was never personal. I still think if he were asked he would stand by his positive recommendation for tenure--and when I ran into him in the hallway here at HST last week we chatted amicably and we still have a lot in common. I still believe that you can contact anyone I worked with in Freetown and get a positive recommendation and I’m counting on those individuals to get me handshakes when I go back to Africa. In addition I have 3 TDYers (including a retired AMB) and 4 people from Wellington that I’m sure would help me to get handshakes.

FACTS OF GRIEVANCE

I was denied tenure on the basis of this last EER. The security violation Tim wrote me up for was so suspect that the RSO apparently never entered it into the system and DS has no record of it. Tim referred to the security violation incident in my EER. On January 21, 2010 in a second meeting with the MO I sat in the MOs office and told Tim: “I’m desperate to get tenured, I’ll do whatever it takes” and I showed him my limited appointment letter that had a Nov 7 expiration date. Tim felt embarrassed and challenged by my refusal to back down on the overtime issue and set out to “put me in my place”.

DISCUSSION

What follows is a blow by blow response to statements made by Tim in my EER:

1. “he needs to pay closer attention to solving existing system issues. He will begin working on an issue and then abandon the effort, without solving the problem.”
- MARVIN’S REPOSE:

Before we discussed overtime with the Management Officer on Jan 19, 2011:
-- 13 e-mails total from Tim to me in 76 working days (attached)

- 4 e-mails with subject of task or tasking—no criticism voiced or written, on completing items.
- 1 criticism for not carrying my cell phone down to the kitchen while cooking my dinner
- Work Requirements Statement not completed until EER was started Feb 2, 2011
- No work counseling on a DS-1829 were performed--at any time, even after Jan 19

After we discussed overtime compliance with the Management Officer on Jan 19, 2011:

- 61 e-mails in just over 100 work days
- 24 e-mails with task or tasking in subject – more tasks than 3 people could have accomplished after Jan 19, where he prioritized the tasking lists and I worked my way down his lists as fast as possible. I volunteered for paid overtime but he expected me to want tenure so badly I would work overtime for free. Even when overtime was known well in advance he would not sign the DS-3060 form prior to the scheduled work, (example available), and afterwards he would only sign for a lesser portion of the overtime already worked.

I received daily e-mail tasking lists. I worked the tasks in the order assigned and abandoned those tasks that I was instructed to abandon by the next day's changing priorities. I volunteered to work paid scheduled overtime but was refused—so I worked the hours I was paid for, doing exactly what I was told to do, in the order I was instructed to do it in. This criticism is unfounded and was only made after I shared my overtime related EEO complaint with Tim and the MO on Jan 19, 2011.

2. “[D]uring the [Secretary of State’s] visit [to New Zealand], during the critical initial set up at the hotels, when decisions needed to be made”

- I received numerous reports that Marvin was missing and unable to be located.
- I also tried to reach him, unsuccessfully.
- MARVIN’S RESPONSE:

“numerous reports” is a complete **fabrication** dreamed up 5 months after the events in question (in the midst of my EER, no less). Three of the key personnel in Christchurch made written statements that contradict this unsupported claim. **Tim has no documents or witnesses that will backup his statement.**

When he “...also tried to reach [me], unsuccessfully” Tim was referring to an e-mail he sent me where **he typed in my gmail address incorrectly.** (See attachment).

I carried my cell phone with me 24/7. The reason the Secretary visited Christchurch was that it had been **4 weeks since a major earthquake.** In carrying out my assigned duties I moved about the city and made several trips to the airport. **Cell phone coverage was not yet uniformly reestablished.** I spoke with Tim many times and we were getting along great at this time. I responded to all voicemails promptly. He never mentioned these two items verbally. I have no e-mail from him on this subject. A work counseling was never conducted on this or any other subject. I first heard about this false assertion when reading it in my EER.

I was newly arrived at Embassy Wellington--only a month prior to the Secretary’s Visit to Wellington, and then Christchurch. Tim supported the Wellington stop, I was sent to support Christchurch. The FSN and I were pretty much on our own in Christchurch.

Comments from the people supposedly making the undocumented “numerous reports”:

Jenny Cordell: “IT support was top notch as well; kudos to Marvin Green and Iain Cameron.”

Bill Geschwind: “On behalf of my team members in Mobile Communications and myself, I would like to thank you and in particular Mary Gunn, Marvin Green and Iain Cameron for their excellent support during Secretary Clinton’s recent visit to Christchurch.”

