

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)

Cynthia Bower
EEOC Appeal No. 0120120069

Exhibit A

Final Agency Decision from Complainant's First Administrative Grievance Series sent to the USDA ARS (2007-2008). This document is noteworthy since it includes a response from ARS Administrator Edward Knipling, who pronounces unlawful discrimination against women as a "nongrievable matter".

Dr. Edward B. Knipling, Administrator

March 26, 2008

Dr. Edward B. Knipling, Administrator
USDA, Agricultural Research Service
c/o HRD, Employee Relations Branch
5601 Sunnyside Avenue, Stop 5102
Beltsville, MD 20705-5102

Attn: LaFondra Lynch

Dr. Knipling,

This letter is in response to the document issued by PWA's Acting Area Director Andrew Hammond as a reply to my Formal Grievance. He instructed me to contact you in the event that the matter was not resolved to my satisfaction. Considering that Dr. Hammond introduced false statements into his response, then dismissed my grievance and denied all relief, I believe that dissatisfaction is a reasonable reaction on my part. Consequently, I wish to pursue this grievance further. To expedite the process, ***I am requesting that a final decision be made***, without a factfinder, based on the ample evidence previously presented in my grievances, which are attached.

Items Remaining Unresolved

- 1.) The Research Leader (Alberto Pantoja) has established an extremely hostile environment for women in ARS Alaska's Subarctic Agricultural Research Unit (SARU). There are only three female research scientists at SARU, and each of us has filed more than one grievance concerning career-damaging events. The male scientists have all witnessed at least one harassing event, and they can serve to corroborate that unequal treatment exists for SARU's women. During this time, the PWA administrators (Drs. Buxton, Hammond, and Matteri) have facilitated the EEO violations, rather than taking definitive action to correct them.
- 2.) I was originally offered my job at lower GS and salary levels than the advertised position (GS 13/14) due to willful misconduct of ARS personnel. I now strongly believe that this discriminatory treatment was permitted by PWA because I am a female scientist, (which remains an underrepresented group in the ARS).
- 3.) Leadership decisions within ARS have severely damaged my career. Loss of promotion is a tangible employment action that will have financial and stature-related repercussions for the rest of my life. I am now excluded from the possibility of attaining a GS 14 rating, necessary for an ARS leadership position, before I approach retirement age. This is especially distressing to me at a time when I perceive such a vital need for competent leaders with integrity to emerge from within the ARS ranks.

Corrective Action Being Sought

- 1.) I request that I be reclassified as GS 13, retroactive to December 2007.

- 2.) I request that leadership failures existing within the PWA be dealt with appropriately.

Additional Evidence I wish to Have Considered

1.) My earlier grievances documented problems in Alaska's ARS unit and clarified misconceptions associated with Dr. Matteri's response. For example, Dr. Matteri's contention that there is no evidence of abuse of ARS female scientists in Alaska simply ignores the facts, (in this case, numerous grievances and other communiqués from the other two female scientists working for the ARS in Alaska). My previous grievances stand on their own merit and are attached for your review. However, it is essential that I now refute the false statements introduced by Dr. Hammond through his recent response to my Formal Grievance:

- The statement quoted from P&P 463.2 ("the formal grievance may not concern any matter that was not presented as part of the informal grievance") was misleading. No newly presented issues were raised, and the P&P statement does NOT apply to additional requests for relief. Any extra information included in my Formal Grievance was in direct response to misconceptions introduced by Dr. Matteri in his response to my Informal Grievance, and it was critical that his errors be properly refuted.

- Additionally, Dr. Hammond assigned "nongrievable" status to my complaints (despite accepting the Informal Grievance and addressing the requests) by stating that I should have taken them to another forum outside the ARS, such as the Merit Systems Protection Board or the Equal Employment Opportunity Commission. If an Agency's Policies and Procedures designate it as unable to handle complaints of workplace discrimination, how can the Agency issue an EEO statement proclaiming zero tolerance for gender bias and other discriminatory practices? The PWA either has an enforceable EEO policy or it doesn't, in which case Dr. Hammond's errant EEO missive of January 25th should be recalled (again).

- Dr. Hammond further alleged that my first informal grievance was not filed in a timely manner. This is incorrect. I received my RPES results on December 15th, and I filed the grievance on December 27th. This is well within the 15 days that I was allowed. The basis of my complaint was that the hostile work environment, which I had been enduring in silence up to that point, had just irreparably damaged my career. I introduced as much evidence as I could to support my contention. The discriminatory practices surrounding my initial hiring certainly qualified as proof that I had not received fair treatment from the very beginning of my employment with

Dr. Edward B. Knipling, Administrator

the ARS. According to SARU's recent EEO training, demonstrating pervasive unfair treatment is required to prove discrimination. Therefore, it is completely unreasonable for Dr. Hammond to disallow evidence that establishes a pattern of abuse, merely because it occurred more than 15 days before I filed my grievance.

- Dr. Hammond also provided information concerning the ARS's EEO policy statement. The paragraph is disingenuous. If Dr. Matteri had "thoroughly investigated complaints of discrimination" occurring in Alaska's ARS unit, he would have discovered that all three female scientists had filed grievances concerning gender bias and hostile working conditions. Then, according to ARS policies, immediate action would have occurred and the abuse would have stopped. Since the grievances, complaints, and other communiqués continue to flow from Alaska to the Pacific West Area, I can only conclude that any investigations by Drs. Matteri and Hammond have been embarrassingly inadequate.

I maintain that I did not invite the harassment I am experiencing and I do not deserve to be mistreated. This has been a soul-draining experience for me, but I am hopeful that you will provide an equitable resolution, once and for all.

Sincerely,

Cynthia Bower
Research Food Technologist
Subarctic Agricultural Research Unit (SARU)
USDA ARS, Pacific West Area
360 O'Neill Building, University of Alaska
Fairbanks, AK 99775-7200

(907) 474-6732

bower@sfos.uaf.edu

Legend for attached Exhibits

- Exhibit 1: Informal grievance sent to Andrew Hammond (12/27/07)
- Exhibit 2: Robert Matteri's response to my informal grievance (01/24/08)
- Exhibit 3: Formal grievance sent to Andrew Hammond (02/04/08)
- Exhibit 4: Andrew Hammond's response to my formal grievance (03/17/08)



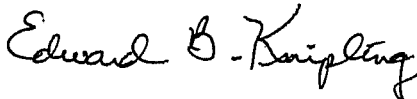
United States Department of Agriculture

Research, Education, and Economics
Agricultural Research Service

MAY 23 2008

SUBJECT: Final Agency Decision

TO: Cynthia K. Bower
Research Food Technologist
Subarctic Agricultural Research Unit

FROM: Edward B. Knipling 
Administrator

This memorandum is to inform you of the final Agency decision you requested on March 28, 2008, on your formal grievance concerning your allegations of a "hostile work environment." As relief, you requested to be "reclassified as GS 13" and the alleged "leadership failures existing within the PWA be dealt with appropriately." I have fully and carefully considered your grievance and the exhibits you have presented to support your position, as well as the material contained in the grievance file.

In your request for a final Agency decision, you stated the following issues remain unresolved: 1) "an extremely hostile environment for women," 2) "discriminatory treatment" resulting in your being "offered [your] job at lower GS and salary levels than the advertised position," and 3) "loss of promotion."

Your grievance centered on your allegations of discrimination. Article 5 of the Administrative Grievance System, Policies and Procedures 463.2, dated June 4, 2001, states:

"This Policies and Procedures issuance does not apply to . . . [a] dispute over a matter for which an employee has an entitlement to file an appeal, grievance, or formal challenge in some other forum. This includes matters that are reviewable by the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Office of Personnel Management (OPM), the Comptroller General (CG), the Federal Labor Relations Authority (FLRA), or the Federal Mediation Conciliation Service (FMCS)."

Thus, the three issues cited in your request are nongrievable matters. However, the Agricultural Research Service (ARS) does not support acts of discrimination nor will these acts be tolerated. Dr. Robert Matteri, Assistant Area Director, Pacific West Area, investigated your allegations.



No evidence was found to support your allegations of a hostile work environment or discrimination. In addition, Mr. Jeff Schmitt, Research, Education, and Economics Cooperative Resolution Program Office, visited your location from January 14-18, 2008, to discuss any issues or concerns you and the other scientists may have and attempt to resolve them. Mr. Schmitt did not report any evidence supporting your allegations.

In addition to your allegations of discrimination, you asserted you were “offered [your] job at a lower GS and salary levels than the advertised position.” Although this is not uncommon, Dr. Matteri consulted the Director of the ARS Human Resources Division (HRD), Karen Brownell, regarding this process and confirmed that for all Category 1 scientists, final classification decisions must be made by a peer panel through the Research Position Evaluation System (RPES) before HRD can issue a letter of offer. An RPES panel evaluated your application and determined you be classified as a GS-12. Thus, a job offer could not be made to you on the original recruitment announcement. Subsequently, the position was readvertised at the GS-12 level for which you applied, and you were hired under the new recruitment announcement. The supervisory selecting official, in your case Dr. Alberto Pantoja as Research Leader, does not have the authority to make formal offers of employment or to establish position grade levels for new hires or incumbent employees.

