

This material is part of a collection that documents the harassment, discrimination, and retaliation perpetrated against Alaska's women research scientists by their supervisor, with full knowledge (and arguably, "tacit approval") of their federal employer, the USDA Agricultural Research Service (ARS)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 19848

Washington, D.C. 20036

_____)	
CYNTHIA BOWER,)	
)	
Appellant,)	OFO Docket # 0120120069
)	
v.)	Hearing # 551200900074X
)	
TOM VILSACK,)	Agency # 200800696
)	
SECRETARY, U.S. DEPARTMENT)	
OF AGRICULTURE,)	
)	
Agency.)	
_____)	

**AGENCY'S STATEMENT IN OPPOSITION
TO APPELLANT'S NOTICE OF APPEAL**

The United States Department of Agriculture ("the Agency" or "the Department" or "the USDA"), by and through its representative and pursuant to 29 C.F.R. §§ 1614.403 and 1614.504(b), seeks dismissal of the appeal of Appellant Cynthia Bower ("Appellant") in the above-captioned matter. For the reasons set forth below, the Agency respectfully requests that the Office of Federal Operations ("OFO") of the United States Equal Employment Opportunity Commission ("EEOC" or the "Commission") dismiss Appellant's appeal.

Appellant has not raised any specific issue(s) on appeal. However, given the procedural history of this case, Appellant's appeal is undoubtedly a repeat of the non-compliance allegation she sent to the Agency on August 2, 2011.

The Agency provides this Statement In Opposition To Appellant's Notice of Appeal ("Opposition Statement") despite never receiving an appeal brief from Appellant and not being

This USDA statement is not true. A copy of my September 20th letter to EEOC's Judge Gaffin was also sent to the USDA (Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W. Washington D.C. 20250).

aware of one having been filed with the OFO. The Agency's Opposition Statement is timely, as the Agency received Appellant's Notice of Appeal on October 25, 2011.¹

PROCEDURAL HISTORY

Appellant and the Agency voluntarily entered into a settlement agreement on August 19, 2010 (the "Settlement Agreement"), resolving any and all complaints or claims of employment discrimination that Appellant had with the Agency. *See* Exhibit 1 of this Opposition Statement, the Settlement Agreement.

On August 2, 2011, almost a year after entering into the Settlement Agreement, Appellant submitted a letter to the Agency alleging Agency non-compliance with a provision of the Settlement Agreement ("Appellant's August 2, 2011 Non-Compliance Letter"). *See* Exhibit 2 of this Opposition Statement, Appellant's August 2, 2011 Non-Compliance Letter at pg. 2. Appellant's non-compliance allegation is that the Agency "refused to report [Appellant's] settlement income to the IRS (in accordance with Paragraph 2 of the Settlement Agreement AND as required by U.S. law)." *See Id.*

On September 16, 2011, the Agency submitted a response to Appellant's August 2, 2011 Non-Compliance Letter ("Agency's September 16, 2011 Non-Compliance Response"). *See* Exhibit 3 of this Opposition Statement, Agency's September 16, 2011 Non-Compliance Response.

After receiving the Agency's September 16, 2011 Non-Compliance Response, on September 29, 2011, Appellant filed the instant notice of appeal that the Agency now opposes.

¹ Sixty (60) days from October 25, 2011 is December 24, 2011. *See* 29 C.F.R. § 1614.403(f).

**THE AGENCY HAS NOT BREACHED THE SETTLEMENT AGREEMENT
BECAUSE THE AGENCY NEVER REFUSED TO REPORT APPELLANT'S
SETTLEMENT PAYMENT TO THE IRS AND HAS PROPERLY REPORTED
APPELLANT'S SETTLEMENT PAYMENT TO THE IRS**

Appellant's non-compliance allegation, as contained in August 2, 2011 Non-Compliance Letter, is that the Agency "refused to report [Appellant's] settlement income to the IRS (in accordance with Paragraph 2 of the Settlement Agreement AND as required by U.S. law)." See Exhibit 2, Appellant's August 2, 2011 Non-Compliance Letter at pg. 2.

Appellant's non-compliance allegations are simply incorrect. First, the Agency never refused to report Appellant's settlement income to the IRS. Second, the Agency has properly reported Appellant's settlement income to the IRS. As such, the Commission must dismiss Appellant's appeal.

I. The Agency Never Refused To Report Appellant's Settlement Payment To The IRS.

The Settlement Agreement, at Paragraph 2, states in its entirety:

Content removed to comply with USDA confidentiality requirements

See Exhibit 1 of this Opposition Statement, Settlement Agreement at Paragraph 2 (emphasis added).

Appellant was paid the settlement payment [redacted] (herein the "Settlement Payment") by the Agency on or about August 31, 2010. See Exhibit 4, Screen

Shot Establishing Payment of Settlement Sum to Cynthia Bower on or about August 30, 2010.