Mike Layne: “Marvin’s performance during the Secretary’s visit was flawless, which is particularly noteworthy given it was his first such visit and only recently arrived at Post. **The advance team commented how promptly he responded to any requests for assistance and was very pleased with how well the IT requirements were met before they arrived.** Marvin also honed his leadership skills, taking the Consulate’s IT Specialist Iain Cameron under his wing to show him how to manage the specialized set-up for the Secretary’s visit. It is important to note that Marvin achieved his accomplishments without the backbone of a nearby Embassy or Consulate for support. Moreover, he managed all this in a city and hotel with a fragile infrastructure, weakened by the September 2010 Canterbury earthquake.”

3. He repeatedly delivered highly classified packages to the wrong groups and the customers had the impression that he either didn't understand why they were upset or didn't care.
- MARVIN'S RESPONSE:

One class pouch incident occurred where 2 mis-deliveries were made while Tim was on 3 weeks of Christmas leave; where I had only been on post for 2 months, (with 2 weeks of that in Christchurch getting a Franklin Award!), and I had only minimal previous contact with the agency involved. Tim said I "didn't care" but he was in California at the time and has no personal knowledge of the event.

In the first instance, I delivered and got a signature from the AMB OMS, (seeing as it was addressed to the Ambassador), together we discovered the inner addressing, I then correctly delivered the inner package. NO SECURITY VIOLATION OCCURRED. The inner packages were never compromised. The package was never out of my sight and the inner package was delivered correctly—so technically no mis-delivery actually occurred and I was in compliance with 5 FAH-6xx. The RSO marched me into the agency office. There were about 8 or 9 people all lined up to hear my apology. THE ONLY PERSON NOT PRESENT WAS AMB OMS REPRESENTING THE PACKAGE ADDRESSEE!!! Until this instance I had never heard of double wrapping. I was new to post and this was the first time I had the opportunity to work with the full complement of other agencies.

Embassy Wellington is not following the double and triple wrap procedures as outlined in the classified Communications Security Manual section of the FAH (5 FAH-6?).

The 2nd package was delivered to the DAO, the SUSLO stated that she was "not particularly concerned about the misroute ... because it was the DAO". After my EER was completed—Tim made exactly the same mistake, a mistake he has written me a security violation for, a mistake I made following his training instructions, training instructions that he altered, adding a phone number, after he came back from leave—making it appear that I had not called for clarification.

When I printed 5 FAH-6xx in compliance with his instructions to create a SOP, and presented the correct procedure to Tim, and asked him about triple wrapping, he locked me out of the IPC and changed the combinations that same night.

December 15, 2011: I went over to the DS facility in Rosllyn last week to challenge my Security Violation with Dwight Locklear. I approached him in July, soon after I arrived in the DC area, and he couldn't find it in the system so we agreed to wait for it to arrive on paper or be entered electronically.

Apparently the RSO rejected Tim's write up of my security violation—so I guess I don't have any security violations going back to the crypto clearance I held in the early 80's—which begs the question: What is it doing in my EER?

4. Marvin has chosen not to have a landline at his house, and twice he has left his work cell phone and his “duty” call-in cell phone at the embassy. This means that there is no way to get in touch with him or notify him of the need to report to work. When he realized that he didn’t have the phones, he did not return to the embassy to retrieve them. We are on call because a cable requires immediate action, even at night, and we are required to be at the embassy to handle the cable within two (2) hours. His action, even after repeated reminders, demonstrates a lack of responsibility.
- MARVIN’S RESPONSE:

STATEMENT OF FACTS

On Sept. 27, 2010, my first day of work at Embassy Wellington; I discussed overtime with my new supervisor, Timothy Simas. I indicated my availability for scheduled overtime to make up for the 30% post differential that I had lost leaving Freetown. I was issued 2 cell phones and told that my response time was 1 hour for the local Embassy cell phone. The State Dept has a policy of 2 hour response time for their Emergency Recall Phone. No written or spoken additional requirement for a landline at my residence was made. However, on my own initiative, I established a permanent, always on, cable modem internet connection and maintained my permanent Skype number with voicemail (202-657-4911) in an available status while at home.