Dr. Pantoja, Research Leader, Subarctic Agricultural Research Unit (SARU), has arranged for Dr. Eric Jang, Research Leader, Tropical Plants Pest Research Unit, to deliver a presentation on the RPES process to all SARU employees on September 4, 2008. Please take this opportunity to fully understand the RPES position classification process and to ask additional questions about it.

This completes the grievance process and constitutes the final Agency decision in this matter. If you have any questions or concerns regarding this letter, please contact Ms. LaFondra Lynch, Human Resources Specialist, at 301-504-1409 during normal business hours.

cc:

L. Lynch, HRD

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)

Cynthia Bower
EEOC Appeal No. 0120120069

Exhibit B

Letter from USDA (fragmenting original complaint and omitting actionable claims), and letter from Complainant (submitting clarification)



United States
Department of
Agriculture

NOV 17 2008

Office of the
Assistant Secretary
for Civil Rights

Cynthia Bower
Post Office Box 81964
Fairbanks, Alaska 99708

Office of Adjudication
and Compliance

1400 Independence
Avenue SW

Washington, DC
20250

Re: USDA Complaint No.: ARS-2008-00696

Dear Ms. Bower:

This letter accepts your Equal Employment Opportunity (EEO) complaint of discrimination against the Agricultural Research Service (ARS) dated July 25, 2008, and based on the postmark, is considered filed on July 26, 2008. Please refer to this complaint number in any future communication on the subject EEO complaint.

We are accepting¹ and referring for investigation the following allegation:

Whether the Agency subjected the Complainant to discriminatory harassment² based on sex (female), and limited her career advancement when:

1. on July 2, 2004, after she accepted the verbal offer of the Research Food Technologist position, GS-13/14, her supervisor said that the position had to be evaluated by the RPES panel;
2. on September 16, 2004, her supervisor offered her the re-evaluated Research Food Technologist position at the GS-12 level;
3. since she began, her supervisor has not promoted her;
4. since she began, her supervisor actively excluded her from mentoring and other career building opportunities;

¹ This complaint was accepted without the benefit of an EEO counselor's report.

² The phrase "hostile work environment" is a finding or result of the finding that harassment occurred, and that the harassment is severe or pervasive enough to alter a condition or privilege of employment. See National Railroad Passenger Corp. v. Morgan, 122 S. Ct. 2061 (June 10, 2002) and Cobb v. Department of Treasury, EEOC Request No. 05970077 (March 13, 1997). The phrase is not an issue or incident but the identification of the result of harassment.

5. since starting her research programs her supervisor has damaged her reputation, devalued her work, actively sabotaged her programs by placing various behind-the-scenes impediments in the way of her progress, and eventually caused her programs to be shut down, by disrespectfully:
 - tying up her technician 20% of the time;
 - interfering through disallowed Current Research Information System relevant projects and curtailed collaborations;
 - negatively impacted her credibility with co-workers and peers; and
6. in a closed door private meeting, her supervisor yelled at her so loudly it caused a co-worker to believe that he had missed a workplace meeting?

The Department of Agriculture (Department) is required under 29 C.F.R. §1614.108 to complete an impartial, factual and appropriate investigation of the accepted allegation within 180³ days of the date the subject EEO complaint was filed. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. The complainant and the Department may voluntarily extend the 180-day time period not to exceed an additional 90 days. In addition, the Department may unilaterally extend the 180-day time period or any period of extension for not more than 30 days where it must sanitize a complaint file that contains classified information.

When the investigation begins, an EEO Investigator will contact you. You are required to cooperate fully with the EEO Investigator. Failure to do so may result in dismissal of your EEO complaint. You must present to the EEO Investigator all the information you wish considered relevant to the accepted allegation. In addition, you must provide the EEO Investigator with the names of any witnesses you believe should be contacted.

You must keep the agency informed of your current address. If the Department is unable to locate you, your complaint may be dismissed under 29 C.F.R. §1614.107(a) (6).

When you receive the EEO investigative report, you will be notified of your right to elect either an agency decision based on the record or a hearing with a decision from an Equal Employment Opportunity Commission (EEOC) Administrative Judge (AJ). The notification will provide you with the specifics on how to exercise your election rights.

If you have not received the EEO investigative report after 180 days from the filing of your EEO complaint, you have the right to request a hearing from an EEOC AJ. Should

³ All references to days refer to calendar days unless specified otherwise.

you request a hearing, you must send your request to the EEOC District Office and address identified in the enclosed document. Additionally, you must certify to the EEOC that a copy of the hearing request was sent to the following address:

Civil Rights Director
Agricultural Research Service
United States Department of Agriculture
Room 3552-South Building
1400 Independence Avenue, S.W.
Washington, DC 20250

If you do not agree with the defined allegations, you must provide us with sufficient reasons, in writing, within 7 calendar days of receipt of this letter. The statement should be sent to the following address:

Division Chief, Employment Complaints Division
Office of Adjudication and Compliance
United States Department of Agriculture
1400 Independence Avenue, S.W.
Stop Code 9440
Washington, DC 20250-9440

You also alleged that you were subjected to discrimination based on reprisal for filing an Administrative Grievance on December 27, 2007. This basis is dismissed for failure to state a claim, pursuant to 29 C.F.R. §1614.103. To state a claim, you must allege present harm inflicted on the basis of race, sex, religion, national origin, age, physical disability, mental disability, or prior protected activity. See Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994). Reprisal for filing an Administrative Grievance is not a protected basis under the EEOC regulations.

You also alleged that during the grievance process, the agency willfully obstructed your rights by inserting false or misleading statements into the May 23, 2008, decision. This spin-off claim is dismissed pursuant to 29 C.F.R. §1614.107(a) (8), which states that the agency is required to dismiss complaints, or portions thereof, that allege dissatisfaction, unfairness, or bias in the processing of a previously filed complaint. These claims are outside the purview of actions that can be remedied through the EEO complaint process. The "spin-off" allegations, however, will be referred to Dr. Donald Mclellan, Director, Civil Rights, ARS for appropriate action. As required in EEO Management Directive 110, Section IV (D), Dr. Mclellan will respond to your claim and provide a copy of the response to our office. The information obtained will be incorporated into the complaint file.

In accordance with 29 C.F.R. §1614.107(b), if you elect a hearing, an Administrative Judge will review the complaint, including our determination of the dismissed claim. Furthermore, once a Final Agency Decision is rendered on the entire complaint, you

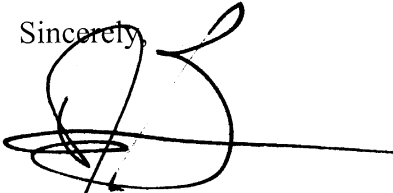
Cynthia Bower
Page 4

may appeal it to the Equal Employment Opportunity Commission (EEOC). However, you may not appeal this dismissal until a Final Agency Decision is rendered by the Department on the remainder of your complaint.

Please be advised that, consistent with EEOC regulations and the Secretary of Agriculture's strong commitment to the early resolution of EEO complaints, parties are encouraged to seek resolution at any stage of the EEO complaint process. Settlement discussions may take place throughout the administrative complaint process. If resolution is achieved, a copy of the settlement agreement must be provided promptly to avoid unnecessary processing and additional cost. Likewise, if at any stage of the EEO complaint process your client wishes to voluntarily withdraw her complaint, she must provide promptly written notification of her desire to withdraw her EEO complaint. The withdrawal notice must be signed, dated, and contain the EEO complaint number. To ensure prompt receipt, please fax a copy of the voluntary settlement agreement or voluntary withdrawal notice to the Complaints Adjudication Division, at Fax Number (202) 401-8035.

Please contact the Customer Service Unit at 1-800-795-3272 if your client has questions or concerns regarding the status of this complaint.

Sincerely,

A handwritten signature in black ink, appearing to be "K. Baisden", with a long horizontal line extending to the right.

KENNETH J. BAISDEN, SR.
Division Chief
Employment Complaints Division

Enclosure

cc: Civil Rights Director, ARS
ECD Liaison

Division Chief, Employment Complaints Division
Office of Adjudication and Compliance
United States Department of Agriculture
1400 Independence Avenue, S. W.
Stop Code 9440
Washington DC 20250-9440

RE: USDA Complaint No.: ARS-2008-00696

December 6, 2008

I received a letter on December 2nd 2008 accepting and referring for investigation a portion of my USDA complaint (ARS-2008-00696), which was filed July 26th, 2008 and will therefore be eligible for EEOC on January 22nd 2009.

However, please be aware that the issues you accepted do not adequately reflect the discrimination complaints I filed with your agency. In the following section I have clarified the issues, each of which was either discussed with the informal Counselor (and documentation provided to the Counselor) or has occurred since the original complaint was filed.

#1

I was subjected to discriminatory treatment (Unfair Hiring Practices)

There is ample documentation of this event and there can be no genuine issue of material fact concerning the misconduct in hiring that occurred.

#2

I was subjected to discriminatory treatment (Denied the Career-Building Opportunity of Serving as Acting Research Leader on the Basis of Gender)

There is ample documentation of this event and there can be no genuine issue of material fact concerning the discrimination that occurred against all women scientists at the Subarctic Agricultural Research Unit (SARU) from 2003 until December 2008.

