

Marvin Green

v.

HRC, Secretary,
U.S. Dept. of State

DOS Case: DOS F-125-10;
EEOC Case: 570-2011-00700X

Exhibit 28

This exhibit demonstrates systemic favoring of tenure candidates under 40 years of age over those candidates closer to mandatory retirement age. This exhibit, along with this case, demonstrate that the Dept of State must participate in the interagency Priority Placement Program as an address to complainants demonstration that national security is put at risk when EEO complaints are suppressed for the convenience rather than the needs of the Embassy and/or Ambassador.

From: Yorke, James
Sent: Saturday, June 26, 2010 1:26 AM
To: Green, Marvin E
Subject: RE: Request for Marvin Green EER Reviewing Officer Statement

Hi Marvin:

Thanks for copying me on this. I assume this is because you were reviewed for tenure by the Spring board, but did not receive tenure. I am sorry to see this; it is always very discouraging to find that your efforts have not been rewarded in this way.

You are right that the Board did not know your ages, so it is odd that three of the four IMS not tenured were over 50. It's also odd that, as far as I could tell from comparing the lists, five of the eight people who were not tenured were IM specialists.

I also follow, although I'm not sure I agree with, your concern about stated goals and ambitions and the effect these may have on the Board's decisions. Obviously, of course, saying "I just want to make it to age 65 without screwing-up" is not going to resonate very well with the Board, but you are by no means the only person who has joined the FS at age 59 and served successfully – including getting tenured – till retirement age.

The other point is that the number of people who do not get tenure at all in the Foreign Service is literally miniscule – a couple of percent at most – and those that do not get tenure generally have a serious underlying problem of some kind. So I'm not really going out on a limb by predicting that you are highly likely to be tenured next time round, if your EERs continue to show solid performance and your own statements are good as well.

Good luck and best regards, James Yorke, AFSA Labor Management

From: Green, Marvin E
Sent: Friday, June 25, 2010 8:06 AM
To: Marcouiller, Judy
Cc: Yorke, James
Subject: RE: Request for Marvin Green EER Reviewing Officer Statement

I went back and reviewed the original Vacancy Announcement I responded to for my current IRM position.

It clearly invites persons up to 59 years of age to apply—and promises a discrimination free environment, specifically including age discrimination.

For an individual to apply at 59, train until age 60, then work 2 directed 2 year tours to age 64—no tenure board could possibly follow this criteria and tenure this individual based on his stated career goals or those of his evaluator or reviewer. In fact not knowing the individual's age would raise a red flag for otherwise reasonable statements, given the individual's age, being interpreted as a lack of ambition in a presumably younger candidate.

the potential, assuming normal growth and development, to perform effectively in the Foreign Service at higher levels with greater responsibilities in the candidate's occupational category.

Of the members of the 99th class, 6 of 7 under 50 were tenured, 3 of 3 over 50 were not tenured. Assuming the tenure panel did not know our ages—they discriminated against those over 50 because they did not see sufficient "potential, assuming normal growth and development, to perform effectively in the Foreign Service at higher levels with greater responsibilities in the candidate's occupational category"

I should have been tenured. I have included a more ambitious statement in my current EER. But the reality is that I will only have one bid tour after New Zealand. Overly ambitious statements denigrate the EER process into being a game rather than a motivational tool.

This email is UNCLASSIFIED.

From: Marcouiller, Judy
Sent: Thursday, June 24, 2010 11:14 AM
To: Green, Marvin E
Cc: Hromatka, Josh J
Subject: RE: Request for Marvin Green EER Reviewing Officer Statement

Hi Marvin,

Regarding your questions on tenure and priority placement:

Sorry but I don't have the expertise you need for a definite answer on your specific situation. I'm not sure whether you would be eligible for priority placement or have re-employment rights to your former job – were you previously with DOD?? You could check with your CDO on this, and ask if they can point you to an appropriate resource to get your questions answered.

In the meantime, I would encourage you to continue working towards getting tenure in the Foreign Service IMS program, by focusing on improved communication with your supervisor regarding your work accomplishments and progress towards meeting the Core Precepts, which have recently been updated (enclosed).