ARGUMENTS

Tim Simas took advantage of my untenured trainee status to force additional and unusual unshared duties upon me for which I have not been compensated. He compounded his error by inserting the following into my Employee Evaluation Report (EER):

Marvin has chosen not to have a landline at his house, and twice he has left his work cell phone and his “duty” call-in cell phone at the embassy. This means that there is no way to get in touch with him or notify him of the need to report to work. When he realized that he didn’t have the phones, he did not return to the embassy to retrieve them. We are on call because a cable requires immediate action, even at night, and we are required to be at the embassy to handle the cable within two (2) hours. His action, even after repeated reminders, demonstrates a lack of responsibility.

--I had an “always on” Skype number and computer—he never used it. There was no verbal or written requirement to have a landline phone in addition to the 2 cell phones I was carrying. I resided in government provided quarters. Other Embassy Senior Officers were provided with residential phone service as required. It was Tim’s responsibility to provide me with a landline if he deemed it critical to my job performance; or as a necessary part of my ability to standby for evening or weekend duty.

--I forgot 3 times in 9 months and returned 1 of those times to retrieve the phones when I realized in time. The other 2 times I didn’t realize I forgot them until the next morning. I took action to address his concerns by carrying my phone around in my pocket while at home.

-- “His action, even after repeated reminders, demonstrates a lack of responsibility.” I carried a cell phone for 14 years for DoD and 2 in Freetown for DOS. 16 years with no complaints. 2 incidences in 9 months and I’ve demonstrated a lack of responsibility? This is the point where one must consider the possibility that older tenure candidates are being judged more harshly than their younger compatriots. The IT specialist tenuring statistics of the last 6 years clearly point toward this conclusion.

Tim and I are close to the same age. We both, in about equal measure, forgot to sign safe logs, initial reports, walked into the Information Programs Center (IPC), (IPC-2 person workspace behind a “bank vault” type door) forgetting to leave our phones in the Cleared Access Area (CAA) box outside, etc. etc. and we had to remind each other at least several times a week to correct various lapses. My errors were no more frequent or severe than his various errors. Yet as a supervisor of an untenured trainee Tim exercised the prerogatives of his new position while ignoring the responsibilities. All of the 5 criticisms voiced in my EER can be attributed to either local embassy practices that he established, or a lack of attentiveness in following through on my training; or possibly age related normal memory loss—to which we were both subject in equal amounts.

Tim used his position and seniority over me to “etch my errors into stone” in my EER while burying his errors behind security and the isolation of secure IPC operations.

http://www.law.cornell.edu/uscode/usc_sec_05_00005545----000-.html

§ 5545. Night, standby, irregular, and hazardous duty differential

(a) Except as provided by subsection (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes—

(1) periods of absence with pay during these hours due to holidays; and

(2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.

Except as otherwise provided by subsection (c) of this section, an employee is entitled to pay for nightwork at his rate of basic pay plus premium pay amounting to 10 percent of that basic rate. This subsection and subsection (b) of this section do not modify section 5141 of title 31, or other statute authorizing additional pay for nightwork.

(b) The head of an agency may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of subsection (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by subsection (a) of this section.

(c) The head of an agency, with the approval of the Office of Personnel Management, may provide that—

(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) (or, for a position described in section 5542 (a)(3) of this title, of the basic pay of the position), by taking into consideration the number of hours of actual work required in the position, the number of hours required in a standby status at or within the confines of the station, the extent to which the duties of the position are made more onerous by night, Sunday, or holiday work, or by being extended over periods of more than 40 hours a week, and other relevant factors; or

(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty, shall receive premium pay for this duty on an annual basis instead of

premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is an appropriate percentage, not less than 10 percent nor more than 25 percent, of the rate of basic pay for the position, as determined by taking into consideration the frequency and duration of irregular, unscheduled overtime duty required in the position.

And this March 1 2011 e-mail seeking support and resolution, sent to my Career Development Officer (CDO), William Potter:

In Freetown both Josh and I carried a State Dept provided recall phone and the stated requirement was that we were to return to the Embassy and print and deliver any cables that the phones had alerted us to deal with. I was told that we had 2 hours to respond.

In two years in Freetown I think the phone had a text message twice and one of those times I returned to the embassy, printed the message, called the RSO and he ordered the flag to be flown at half mast. Some IMOs complained about wasting \$40,000 but I think that is the only other test the system had ever gotten that I know of.

Anyway, the point is the system is seldom used and I think we had one other time we got a test text message and had to return an acknowledgement.