#3

I was subjected to discriminatory treatment (in Committee Assignments)

There is documentation of these events and there can be no genuine issue of material fact concerning the discrimination in committee assignments that occurred against the women scientists at SARU

#4

I was subjected to discriminatory treatment (Denied Program Resources)

There is documentation of these events and there can be no genuine issue of material fact concerning the discriminatory practices levied against women scientists in Fairbanks during the technician hiring process

#5

I was subjected to discriminatory treatment (Denied Supervisory Stature)

There is documentation of these events and there can be no genuine issue of material fact concerning the discriminatory practices levied against women scientists in SARU during the assignment of supervisory codes

#6

I was subjected to discriminatory treatment (Denied Support for Promotions)

There was verbal admission by the Research Leader, and additional documentation of this event can be compelled from witnesses (e.g. the in-depth reviewer of the ARS panel in charge of evaluating my research career, December 2007)

#7

I was subjected to discriminatory treatment (During Conflict Resolution Training)

There were numerous witnesses to this discriminatory event against women scientists in SARU, including an ARS facilitator trained in conflict resolution

#8

I was subjected to reprisal discrimination (by Rating and Approving Officials who both knew they were listed by name on my Formal EEO complaint) resulting in a lower-than-warranted annual performance appraisal on November 5th 2008. The Research Leader failed to provide "objective measures" (in accordance with the ARS Performance Appraisal System, P&P 418.3) when preparing my performance plan. I twice asked the RL (in writing) for advice and guidance for exceeding on my annual performance rating. The informal EEO counselor made a similar request on my behalf as part of her Informal Resolution Attempt (Case # 08-40, attached to this letter). However, the RL refused to provide information and ultimately discounted my extra work in two elements, resulting in a lower appraisal than was warranted. This form of reprisal has had both professional stature and monetary impacts on my career.

- *The Research Leader of SARU discriminated against the women scientists in the unit (and direct evidence of this unlawful disparate treatment exists)*
- *I engaged in a protected activity (grievance writing and EEO complaints)*
- *The Research Leader and ARS administrative personnel were aware that I had participated in a protected activity (since many of them were listed by name)*

- *During my annual appraisal the Research Leader rated me lower than was warranted (which constitutes an adverse action)*
 - *The adverse action was causally linked to the protected activity*
-

Concerning the dismissed claim mislabeled as a “spin-off “, you have misinterpreted MD 110 Chapter 5, Section IV, which deals with Agency processing of formal complaints of discrimination (e.g. a complaint through the ARS’s EEO office). It does not refer to grievances filed within the ARS as you suggested and was therefore inappropriately not accepted, (nice try, though).

Although MD 110 states that “there is no immediate right to appeal the partial dismissal”, I do have the right to correct an obvious error on your part.

However, your mention of 29 CFR § 1614.606 raises a relevant issue: “Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the agency or the Commission for joint processing after appropriate notification to the parties.”

I am surprised that the following three EEO complaints from Alaska’s ARS unit were not consolidated:

- Lori Winton (USDA Complaint # 542)
- Nancy Robertson (USDA Complaint # 647)
- Cindy Bower (USDA Complaint # 696)

Each claim was against the same management, concerning the same bases (Sex Discrimination and Reprisal), occurring within the same time frame, requesting the same witnesses, and stating similar facts and circumstances. Consolidation of these complaints would have conserved valuable Agency resources.

Please make the suggested corrections to my complaint.

Thank you.

Sincerely,
Cynthia Bower

Research Food Technologist
USDA Agricultural Research Service
Subarctic Agricultural Research Unit
PO Box 81964
Fairbanks, AK 99708

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)

Cynthia Bower
EEOC Appeal No. 0120120069

Exhibit C

Letter from Complainant to EEOC with Corrected EEO Claims

EEOC Hearings Unit
Seattle Field Office
Federal Office Building
909 First Avenue
Suite 400
Seattle, WA 98104-1061
(phone: 206 220-6883)
(fax: 206 220-6911)

26 January 2009

Dear Sir/Madam,

I am requesting the appointment of an Equal Employment Opportunity Commission Administrative Judge pursuant to 29 CFR § 1614.108(g). More than 180 days have passed since 26 July 2008 when I filed my complaint with the United States Department of Agriculture.

Cynthia Bower
USDA Agricultural Research Service
PO Box 757200
Fairbanks, AK 99775-7200

USDA Complaint # ARS-2008-00696

I have attached a document describing my ten claims of discrimination and reprisal. Sadly, the discrimination practiced by Alaska's ARS unit extended to 100% of the female research scientists. Since we are each eligible to file with EEOC, I request that our cases be consolidated in accordance with 29 CFR § 1614.606.

- Lori Winton (USDA Complaint # ARS-2008-00542)
- Nancy Robertson (USDA Complaint # ARS-2008-00647)
- Cindy Bower (USDA Complaint # ARS-2008-00696)

Each claim was against the same management, concerning the same bases (Sex Discrimination and Reprisal), occurring within the same time frame, requesting the same witnesses, and stating similar facts and circumstances.

Due to inaction by USDA in seriously addressing my claims, I have retained counsel. I am now represented by Joe Josephson of Josephson & Associates.

Josephson & Associates, P.C.
912 W. Sixth Avenue,
Anchorage, AK 99501
Tel:(907) 276-0151
Fax:(907) 276-0155

In accordance with 29 CFR § 1614.108(g), I have sent a copy of this request for a hearing to:

Civil Rights Director
Agricultural Research Service
United States Department of Agriculture
Room 3552 – South Building
1400 Independence Avenue, S.W.
Washington, DC 20250

The tracking number for this document is USPS _____ and can be accessed on the USPS.gov website.

Sincerely,

Cynthia Bower, PhD
Research Food Technologist
USDA Agricultural Research Service
PO Box 757200
Fairbanks, AK 99775-7200
Phone: (907) 474-6732

Cindy Bower
26 January 2009

Discrimination Claims for EEOC (26 January 2009)

I am a Research Food Technologist with the USDA Agricultural Research Service (ARS) working in the Subarctic Agricultural Research Unit (SARU) in Fairbanks Alaska. On 27 December 2007 I filed a timely grievance with ARS Pacific West Area (PWA) management personnel (Andrew Hammond, Associate Area Director) in which I described discriminatory practices enacted by my supervisor (Alberto Pantoja) against me and the other women scientists. I also noted that my supervisor had instituted a work environment extremely hostile to women. I was the third (of three) female research scientists to contact the PWA about the discrimination and hostile work environment at SARU. Incredibly, ARS administrators did not take meaningful action to stop the discrimination. Over the next six months I filed six more timely grievances and numerous communiqués with ARS. Below is a list of the discriminatory behavior (prohibited by title VII of the Civil Rights Act), which was perpetrated against me, apparently with tacit approval of all ARS administrators who were notified of this situation.

#1

Unfair Hiring Practices

In September 2004 I was offered an ARS research position at lower GS and salary levels than the advertised position (GS 13/14) despite ten years of research experience, an ARS finding of superior qualifications and a suggested salary of \$64,980 specified by the US Department of Labor as being appropriate for food scientists in Alaska. The decision to withhold the advertised GS level was made by an ARS ad hoc Research Position Evaluation System (RPES) Panel, despite the officially certified GS 13/14 position description. Panel members chose to inappropriately lower the point values for Factors I and II (factors which related to the job announcement, NOT my qualifications) to produce a score with a salary almost \$10,000/yr lower than advertised. This decision was fully supported (if not entirely orchestrated) by Dr. Pantoja as evidenced by his initial proposal of the lower salary when tentatively offering me the job two months before the RPES panel met. I was not fully aware of these events until my Official Personnel File became available online in November 2007. In retrospect Dr. Pantoja's initial "low" salary suggestion is consistent with the pervasive discrimination targeted at me and the other two women scientists working in Alaska's ARS unit. I strongly believe that I was devalued by Dr. Pantoja (and the ARS administrators who oversaw and approved my initial hiring) on the basis of my gender.

There is ample documentation of this event and there can be no genuine issue of material fact concerning the misconduct in hiring that occurred.

#2

Discrimination in Career-Building Opportunities

From my date of hire (Oct 2004) until present I have been excluded from the career-building opportunity of serving as acting research leader, which has had a negative impact on my promotion potential, as well as being detrimental to my professional stature and future employment opportunities. ARS documents conclusively prove that Dr. Pantoja does NOT equally apportion opportunities among the research scientists he supervises, (e.g., no woman had ever been appointed acting research leader in Alaska, whereas every male research scientist in Fairbanks had been asked to serve, including GS 12 level scientists and those still on probation). It was only after all three female research scientists filed formal EEO complaints with the USDA describing employment discrimination on the basis of sex (prohibited by title VII of the Civil Rights Act) that a rotation plan was proposed (01 August 2008) to allow women to serve as acting research leader.

There is ample documentation of this event and there can be no genuine issue of material fact concerning the gender discrimination perpetrated against me and all the other women scientists at SARU until August 2008.

