

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)

U.S. Equal Employment Opportunity Commission
Office of Federal Operations
PO Box 19848, Washington, D.C. 20036

CYNTHIA BOWER)	OFO Docket # 0120120069
Appellant,)	
)	Hearing No. 551-2009-00074X
v.)	
)	Agency No. ARS-2008-00696
Thomas Vilsack)	
Secretary, Department of Agriculture))	
)	
Agency)	
)	Date: December 30, 2011

APPELLANT’S STATEMENT IN OPPOSITION TO AGENCY’S REQUEST TO DISMISS

The Appellant, Cynthia Bower, pursuant to 29 CFR 1614.504 (Compliance With Settlement Agreements) respectfully requests that the U.S. Equal Employment Opportunity Commission (“EEOC”) deny the Request for Dismissal [Exhibit 1] submitted by the U.S. Department of Agriculture (“USDA” or “the Agency”) for reasons cited below:

- 1) 29 CFR 1614.504(a)
The Agency failed to comply with the terms of Paragraph #2 of the Settlement Agreement (negotiated with Appellant on 19 August 2010 in response to harassment, discrimination, and retaliation perpetrated by USDA Agricultural Research Service (ARS) personnel), by not notifying the Internal Revenue Service (IRS) of the settlement award. Appellant made five separate requests of Agency to acquire tax documentation (beginning in February 2011), and the IRS sent the Agency two additional requests. The Agency did not provide the requested tax documentation (in violation of U.S. law, 26 USC 6051), and failed to respond to all IRS inquiries and to all Appellant’s follow-up emails after March 15th, 2011. The Agency’s actions, for all practical purposes, constitute a “refusal” to comply with Appellant’s request for tax documentation. On August 2nd, after the IRS failed to intervene, Appellant notified the USDA (Exhibit 2) of the ARS’s noncompliance, in accordance with instructions provided in Paragraph 13 of the Settlement Agreement.
- 2) 29 CFR 1614.504(b)
The Agency submitted an untimely response (postmarked September 16th) to Appellant’s August 2nd breach-of-settlement letter and again failed to provide tax paperwork (as required by the Settlement Agreement and by U.S. law)

[Exhibit 3]. Dissatisfied, the Appellant filed with the EEOC (in accordance with 29 CFR 1614.504(b)).

3) 29 CFR 1614.504(c)

The matter now before the Commission demonstrates that the Agency was not in compliance and the noncompliance was not attributable to acts or conduct of the complainant. After almost a year of noncompliance in issuing tax documentation to Appellant, the Agency has suddenly provided *incorrect* tax paperwork, with full knowledge that wage-based EEOC complaints should be reported on a W-2 Form and not a 1099 Form [Exhibit 4].

SUMMARY OF APPEAL

On 20 September 2011, in accordance with 29 CFR 1614.504(b), Appellant notified the EEOC of the USDA's "Violation of Settlement Agreement for 551-2009-00074X", and provided sufficient information to allow EEOC personnel to evaluate the Agency's violation (i.e. failure to provide tax documentation). The Appellant had previously exhausted all other (non-litigious) options for obtaining the necessary tax paperwork, before recognizing that the Agency's noncompliance with U.S. tax laws (26 USC 6051) simultaneously breached the Settlement Agreement. After reporting the violation to the EEOC, an OFO docket number was assigned, and Appellant awaited a ruling on the issue. Instead, the Agency filed a statement to dismiss the case. Listed below are significant errors within the Agency's opposition statement, which should be considered:

- 1) The Agency claimed that no specific issues were raised on appeal, which is false, since Appellant's request for tax paperwork to document income from an EEOC-negotiated Settlement Agreement was clearly listed as the source of the Appeal.
- 2) The Agency classified Appellant's five separate requests for tax documentation, plus the IRS's two additional requests, as "inadvertently" not reporting the Settlement payment. The Agency then deliberately took Ms. Kim Park's statement out of context to give the (false) impression that the Agency had attempted to comply, without noting that Ms. Parks ignored (i.e. refused to respond to) all of Appellant's subsequent correspondences requesting updates on the tax paperwork.
- 3) The Agency's letter (postmarked September 16th) was untimely, but more importantly, failed to provide the requested tax documentation for the Settlement income (as required by law), further confirming that the Agency DID indeed breach the Settlement Agreement.

- 4) The Agency has still NOT properly reported the Settlement payment to the IRS using a W-2 Form, as required for a wage-based EEOC complaint.
- 5) The Agency stated that it “unintentionally and mistakenly omitted reporting” Appellant’s Settlement Payment”, when in fact, Appellant queried a number of ARS women research scientists who in the last decade have received EEOC-mediated Settlement awards and none (not a single one!) has ever received tax documentation for their settlements, (which suggests that failing to report Settlement income is actually an “unwritten” USDA policy).
- 6) Although the Agency states that the Settlement Agreement provides no deadline as to when the Agency must report Appellant’s Settlement Payment, the Agency could reasonably have predicted that it was required to follow U.S. tax laws, which listed the reporting deadline as January 31st, 2011.
- 7) Contrary to the Agency’s assertions, monetary payments from a wage-based EEOC claim must be reported on a W-2 form [Exhibit 4], so that federal employees subjected to unlawful workplace discrimination can be made whole.

CONCLUSION


The Agency has not supplied appropriate tax paperwork to document Appellant’s Settlement income, nor has it provided sufficient evidence to support dismissal of Appellant’s request for a W-2 Form. For the above reasons, the Commission should be allowed to determine this case based on the merits.

Dated 30 December 2011

Respectfully submitted,

Cynthia Bower

PO Box 1383
Kodiak, AK 99615


<http://www.JusticeSleeps.com>

Attachments:

- Exhibit 1.) Agency’s Statement in Opposition to Appellant’s Notice of Appeal
- Exhibit 2.) USDA’s Violation of Settlement Agreement for 551-2009-00074X
- Exhibit 3.) USDA’s Untimely (and Unreadable) Response
- Exhibit 4.) U.S. law requires a W-2 not a 1099

CERTIFICATE OF SERVICE

I certify that on 30 December 2011 the foregoing notice to EEOC was sent via First Class Mail to the following:

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

U.S. Department of Agriculture
Office of the General Counsel
Civil Rights Litigation Division, Rm 3314
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Washington D.C., 20250-1400