However, Josh and I each carried those phones faithfully for 2 years, kept them charged, carried them everywhere, kept them by the bed so we could respond in the middle of the night—generally we did a great job of standing by for duty and one of us was always available to respond within 2 hours for 2 years.

We also both carried embassy provided cell phones and I would estimate I answered the phone maybe 50 times and actually drove back to the embassy for duty maybe 10 times.

Here in Wellington, Tim gave me the recall phone and left the other one with the Marine Guards at Post One. In addition I have been given a regular embassy provided cell phone and Tim has told me that I have a 1 hour response time. Tim has tested my responsiveness by calling me at home to see if I had them handy and I have started carrying them around my apartment with me so that I can hear them ring should I be called. I have not been allowed to be more than an hour away from the embassy with the exception of one 4 day weekend to Cambridge NZ.

Last night I forgot both phones, leaving them in the CAA box overnight. This is the 3rd time I have forgotten them in 5 months.

Tim called me at around 9 this morning and said he was going to write me up because this was the 3rd time I had forgotten them.

I believe that compensation for standing by for duty is a matter of agency head discretion. I believe that a sound argument can be made for compensation due to the critical nature of the recall function in addition to the obligation to carry 2 separate phones that subject IRM personnel to recall by two distinct entities.

We have a COMSEC auditor due Friday. I think Tim just had a conversation with the MO or HR and has decided not to proceed on his threat. Not sure.

I need your advice. What I would like to do is refuse to carry my phones and see what arguments Tim makes that would tend to support my argument for compensation for this extra duty which I currently perform exclusively here for the DOS and in tandem for this embassy.

Can I refuse to carry the phones, for which I receive no compensation, without inviting a valid charge of insubordination?

With this response from my CDO:

..."With only an IMO and an IMS at post, this should be a shared responsibility. If you are the only one performing this duty, you need to be discussing that with Tim and workout a suitable arrangement. That's just not fair..."...

CONCLUSION

Tim Simas set out unique requirements that together raised my work duty level beyond those established by the Secretary for normal DOS Embassy operations. Untenured trainees are vulnerable to this type of abuse and this supervisor crossed a legal threshold constituting abuse of authority when he added this duty to my required duties--without monetary compensation, and while holding out an implied false promise of a tenure recommendation. The IPC, particularly 2 man shops like Wellington and Freetown, lack sufficient oversight due to security related limitations on access. Supervision in these small 2 man IPCs is often taken on by newly appointed IMOs. Both of my first 2 tours have been with older first time supervisors. Both sought to "manage" me by giving or withholding premium compensation. Both viewed this as "normal" and were surprised by my objections because they had been treated similarly.

5. AFI: He constantly asks questions about how to fill out a form or complete a process, but when asked if he's read the directions, he'd reply No! He needs to be actively reading the regulations required for this job and spend some time establishing a personal Standard Operating Procedures (SOP) manual.
- MARVIN'S RESPONSE:

Forms:

I have 20 forms in the MyForms section of eForms. 14 do not come with instructions—so in those cases the only possible reply was “no”. Since I filled out the majority of forms in the IPC I had to ask questions when it was a new form I had not seen before—assuming it was one of the ones where there were no instructions. (13 examples attached). A case in point is the inventory of class equipment that I completed while in Wellington. I found that approximately 2/3rds of the equipment on the inventory was not in use and needed to be disposed of. I searched eForms for the most appropriate forms to use and found there to be several choices. I asked my supervisor which one he wanted me to use and asked how he wanted me to proceed and he told me to “read the directions”. I don't think any of them had any directions. On my own initiative I selected DS-584 “Nonexpendable Property Transaction”. I created and submitted a cable requesting disposition instructions from RIMC. This was my first time. I had seen it done in Freetown but was never allowed to send a cable there, so this was my first cable. I had to do a corrected copy because I left out a key addressee—but the body of it was perfect. So then I had to switch to the DS-132 form and cut and paste all the items in because the GSO and the MO needed to sign off before I could dispose of the items.

So to make a long story short: I did the class inventory. I got most of my answers from the IMS who did the inventory the year before and most of the forms I used didn't come with instructions.

SOPs:

There exists a surprising amount of detail in the Foreign Affairs Handbook. The correct way to write an SOP is to start with what is already in the FAH and add detail to fit local conditions. **I wrote, compiled (with FAH and .gov references) a 100+ page SOP and he instructed me in writing to shred it! (SOP available for viewing).**