#3

Discrimination in Committee Assignments

Women scientists were given a disproportionate amount of time-consuming committee assignments by the research leader. From my appointment in October 2004 until Dec 2006, only technicians and women research scientists were required to serve on the Safety committees and Environmental Management System (EMS) committee. No male research scientists were appointed until January 2007, AFTER the issue of discriminatory treatment had been repeatedly questioned and reported to administrative personnel at PWA (starting in 2005). In 2007 the EMS and Safety committees merged to become SHEM, (Safety Health & Environmental Management) and a committee rotation schedule was implemented in an attempt to stop the discriminatory treatment against women in the unit. However, the new schedule was set up to appoint the only other female research scientist in the unit as the first new member to serve on the SHEM committee. The new rotation schedule also introduced discriminatory treatment in terms of the length of committee service for research scientists, which was shortened from two years (as the original two women scientists had just served) to only one year (as the first male scientist began his tenure). Additionally, the assigned duties for the years when women had been required to serve two-year terms had been significantly more complex (designing and implementing an EMS program for the unit, preparing a unit-wide chemical inventory reporting system, merging the Safety committee with the EMS committee, etc...) than for the subsequently appointed male committee members who merely worked with the systems already in place.

There is documentation of these events and there can be no genuine issue of material fact concerning the gender discrimination that was perpetrated against me and other women scientists at SARU in committee assignments (i.e. appointment AND duration of service AND complexity of assigned duties)

#4

Discrimination in Program Resources

Women scientists in Fairbanks were subjected to discrimination while building their research programs when they were denied resources equivalent to those provided to the male scientists. In 2004 and 2005, four newly hired scientists (two women and two men) were instructed to hire their technicians as GS 5 temporary employees. By 2007, every male scientist in Fairbanks (regardless of GS level, length of time in Alaska's ARS unit, or CRIS project assignment) had a permanent technician, whereas the two female scientists still have technicians with limited term appointments, (ensuring continual program disruption as the technicians are recruited, hired, trained, then lost to permanent employment elsewhere). In 2008, the last male scientist with a non-permanent technician was advertising for a permanent one. To combat growing complaints of discrimination within the unit (after all three women scientists filed formal EEO complaints with the USDA), the research leader announced that all research scientists were now allowed to hire permanent technicians. It is now 2009 and the two female scientists in Fairbanks still have technicians with term positions, despite having requested permanent appointments in the budget (ARMPS) every year. The proposed upgrade to permanent technicians offered by the research leader last August was disingenuous since technician positions cannot be changed noncompetitively from temporary to permanent without advertising the position to all qualified applicants. The affected technicians were unwilling to risk losing their jobs prematurely. Consequently, the disparate treatment of the two female research scientists in Fairbanks will persist until both technician positions are re-announced at the end of their term appointments.

There is documentation of these events and there can be no genuine issue of material fact concerning the gender-based discriminatory practices levied against women scientists in Fairbanks during the technician hiring process

#5

Discrimination in Supervisory Stature

All three women research scientists were incorrectly coded in official paperwork as having no supervisory stature (8 instead of 4 in Box 7 of the AD 332 Master Record / Individual Position Data form). All Category-1 research scientists are

Cindy Bower
26 January 2009

expected to supervise a technician and therefore are automatically accorded a supervisory code of 4. Even post-docs are given supervisory codes of 4. Assignment of non-supervisory status may extend beyond Dr. Pantoja's ability to limit the status of women in his unit, but certainly reflects lack of administrative oversight when a form of discrimination such as this is allowed to persist.

There is documentation of incorrectly assigned supervisory codes and there can be no genuine issue of material fact concerning this decreased supervisory stature accorded the women scientists in Alaska's ARS unit

#6

Discrimination in Support of Promotions

Support of the research leader is critical when a scientist is being considered for promotion through the RPE system. The RPE system is the only means of promotion available to ARS scientists and is only accessible to GS 12 scientists every three years. I was denied promotion to GS 13 (December 2007), without explanation, after my supervisor, Alberto Pantoja, verbally admitted that he had failed to support me in his discussion with the RPES in-depth reviewer. I filed a series of timely grievances asking for specific reasons why I was not promoted and asking for reevaluation of my case, but no relief was granted. Instead, a training to explain the RPE System was scheduled for SARU on 3 September 2008 by Eric Jang (ARS Tropical Plant Pests Research Unit in Hilo Hawaii) during which he noted that the accuracy rate for RPES is approximately 70%, (i.e. one out of every three ARS research scientists is judged incorrectly by the panel members, without effective recourse for correcting these career-damaging errors). Statistical evidence within the ARS suggests that female scientists are not recruited, promoted and/or retained at the same rate as male scientists. Since RPES is not based on any defined criteria, (e.g. specific number of publications required for promotion, impact of research as reflected through the number of citations, etc...), it seems clear that the ARS's "secret" RPES panels represent a vehicle for perpetuating the discrimination against women within the agency. Of note, there is an entire section in the RPES case write-up dedicated to supervisory duties. I was inexplicably rated low in the supervisory category of the RPES evaluation in 2004, as were the other women scientists in their RPES results, which directly correlates with the "Discrimination in Supervisory Status" claim listed above.

There is documentation of these events and there can be no genuine issue of material fact concerning the secretive nature of the RPE System, the lack of accountability for RPES judgments, and the inaccessibility of meaningful recourse for women scientists who are targeted for discrimination by their male supervisors

#7

Discrimination Against Women by Denying Mentoring

Mentoring by the research leader is a valuable career advantage for scientists hoping to be promoted within the ARS system. The other women of SARU and I were denied all forms of mentoring, predominantly due to the research leader's lack of expertise in our scientific fields, but also due to the research leader's propensity to mentor only male scientists. For example, career opportunities such as serving as acting research leader were only accorded the men, not the women scientists (until 100% of the women scientists had filed formal EEO complaints with USDA). The ARS Performance Appraisal System (P&P 418.3) requires "objective measures" when establishing performance plans for scientists. Outlining ways to exceed in performance is an important form of mentoring that takes place between a supervisor and an employee. My attempts to receive advice and guidance from the research leader (so that I could exceed on my annual performance rating) were continually rebuffed, resulting in a lower appraisal than I believed was warranted, whereas male scientists at SARU who were lavished with mentoring scored higher on their appraisals. Additionally, women scientists were expected to conceive, design and implement their research programs entirely by themselves, as would be expected of a GS 14 or 15 ARS scientist, but not required at the GS 12 level. It wasn't until I had been denied promotion (after my critical first three years of program building had already elapsed) that PWA administrators allowed me access to a mentor in my field.

There is documentation of these events and there can be no genuine issue of material fact concerning the lack of qualified leadership and mentoring resources available to me and the other women scientists in SARU

#8

Discrimination during Conflict Resolution Training

During Conflict Resolution training (January 2008) the research leader, Alberto Pantoja, treated me and the other women research scientists in a manner that was clearly different from how he treated the men when he scheduled each woman to speak first in her project group, and then verbally harassed us during questioning. There were numerous witnesses to this discriminatory event against the women scientists in SARU, including an ARS facilitator, Jeff Schmitt, who had allegedly received training in conflict resolution.

There is ample documentation of this event and there can be no genuine issue of material fact concerning the discriminatory misconduct that occurred

#9

Reprisal Discrimination by ARS Administrators

Cindy Bower
26 January 2009

On 27 December 2007 I filed a timely grievance with Andrew Hammond, Associate Area Director for the Pacific West Area, listing discriminatory acts by the research leader, Alberto Pantoja, against the women scientists in SARU, (e.g. career-building opportunities were not equally apportioned, committee assignments were not equitable, etc...). I also noted that SARU had been transformed into an extremely hostile work environment for women through the management style of the research leader. I requested that the EEO-unfriendly ARS leadership decisions that had so severely damaged my career be remedied. Because these acts of employment discrimination at SARU were in violation of title VII of the Civil Rights Act, I sent copies of my grievance to the following ARS administrative and Human Resources personnel:

- Edward Knipling (ARS Administrator)
- Antoinette Betschart (ARS Associate Administrator)
- Karen Brownell (Director of Human Resources)
- Dwayne Buxton (ARS Pacific West Area Director)

29 C.F.R §1614.102 (a) requires the ARS to identify and eliminate discriminatory practices and policies. However, the aforementioned ARS personnel knowingly allowed the discrimination to continue.

From January to May 2008, I subsequently filed five more grievances outlining the discrimination against women research scientists at SARU. Each time I received ARS responses discounting my claims and trivializing the severity of the situation. By this time, more ARS administrative personnel had been informed of the discrimination taking place at SARU, yet no meaningful action was taken by any of them:

- Robert Matteri (Assistant Area Director, ARS Pacific West Area)
- Molly Kretsch (Acting Associate Area Director, ARS Pacific West Area)
- James Bradley (ARS Deputy Administrator)

ARS's refusal to correct these EEO violations have resulted in tangible adverse employment actions that negatively impacted my career, and therefore qualify as retaliation. This is a direct violation of 29 C.F.R. §1614.101(b): "No person shall be subject to retaliation for opposing any practice made unlawful by title VII of the Civil Rights Act (title VII)". Additionally, I received a written threat of reprisal in response to one of my grievances, helping me to recognize that my job was vulnerable if I continued to oppose discrimination within the ARS.