I found the following guidance from a 2002 cable - **State 218857** – old but still very good guidance:

The tenure program for specialists provides specialist career candidates, and the Department as an institution, with a means of determining, based on documented performance, whether a career in the Foreign Service is in the best interest of both parties. Most specialists are considered for tenure in the second year of their four-year limited career appointment (exceptions include medical specialties requiring three years of service) instead of the three years required for generalists who have five-year limited career appointments. The Specialist Tenure Board includes, to the maximum extent possible, members who have the same occupational category as the group of career candidates being reviewed. It is important for all participants in the process to remember that specialist career candidates earn tenure based on accomplishments documented in their employee evaluation reports and that the best way for them to achieve success is to do a good job and to ensure that it is properly documented. The criteria for tenure for specialists are the candidate's demonstrated ability to perform satisfactorily in the occupational category in which the candidate is serving and the potential, assuming normal growth and development, to perform effectively in the Foreign Service at higher levels with greater responsibilities in the candidate's occupational category.

Tenure will continue to be conferred, on first or subsequent reviews, only upon those whose official performance folders show that they meet the criterion explained above. Because specialists are recruited and appointed to perform specific jobs, the object of the tenure process is to confirm that fact and to help the career candidates and the Department to determine whether a career in the Foreign Service is appropriate to both. I believe that the very high percentage of specialist career candidates recommended for tenure confirms the outstanding qualities and abilities of the candidates and suggests that they will be successful members of the Foreign Service. No system, however, is perfect, and in those relatively few cases in which there is not a good match between a career candidate and the Foreign Service, it is in the best interest of both parties to reach that conclusion sooner rather than later.

-----Original Message-----

From: Green, Marvin E
Sent: Friday, June 18, 2010 9:31 AM
To: Hromatka, Josh J
cc: Marcouiller, Judy; Vernon, Daniel A
Subject: RE: Request EER Input Material

During this rating period I:

- Performed solo IPC operations for 3 1/2 weeks in your absence, maintaining momentum on long term project in addition to performing the routine day to day operations, without error.
- coordinated the visit and delivered material to that other agency for their transport to Conakry-- supporting the reinitiating of normal operations at that Embassy.
- administered the eCC remote application, learning to add users, modify groups and configure the post profile to facilitate workflow from remote user through to the approval and visit coordination processing of arriving TDYers.
- Performed a final courier run -- this time I met with airport warehouse and security personnel to follow up and verify earlier agreements to ensure embassy pouches are continuing to receive priority treatment to prevent the compaction of incoming boxed mail items and the timely delivery of pouches to our GSO drivers.
- Worked with and assisted RIMC Frankfurt to implement connectivity for the soon to arrive ECON officer. I setup the workstations and printers, assisted in the relocation and troubleshooting the connectivity of the switches and racks. I created a IP address list for the repair of the DHCP scope so the printers could be added.

Verified with Judy Marcouiller that even if I don't get tenured, since I transferred from a tenured GS-12 step 8 position--that the State Dept is obligated to convert me back to GS-12 step 9 (my next step earned for 3 more years time in service), without a break in service, giving me priority placement for the next available series 2210 Systems Administrator opening (based on applicant final list ranking, meaning I can only be beat out by someone with GS tenure and more than 15 years in service). Even if I am tenured I'd like to know if this is a current and/or post New Zealand option I have. In fact now that I think about it, all tenured GS employees in the overseas area have the right to participate in the OPM based Priority Placement Program. Come to think of it, the GS system does not have a mandatory retirement requirement. I don't have to retire at 65 either. In fact, could not any Foreign Service Officer in the overseas area apply for priority placement and avoid both the 65 mandatory retirement and/or the up or out promotion policy? The question is whether State Dept. participates in the PPP program--and if not why not? And even if not, I as a transfer DoD employee, employed in the overseas area, should still be eligible to participate. Judy, can you find out for me?

This email is UNCLASSIFIED.