As stated in the Agency's September 16, 2011 Non-Compliance Response, as of September 16, 2011, the Agency inadvertently had not reported Appellant's Settlement Payment to the IRS. However, unlike what Appellant states in her August 2, 2011 Non-Compliance Letter, the Agency never "**refused**" to report her Settlement Payment to the IRS.

Conversely, in her August 2, 2011 Non-Compliance Letter, Appellant admits the Agency did make efforts to report Appellant's Settlement Payment to the IRS. Specifically, at Exhibit 2 of her August 2, 2011 Non-Compliance Letter, Appellant admits that on March 2, 2011, Appellant received an email from Ms. Kim Parks, of the Agricultural Research Service Fiscal Operations Branch, where Ms. Parks informs Appellant that Ms. Parks contacted the USDA National Finance Center on Appellant's behalf. Appellant's Non-Compliance Letter points out that Ms. Parks contacted the USDA National Finance Center regarding the issuance an IRS 1099 tax form in conjunction with the Settlement Payment. Specifically, in the timeline at Exhibit 2 of her August 2, 2011 Non-Compliance Letter, Appellant herself states:

2 March 2011

Kim Parks (Kim.Parks@ars.usda.gov) emailed that she had left a message for the 1099 help desk at the National Finance Center regarding the issuance of a [IRS] 1099 form...

The unabridged timeline is available at

http://JusticeSleeps.com/Chapter5/04_ToUSDA_Exhibits.pdf

The USDA has knowingly engaged in deception by reproducing only a small part of the evidence concerning my email interactions with Ms. Kim Parks.

Although the Agency may have unintentionally and mistakenly omitted reporting Appellant's Settlement Payment to the IRS at the time it made the Settlement Payment to Appellant, the Agency never refused to report the payment.

The USDA's protestations are simply not credible.

The USDA ARS was made aware (repeatedly, beginning in February 2011) that tax documentation had not been provided to account for my EEOC-mediated settlement income. Kim Parks and other ARS personnel never provided any tax documents and almost immediately stopped responding to my emails. For all practical purposes, the ARS "refused" to report the payment.

Contrary to the USDA's (fanciful) account, Kim Parks did not provide me with tax documents of any kind. In fact, she stopped answering my emails almost immediately and never followed through with my requests.



II. The Settlement Agreement Provides No Deadline As To When The Agency Must Report Appellant's Settlement Payment To The IRS And The Agency Has Reported Appellant's Settlement Payment To The IRS.

The Settlement Agreement provides no timeline as to when the Agency is required to report the Settlement Payment to the IRS. The Agency could have reasonably predicted that it was required to follow U.S. tax laws, which listed the reporting deadline as January 31st, 2011.

In any event, the Agency has remedied the inadvertent oversight of not reporting Appellant's Settlement Payment to the IRS at the same time the Settlement Payment was made. In accordance with Paragraph 2 of the Settlement Agreement, the Agency has indeed reported, via a Corrected 2010 IRS Form 1099, the Settlement Payment to the IRS. *See Exhibit 5 of this Opposition Statement, Corrected 2010 IRS Form 1099 for Cynthia K. Bower.*

For three reasons, the Agency correctly reported the Settlement Payment to the IRS using IRS Form 1099. First, despite being able to do so, the parties to the Settlement Agreement did not prescribe what tax form would be used in reporting the Settlement Payment. Second, the parties did not specifically designate any portion of the Settlement Payment for lost wages or other non-wage related compensatory damages. Rather, the parties designated the Settlement Payment as "payment of all pecuniary, non-pecuniary, or compensatory damages based on the allegations raised in her [EEOC case] up to and through the Effective Date of the Agreement." *See Exhibit 3 of this Opposition Statement, Settlement Agreement at Paragraph 2.* Third, the Settlement Payment constitutes payment "based on the allegations raised in [Appellant's EEOC case]" and Appellant's EEOC case was purely a claim under Title VII of the Civil Rights Act of 1964, and not the Equal Pay Act. As such, if Appellant's claims were decided at an EEOC hearing, there is no guarantee she would have received wages as remedies.

CONCLUSION

The Agency has complied with all terms of the Settlement Agreement. For the above reasons, the Commission should deny this Appeal in its entirety.

Date: December 22, 2011

Respectfully Submitted,



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CERTIFICATE OF SERVICE

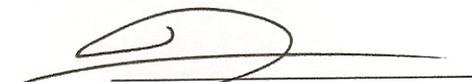
I hereby certify that a copy of the foregoing Agency's Statement In Opposition To Appellant's Notice of Appeal has been sent by the following methods this the 22nd day of December 2011 to the following:

Equal Employment Opportunity Commission
Office of Federal Operations
P.O. Box 77960
Washington, D.C. 20013

VIA CERTIFIED MAIL
70070710000138593827
RETURN RECEIPT

Cindy Bower
PO Box 1383
Kodiak, Alaska
99615

VIA FIRST CLASS MAIL
70070710000138593797
RETURN RECEIPT



Brooks Liswell