Summary

1. The research leader of SARU discriminated against me and the other women scientists in the unit (proven by ample evidence of disparate treatment)
2. I engaged in a protected activity (grievance writing to alert the agency)

3. My timely grievances were not taken seriously by ARS administrative personnel, (who refused to eliminate the discriminatory practices that affected only women).
4. I filed five more grievances and numerous communiqués with ARS administrators but the discrimination against women in SARU was only addressed AFTER formal EEO complaints were filed with USDA, (i.e. I was subjected to retaliatory adverse treatment by ARS administrators when they willfully refused to eliminate discriminatory practices as required by 29 C.F.R §1614.102 (a) in response to my requests)
5. Eventually I was successfully deterred from ever filing any more grievances with the ARS administration
6. The false statements and lack of good faith included in ARS responses to my grievances confirm that the adverse actions on my career, health and well-being were causally linked to the protected activity

#10

Reprisal Discrimination by Research Leader

I was subjected to reprisal discrimination (by Rating and Approving Officials who both knew they were listed by name on my Formal EEO complaint) resulting in a lower-than-warranted annual performance appraisal on November 5th 2008. The research leader, Alberto Pantoja, failed to provide “objective measures” (in accordance with the ARS Performance Appraisal System, P&P 418.3) when preparing my performance plan. I twice asked the research leader, (in writing) for advice and guidance for exceeding on my annual performance rating. The informal EEO counselor made a similar request on my behalf as part of her Informal Resolution Attempt (ARS Case # 08-40). However, the research leader refused to provide information and ultimately discounted my extra work in two elements, resulting in a lower appraisal than was warranted. This form of reprisal has had both professional stature and monetary impacts on my career.

Summary

1. The research leader of SARU discriminated against me and the other women scientists in the unit (proven by ample evidence of disparate treatment)
 2. I engaged in a protected activity (grievance writing and EEO complaints)
 3. The research leader and ARS administrative personnel were aware that I had participated in a protected activity (since many of them were listed by name on the EEO complaint)
 4. During my annual appraisal the research leader rated me lower than was warranted (which constitutes an adverse action)
 5. The adverse action was causally linked to the protected activity
-

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)

Cynthia Bower
EEOC Appeal No. 0120120069

Exhibit D

Complainant's email to her lawyer, in which she noted that USDA repeatedly disrespected women scientists by omitting their proper title ("Dr."), whereas male scientists were accorded their title.

CK B <ckbower319@gmail.com>

 **Rebuttal to Agency’s Summary Judgment**

3 messages

CK Bower <ckbower319@gmail.com>

Sun, Aug 23, 2009 at 2:21 AM

To: Jjosephson <Jjosephson@aol.com>

Bcc: bower <bower@sfos.uaf.edu>, ckbower <ckbower@cmug.com>

Joe,

I received the copy of Hardin’s Summary Judgment motion sent by your office, thanks. I’ve listed a few comments below. I’ve also included a timeline of my administrative grievances (to prove that my EEO complaint was timely). If you ever want to see any of the grievances I’ll send them. Let me know what else you need to defeat the Agency’s ridiculous motion.

Cindy

Page 1

Note that the EEOC number and Agency grievance number are both wrong. They should be EEOC No. 551-2009-00074x and Agency no. ARS-2008-00696.

Note also that I am not given the title “Dr.”, yet male PhDs within the document are accorded the title (e.g. Dr. Pantoja, Dr. Matteri, and Dr. Hammond on page 2, and even Dr. Wu the post-doc on page 12). Dr. Tara McHugh (a female research leader) was also referred to without a title (page 10). Considering that we are currently in the EEOC process, I find this form of devaluation by opposing counsel especially offensive.

Page 2

There are several errors in the document: line 2 should have “Subarctic”, not just Arctic; Line 6 should list Matteri as “Associate” Area Director).

Their statement about RGEF criteria is false, since there are no objective measurable criteria in RGEF, nor are there objective measurable criteria for determining a scientist’s impact and stature. The “person on the job” is also subjectively determined. The h-index that I mentioned during my deposition is a reasonably objective measure, but it is not used by ARS. My h-index is more than double that of Alberto’s, yet the subjectivity of the current ARS rating system allows him to be assigned the rank of GS-15, while I am supposedly “properly graded” as a GS 12.

Page 3

They mentioned that my formal EEO complaint was accepted and referred for investigation on November 17, 2008. Unfortunately, they neglected to mention that the claims were generated by USDA as “fragmented claims”. They also failed to note that I sent a clarification to USDA’s Kenneth Baisden (and the investigator, Martha Tsutsui) on

December 6th, 2008. However, USDA failed to complete its investigation in a timely manner as required by 29 CFR 1614.08(e), so I advanced the case to EEOC. In retaliation, USDA omitted my letter of clarification from the ROI documents forwarded to EEOC.

Due to the Agency’s decision to fragment my claims, there is no way the EEOC judge should dismiss this complaint, since according to the EEOC’s MD 110 (Chapter 7: Dismissal of Complaint by Administrative Judge), “Before dismissing a complaint, the Administrative Judge must ensure that the claim has not been fragmented inappropriately into more than one complaint.”

Page 4

At the bottom of the page the argument is raised that my claims were not timely. This is false (and I’ve included a timeline with this email detailing the timing of the administrative grievances that eventually resulted in my EEO complaint). I exhausted the ARS administrative grievance process before moving my complaints to the EEO venue. The Final Agency Decision was sent by ARS Administrator Dr. Edward Knipling on 27 May 2008. That is the date I used to file my EEO complaint since it encompassed the first set of grievances starting in 2007.

It’s also false that I failed to prove claims of disparate treatment. This isn’t a prima facie case. It’s material evidence! Both sides have the documents proving that no women were allowed to serve as acting RL, but the men were. Both sides can easily determine that serving had nothing to do with GS level (since Lori was a GS 13 when Dennis Fielding was serving as acting RL while only a GS 12), nor time at location (since Lori and I both arrived in SARU prior to Steve Seefeldt, who routinely served as acting RL). Besides, the USDA conveniently ignored my ten claims of discrimination and only addressed their fragmented claims.

Page 6

If I didn’t prove my disparate treatment claims it’s because the Agency did not cooperate in the Discovery process as required by 29 CFR 1614.109(f)(3). I asked for evidence that the Agency (acting in bad faith) refused to provide.

Page 10

The first line falsely implies that the Agency has policy guidelines for RPES, yet it failed to ever produce any objective, measurable criteria. The process is subjective and the Agency acted in bad faith when it refused to respond to my discovery requests. The rest of the page is filled with false statements. Alberto didn’t provide mentoring for me. He not only didn’t provide a mentor until after I’d lost the promotion but he actively prevented me from having one when Dr. McHugh was suggested as a mentor in 2006.

Pages 11, 12

These pages are also saturated with false or deceptive statements.

Page 13

Hardin's arguments are insulting. He fails to mention that 100% of the women research scientists (and none of the men) were targeted, which clearly establishes these incidents as discrimination. Additionally, the case law he cites is inappropriate.

 **Timeline_Grievances.pdf**
52K

Jjosephson@aol.com <Jjosephson@aol.com>
To: ckbower319@gmail.com

Mon, Aug 24, 2009 at 9:25 AM

Cindi: thanks ever so much for the e-mail and the information and suggestions you provide. It is extremely helpful. I am planning to respond to the motion on or before September 10, and will provide you with a draft before finalizing. Best regards. Joe

CK Bower <ckbower319@gmail.com>
To: ckbower <ckbower@cmug.com>

Tue, Sep 7, 2010 at 6:15 PM

[Quoted text hidden]

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, "facit approval") of their federal employer, the USDA Agricultural Research Service (ARS)

Cynthia Bower
EEOC Appeal No. 0120120069

Exhibit E

Email exchange in which ARS administrative and EEO personnel inform Complainant that a final EEOC ruling is required before any action can be taken to stop the activities of a supervisor who is engaging in harassment, discrimination, and retaliation against women.

The following email exchange is critical since it demonstrates that my direct ARS chain-of-command, and also the ARS Equal Employment Opportunity office, both believed that a final EEOC ruling is required before any action can be taken against a supervisor who has harassed, discriminated, and retaliated against all the women research scientists in his unit:

- 1) On May 4th, 2010, the ARS Pacific West Area Director Andrew Hammond was (again) made aware of the continuing discrimination and harassment being perpetrated against me in Alaska's ARS unit;
- 2) Dr. Hammond's response (that he could do nothing until EEOC had ruled) directly contradicted ARS's Policies and Procedures Manual 461-5 (Misconduct, Discipline, and Adverse Action), which states that "Managers and supervisors are required to contact the LERB to discuss the appropriate action after receiving a complaint of harassment. Managers or supervisors who fail to take appropriate action on such complaints will also be subject to disciplinary action, for failure to perform their managerial or supervisory responsibilities."
- 3) Dr. Hammond has never stopped the discrimination, retaliation and harassment in Alaska, and in this instance he merely referred me to ARS's EEO Director Don McLellan, and they both continued to do nothing to improve my situation;
- 4) A reasonable person would be justified in terminating employment with an agency that accepts multi-year discrimination, retaliation, and harassment of women as a legitimate part of the EEO complaint process.

From: "Cindy Bower" <Cindy.Bower@ARS.USDA.GOV>
Subject: FW: Update from Fairbanks Alaska
Date: Wed, May 5, 2010 5:15 pm
To: "McLellan, Don" <Don.McLellan@ARS.USDA.GOV>
Cc: "Hammond, Andrew" <Andrew.Hammond@ARS.USDA.GOV>,"Matteri, Robert" <Robert.Matteri@ARS.USDA.GOV>,"Whalen, Maureen" <Maureen.Whalen@ARS.USDA.GOV>,"Knipling, Edward" <Edward.Knipling@ARS.USDA.GOV>

Dr. McLellan,

I received Dr. Hammond's response, in which he appears to pass to you all responsibility for the continued abuse from my supervisor. As we are both aware, EEOC complaints require years (years!!!) to resolve. I am appalled that ARS would knowingly allow retaliation against an EEOC complainant to occur for as many years as it takes for the EEOC to handle its caseload.

It's unfortunate that Dr. Hammond's statements, while possibly reflecting ³written² EEO policy, do not accurately represent the reality of ARS EEO complaints.

My request to you: Can you please reassign me to a non-discriminating supervisor who does not have a proven record of abusing female research scientists? (And just for the record, given all the factual evidence associated with this case, I should NEVER have had to ask for something that should have so obviously been provided from the beginning).

I wish I could tell prospective ARS employees that the agency follows EEO policies, but at the moment I have absolutely no evidence to support that statement as even being remotely true. Please advise me on how to proceed in such an unlawful discriminatory, retaliatory environment. Thank you.

Cindy

Cindy Bower, Ph.D.
USDA Agricultural Research Service
PO Box 757200
Fairbanks, AK 99775-7200
Phone: (907) 474-6732
Email: Cindy.Bower@ars.usda.gov

----- Forwarded Message

From: "Hammond, Andrew" <Andrew.Hammond@ARS.USDA.GOV>
Date: Wed, 5 May 2010 17:26:47 -0600
To: "Bower, Cindy" <Cindy.Bower@ars.usda.gov>
Cc: "McLellan, Don" <Don.McLellan@ARS.USDA.GOV>
Subject: RE: Update from Fairbanks Alaska

Dr. Bower:

As stated in the Agency's Equal Employment Opportunity Policy Statement, discrimination of any kind will not be tolerated. However, once a formal complaint is filed, the Agency must develop a complete and impartial factual record. The EEO investigation will include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complaint's group (e.g., race, gender, age, etc.) compared

with others not in this group, and any employment policies and practices which may constitute discrimination.

At this stage, it is my understanding that a decision has not yet been issued by EEOC, which will determine what course of action the Agency will take. All such complaints are serious issues for ARS; however, we must allow the complaint process to work through all the appropriate channels to ensure a fair and impartial outcome for all parties involved. As you are aware, the EEO complaint process is managed by the Office of Outreach, Diversity and Equal Opportunity (ODEO). If you or your legal representative have questions and/or concerns regarding the status of your complaint or the EEO process in general, please contact ODEO directly.

Below is the contact information for ODEO:

Donald L. McLellan, Ph.D.

Director, Office of Outreach, Diversity, & Equal Opportunity

United States Department of Agriculture

Agricultural Research Service

1400 Independence Avenue, SW, RM. 3913

Washington, D.C. 20250-0304

Voice: (202) 720-6161/Fax: (202) 690-0088

don.mclellan@ars.usda.gov <<mailto:don.mclellan@ars.usda.gov>>

ANDREW C. HAMMOND

Area Director

USDA, ARS, PWA

800 Buchanan St.

Albany, CA 94710-1105

Voice: (510) 559-6060

Fax: (510) 559-5779

Cell: (510) 684-6450

E-mail: andrew.hammond@ars.usda.gov <<mailto:andrew.hammond@ars.usda.gov>>

From: Bower, Cindy

Sent: Tuesday, May 04, 2010 1:22 PM

To: Hammond, Andrew

Cc: Matteri, Robert; Whalen, Maureen; Bradley, James; McLellan, Don;

Knipling, Edward

Subject: Update from Fairbanks Alaska

Dr. Hammond,

This email is to ensure that you are fully aware of the current situation in

ARS's Subarctic Agricultural Research Unit (SARU). I am now the only female research scientist under Dr. Pantoja's supervision. Although two women SYs are no longer with SARU, there still are three pending EEOC complaints against him, (one from every female research scientist in ARS-Alaska that he ever supervised).

The PWA's steadfast unwillingness to provide me with a workplace (and supervisor) free from unlawful discrimination and retaliation suggests disapproval of Agency EEO policies as well as disagreement with U.S. civil rights laws. If I've somehow misinterpreted PWA's actions, please feel free to provide clarification that better explains the evidence of discrimination and retaliation that I have been presenting to you since 2007.

Thank you.

—
Cindy

Cindy Bower, Ph.D.

USDA Agricultural Research Service

PO Box 757200

Fairbanks, AK 99775-7200

Phone: (907) 474-6732

Email: Cindy.Bower@ars.usda.gov

----- End of Forwarded Message

Attachments:

untitled-[2]
Size: 9.5 k
Type: text/html

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, "facit approval") of their federal employer, the USDA Agricultural Research Service (ARS)

Cynthia Bower
EEOC Appeal No. 0120120069

Exhibit F

These documents demonstrate that Complainant was a highly successful research scientist in the ARS, and that her “voluntary resignation” was not caused by the Quality or Quantity of her work.

- Performance Appraisals and Accomplishment Statements showing “Superior” work quality (pages 2-7)
- Emails to her supervisor following appraisals and noting his conflict of interest (pages 8-14)

**United States Department of Agriculture
Performance Appraisal**

1 Social Security No.	2 Position Number 1PA030	3 Pay Plan GS	4 Occup. Series 1382
-----------------------	-----------------------------	------------------	-------------------------

5 Name (Last, First, Middle Initial) BOWER, CYNTHIA K.		6 Grade/Step or Pay Level 12/05	7 Appraisal Period From 01/01/2008 To 09/30/2008	
8 Official Position Title RESEARCH FOOD TECHNOLOGIST		9 Organization Structure Code 03 50 53 5341 05 00 00 00		
10 Duty Station 02-0770-090 FAIRBANKS, AK	11 Funding Unit	12 Agency Use	13 NFC Use	

Instructions

Blocks 1 through 10, completed by NFC, should be reviewed and, if necessary, corrected.
 Block 11. Enter funding unit number.
 Block 14. Enter brief description of performance elements.
 Block 15A. Check performance elements identified as critical.
 Blocks 15B, 15C, 15D. Rate actual performance by entering 2 for critical elements and 1 for non-critical elements in appropriate column.

Blocks 15E, 15F, 15G. Enter total of each column.
 Block 15H. Enter total from 15E, 15F, and 15G.
 Block 16A. Check off the correct summary rating described in decisions table (16B).
 Blocks 17 through 22. Self-explanatory.

14 Performance Elements	15A Critical Element	15B Exceeds Fully Successful	15C Meets Fully Successful	15D Does Not Meet Fully Successful
1) Conceive, plans and conducts research for CRIS 5341-31410-003-00D	✓	2		
2) Reports research results	✓	2		
3) Resource management	✓		2	
4) Represents agency; program development; personal development			1	
5)				
6)				
7)				
8)				
9)				
10)				

16B Decision Table (check off Summary Rating in block 16A) Rating of Outstanding if 15E equals 15H. Rating of Unacceptable if any critical element is rated in 15D. Rating of Superior if no element is rated in 15D; 15F is greater than zero; and 15E is greater than 15F. Rating of Marginal if 15G is greater than 15E, and no critical element is rated in 15D. Rating of Fully Successful if none of the above apply.	15E Exceeds 4	15F Meets 3	15G Does Not Meet
	15H Enter total 15E + 15F + 15G = 15H 7		
	16A Summary Rating (See Decision Table in 16B)		

*PA
P225
12/19/08*

17 Employee - Standards of Conduct and Ethical Responsibilities (Check off appropriate boxes)			
a I have a copy of the Governmentwide standards of ethical conduct and any USDA and agency supplemental regulations governing conduct.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	
b I attended the required annual ethics training.	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	

18 Employee's signature <i>Cynthia Bower</i>	Date 11/5/08	If employee did not sign, state reason.
---	-----------------	---

19 Supervisor's Signature <i>[Signature]</i>	Date 11-XI-08	20 Reviewer's Signature <i>[Signature]</i>	Date 10/27/08
---	------------------	---	------------------

21 Approving Official's or Funding Unit Manager's Signature (optional)	Date
--	------

Original - NFC Processing Copy

This form was electronically produced by USDA/ARS/IOCC/ADB. ORIGINAL (10/03)



**United States Department of Agriculture
Performance Appraisal**

1 Social Security No.	2 Position Number 1PA030	3 Pay Plan GS	4 Occup. Series 1382
-----------------------	-----------------------------	------------------	-------------------------

5 Name (Last, First, Middle Initial) BOWER, CYNTHIA K.		6 Grade/Step or Pay Level 12/05	7 Appraisal Period From 10/01/2008 To 09/30/2009	
8 Official Position Title RESEARCH FOOD TECHNOLOGIST		9 Organization Structure Code 03 50 53 5341 05 00 00 00		
10 Duty Station 02-0770-090 FAIRBANKS, AK	11 Funding Unit	12 Agency Use	13 NFC Use	

Instructions

Blocks 1 through 10, completed by NFC, should be reviewed and, if necessary, corrected.
 Block 11. Enter funding unit number.
 Block 14. Enter brief description of performance elements.
 Block 15A. Check performance elements identified as critical.
 Blocks 15B, 15C, 15D. Rate actual performance by entering 2 for critical elements and 1 for non-critical elements in appropriate column.

Blocks 15E, 15F, 15G. Enter total of each column.
 Block 15H. Enter total from 15E, 15F, and 15G.
 Block 16A. Check off the correct summary rating described in decisions table (16B).
 Blocks 17 through 22. Self-explanatory.

14 Performance Elements	15A Critical Element	15B Exceeds Fully Successful	15C Meets Fully Successful	15D Does Not Meet Fully Successful
1) Conceives, plans and conducts research for CRIS 5341-31410-003-00D	✓	2		
2) Reports research results	✓	2		
3) Resource management	✓		2	
4) Represents agency; program development; personal development		1		
5)				
6)				
7)				
8)				
9)				
10)				

16B Decision Table (check off Summary Rating in block 16A) Rating of Outstanding if 15E equals 15H. Rating of Unacceptable if any critical element is rated in 15D. Rating of Superior if no element is rated in 15D; 15F is greater than zero; and 15E is greater than 15F. Rating of Marginal if 15G is greater than 15E, and no critical element is rated in 15D. Rating of Fully Successful if none of the above apply.	15E Exceeds 5	15F Meets 2	15G Does Not Meet 0
	15H Enter total 15E + 15F + 15G = 15H		15H

17 Employee - Standards of Conduct and Ethical Responsibilities (Check off appropriate boxes)

a I have a copy of the Governmentwide standards of ethical conduct and any USDA and agency supplemental regulations governing conduct. YES NO

b I attended the required annual ethics training. YES NO

18 Employee's signature *Cynthia Bower* Date *11/12/09* If employee did not sign, state reason.

(Instructions for resolutions of disputes are on the reverse of employee copy.)

16A Summary Rating (See Decision Table in 16B)

Outstanding
 Superior
 Fully Successful
 Marginal
 Unacceptable

19 Supervisor's Signature *[Signature]* Date *12-1-09*

20 Reviewer's Signature *[Signature]* Date *10/29/09*

21 Approving Official's or Funding Unit Manager's Signature (optional) _____ Date _____

Original - NFC Processing Copy

ELEMENT 1: CONCEIVES, PLANS, AND CONDUCTS RESEARCH

Subobjective 1.8 *Develop high-quality, value-added products from salmon*

- 1.) Concluded study on gasification of salmon processing waste with Oklahoma collaborators. Research was presented nationally (AOCS, May 2008), and a manuscript is in review. This project laid the groundwork for introducing an energy-generating technology into rural Alaska.
- 2.) Initiated gasification of salmon processing waste with Alaska collaborators. This research optimizes conditions of pyrolysis for heating greenhouses in rural Alaska, thereby allowing remote fishing villages access to inexpensive greenhouse foods.
- 3.) Evaluated four new drying methods for discarded pollock skins. Fish skins are valuable for gelatin production, but utilizing Alaska's supply is currently not cost-effective due to transportation expenses. Collaboration with PFRU (ARS, Albany, CA) was established for gelatin gel and film testing.

Subobjective 2.4 *Investigate new technologies for stabilization of by-products*

- 1.) Completed a study that provides several successful methods for preserving high protein fish byproducts through ensilage and fermentation. The research was presented nationally (AOCS, May 2008), and a manuscript was accepted for publication.

2.4 a: *Examine smoke-processing as a technology to reduce salmon oil oxidation*

- 1.) Completed an innovative project that protects PUFA-rich salmon oil from oxidation. This oil preservation technology enables room temperature transportation of oils without addition of costly antioxidants. Research was presented nationally (IFT, June 2008), and a manuscript is in review.
- 2.) Spoke with Office of Technology Transfer (PWA Albany, CA) concerning applications for smoked oils. Pursuing possible (non-funded) collaboration with food science professor and her culinary student to develop food products.

2.4 b: *Characterize smoked salmon tissue for stable silage*

- 1.) Completed data collection on stability of smoked salmon tissue. This material has a naturally low pH and thus does not require extensive acidification for preservation. An abstract was submitted to Aquaculture America's annual meeting, (Feb, 2009) and a manuscript is currently in preparation.
- 2.) Initiated smoked silage production (with and without lactic acid bacteria) for evaluation as antioxidants and palatability enhancers in aquaculture feeding trials.
- 3.) Successfully produced a high-protein smoked salmon "cracker" that is shelf-stable, PUFA-rich, contains vitamin E and has antioxidant activity.

2.4 c: *Collaborate with FITC on accelerated fish compost project*

- 1.) Continued salmon composting project (Marine Compost Accelerated for Coastal Climates) with co-investigators (University of Alaska Fairbanks in Kodiak, AK).
- 2.) Invited to collaborate on "Implementation and Evaluation of Carbon Sources for Fish Waste Composting" with co-investigators from University of Alaska Fairbanks.

2.4 d: *Evaluate agricultural discards as a carbohydrate source for fermenting fish*

- 1.) Completed study that evaluated potatoes as the sole carbohydrate source for lactic acid bacteria fermentation of salmon byproducts. Traditional sources of fermentable sugars (cane and beets) are not grown in Alaska. Adapting the process to local agricultural wastes will make fermentation of fish cost-effective. Research was presented at AAAS (Sep, 2008) and a manuscript is in preparation.



- 2.) Completed data collection for a second potato-fish study to evaluate the utility of smoking salmon byproducts to destroy enzyme activity prior to introducing potatoes and lactic acid bacteria. A manuscript is in preparation.

ELEMENT 2: REPORTS RESEARCH RESULTS

Manuscripts Published or Accepted in 2008

- 1.) Bower CK, and Hietala KA. 2008. Acidification methods for stabilization and storage of salmon by-products. J. Aquatic Food Product Tech. *In press*
- 2.) Bechtel PJ, Morey A, Oliveira ACM, Wu TH, Plante S, and Bower CK. 2008. Chemical and nutritional properties of Pacific Ocean Perch (*Sebastes alutus*) whole fish and by-products. J. Food Processing and Preservation (*accepted 2007*)

Manuscripts Submitted for Publication in 2008

- 1.) Bower CK, Hietala KA., Oliveira, A.C.M. and Wu, T.H. Stabilizing oils from smoked pink salmon (*Oncorhynchus gorbuscha*). J. Food Sci.
- 2.) Bower CK, Malemute, C.M., and Bechtel, P.J. Changes in endogenous protease activity prior to spawning in Pink Salmon (*Oncorhynchus gorbuscha*) byproducts. J. Aquatic Food Product Tech.
- 3.) Wu TH, Bechtel PJ, and Bower CK. 2008. Effects of storage time and temperature on the quality of raw and processed fish meal from pink salmon (*Oncorhynchus gorbuscha*) heads and viscera. J. Animal Feed Sci. and Technol.
- 4.) Rowland SL, Bower CK, Patil KN, Mireles DeWitt CA. Updraft gasification of salmon processing waste. J Food Sci.
- 5.) Avena-Bustillos RJ, McHugh TH, Pan Z, Olson DA, Olsen CW, Chiou B, Bower CK, Bechtel PJ, and Pantoja A. Dehydration of Alaskan pollock skins for ultrasound gelatin extraction. J. Food Engineering

ELEMENT 3: RESOURCE MANAGEMENT

- 1, 2, 3, 4.) Collaborated with local safety committee, promoted efficient use of resources, met with RL monthly for verbal update until activity rescinded (5/15/08), and kept a written acting delegation of authority on file when away from duty station
- 5.) Continuing fourth year as ARS liaison to UAF Safety Committee
- 6.) Demonstrated a superior awareness of EO/CR policies and responsibilities
- 7.) Actively attempted to discourage unlawful discrimination within ARS

ELEMENT 4: REPRESENTS PROGRAM & PERSONAL DEVELOPMENT

- 1, 2.) Collaborated with WRRC researchers (PFRU: pollock skin desiccation) and made four presentations to scientific peers (Aquaculture America, American Oil Chemists' Society, Institute of Food Technologists and AAAS-Arctic Division) and two to customer groups (ComFish and UAF Food Safety/Food Preservation class)
- 3.) Reviewed for J Aquatic Food Product Tech, J Food Sci., and Food Hydrocolloids
- 4.) Independently completed two hours of safety videos from SARU safety video library, and regularly attended SARU's (optional) "brown-bag" safety trainings
- 5.) In response to workplace conflict within SARU, I engaged in a self-study program (27.5 credit hours in AgLearn), focusing on Communication (14 hrs), Leadership (8.5 hrs) and Teambuilding (5 hrs). This was in addition to the unit-wide required training (7 hrs) in EEO, Ethics, and Conflict Resolution.



ELEMENT 1: CONCEIVES, PLANS, AND CONDUCTS RESEARCH

Milestone 1.8 Develop high-quality, value-added products from salmon

- 1.) Gasification of salmon processing waste (SCA 58-5341-8-411).
This research optimizes conditions of pyrolysis for heating greenhouses, to allow remote Alaskan fishing villages access to inexpensively grown foods.
- 2.) Collaboration with University of Maine (NFCA 58-5341-9-164).
This project utilizes antioxidant-rich, smoke-processed salmon oils (developed in my lab) for developing nutritious new food products.
- 3.) Initiated two new NFCAs for on-site stabilization of salmon processing wastes using lactic acid bacterial fermentation techniques (NFCA No. 58-5341-9-370N - Kenai River Seafood, and NFCA No. 58-5341-9-371N – Alaska General Seafoods).

Milestone 2.4 Investigate new technologies for stabilization of by-products

2.4 a: Evaluate desiccation methods for stabilizing pollock skins during storage

Fish skins were stabilized to increase cost effectiveness of transport prior to gelatin production. Collaborated with PFRU (ARS, Albany, CA) for gelatin gel and film testing. Research presented (Log # 235202), and manuscript written (Log #246751).

2.4 b: Characterize smoked salmon tissue for stable silage

- 1.) Smoked salmon tissue was stabilized after oil extraction for use in foods (e.g. PUFA-rich, high-protein crackers with Vit E and antioxidant activity) and aquaculture feeds. Research was presented nationally (Log #229756, #235061), internationally (Log #239757) and a manuscript was written (Log # 246753).
- 2.) Local agricultural wastes were used to promote lactic acid bacteria fermentation of salmon byproducts. Research was presented nationally (Log # 235063) and a manuscript (Log #246611) and proceedings (Log # 237469) were written.
- 3.) Silages prepared from smoked pink salmon, with and without lactic acid bacteria, were evaluated as growth stimulants in aquaculture feeds in collaboration with Oceanic Institute (Hawaii).

2.4 c: Continue collaborations with fish compost project

Continued salmon composting project (Marine Compost Accelerated for Coastal Climates) with co-investigators (University of Alaska Fairbanks in Kodiak, AK). Research was presented (Log #235980 and 242379) and a proceedings was written.

CRIS 5-yr plan: Actively participated in new CRIS write-up (2009-2014), which was approved in OSQR with a project score among the highest in its panel group (according to Aquaculture NPL, Jeff Silverstein)

ELEMENT 2: REPORTS RESEARCH RESULTS

Manuscripts Published or Accepted in 2009

- 1) Bower CK, Hietala KA., Oliveira, ACM. & Wu, TH. 2009. Stabilizing oils from smoked pink salmon (*Oncorhynchus gorboscha*). J. Food Sci. 74(3):C248-C257 [Log # 232357]
- 2) Bower CK, Hietala KA. 2008. Acidification methods for stabilization and storage of salmon by-products. J. Aquatic Food Product Technol. 17:459-478. [Log # 218749]
- 3) Bower CK, Malemute, CM. & Bechtel, PJ. 2010. Changes in endogenous protease activity prior to spawning in Pink Salmon (*Oncorhynchus gorboscha*) byproducts. J. Food Biochem. *In press* [Log # 232265]
- 4) Wu TH, Bechtel PJ, & Bower CK. 2008. Effects of delayed processing of pink salmon



(*Oncorhynchus gorbuscha*) byproducts on fishmeal quality. J. Aquatic Food Product Technology. *In press* [Log # 220728]

- 5) Rowland SL, Bower CK, Patil KN, & Mireles-DeWitt CA. 2010. Updraft gasification of salmon processing waste. J Food Sci. *In press* [Log # 232358]
- 6) Bower CK, Hietala, KA & DeLaca TC. 2010. Stabilizing pink salmon (*Oncorhynchus gorbuscha*) byproducts through modified silage processes. In: Proceedings of a Sustainable Future: Fish Processing Byproducts Conference, Portland, OR. 25-26th Feb 2009. *in press* [Log # 237469]

Manuscripts to be submitted in 2009

- 1) Bower CK, Avena-Bustillos RJ, Hietala KA, Bilbao-Sainz C, Olsen CW, & McHugh TH Dehydration of pollock skins prior to gelatin production. J. Food Sci. (Log #246751)
- 2) Bower CK, & Hietala KA, Stabilizing smoked salmon tissue after extraction of oil. J. Food Sci. (Log #246753)
- 3) Bower CK, Hietala KA & Delaca TC. Fermentation of pink salmon (*Oncorhynchus gorbuscha*) using potatoes as a carbohydrate source. J Food Biochem (Log #246611)

ELEMENT 3: RESOURCE MANAGEMENT

- 1, 2, 3, 4.) Collaborated with safety committee, promoted efficient use of resources, met with RL whenever requested and delegated authority as needed
- 5.) Invited to be a judge for the Association for Women in Science (AWIS) District science fair (March 2009)
- 6.) Continued to discourage unlawful discrimination in an attempt to align the Agency with US laws and EEO regulations
- 7.) Facilitated training and development of supervised employees through (optional) opportunities to assist CRIS research at a level sufficient to justify authorship

ELEMENT 4: REPRESENTS PROGRAM & PERSONAL DEVELOPMENT

- 1.) Completed all required trainings
- 2.) Represented Agency by delivering 6 research presentations to scientific peers (Log # 229756, 232265, 235061, 235063, 235202, 235762) and 3 presentations to customer groups (ComFish in Kodiak, Apr. 2009), Alaska Food Expo (Soldotna, June 2009) and Chena Hot Springs Renewable Energy Fair (Aug 2009).
- 3.) Collaborated with WRRRC researchers [Log # 229756 and Log #246751]
- 4.) Continued Program Development through cooperative research programs (3 NFCA's and 1 SCA) with university partners and stakeholders as a prerequisite for establishing future CRADAs
- 5.) Provided peer-reviewer services for three different journals (J Aquatic Food Products Technol, J Food Sci, and Food Hydrocolloids)
- 6.) Invited as a speaker for Aquaculture America (March 1-5, 2010, San Diego, CA)
- 7.) Continued Personal Development by attending leadership training (May 2009)
- 8.) Invited to be a session moderator during the Pacific Fisheries Technologist's annual meeting in Portland, OR (Feb 23-25)
- 9.) Invited to be a session moderator for the Sustainable Byproducts symposium in Portland, OR (Feb 25-26)



From: "Bower, Cindy" <Cindy.Bower@ARS.USDA.GOV>
Subject: Performance Appraisal
Date: Wed, November 5, 2008 7:18 pm
To: "Pantoja, Alberto" <Alberto.Pantoja@ARS.USDA.GOV>
Cc: "Matteri, Robert" <Robert.Matteri@ARS.USDA.GOV>,"Contento, Janis"
<Janis.Contento@ARS.USDA.GOV>,"McLellan, Don" <Don.McLellan@ARS.USDA.GOV>

Alberto,

This email is to confirm that we met today to discuss my annual Performance Appraisal. I have arrived at the conclusion that communication between us is best conducted through written forums, since you were unable to directly address any of my queries on your first (or second) attempts. Communication is an essential skill in leadership and it has been a source of great frustration that so many of our interactions place the burden of communication on me in order to advance the discussion and achieve understanding (e.g. I must restate concepts in multiple ways, as well as redirect conversations away from tangents and back to the main topic).

In a July 18th email to you, as a follow-up to my mid-year review, I confirmed that I had provided all the information you requested and then had asked for feedback concerning any deficiencies in my performance. You had supplied none. I then had asked for your comments concerning issues that would prevent me from achieving an "Exceeds" rating. You gave no suggestions. Consequently, I am disappointed in the performance appraisal rating you gave me today, specifically Elements 3 and 4.

I believe that my extra accomplishments in Element 3 (Resource Management) are understandable and have clear value to the ARS locally as well as nationally. We simply disagree, so I will not address that issue here. However, it concerns me that my extra accomplishments in Element 4 (Represents Program and Personal Development) did not register as worthwhile (i.e. counting towards a rating of Exceeds). In my 2008 Performance Plan I was required to give one presentation to scientific peers, (I gave four) and one to customer groups, (I gave two). I surmise that these activities are not valued by you or the ARS. I noted that I had reviewed manuscripts for three different journals this year, but you indicated that reviewing manuscripts was part of my assigned duties. (We both checked my performance plan and did not find it, yet you insisted that it was implied in the language that was present.) I also expended great effort (using personal time) to take 27.5 credit hours of AgLearn courses that were directly relevant to our ARS Unit. However, my efforts in this area were also discounted. I then (repeatedly) asked for suggestions concerning how I might exceed in Element 4, and you (repeatedly) responded by giving examples of how I could exceed in Element 1 by contributing to the upcoming OSQR project review process for aquaculture (NP 106). I was eventually successful in having you list two methods for exceeding in Element 4: organize a symposium, or become an editor for a journal. I believe there must be other ways to demonstrate an Exceeds and I am disappointed that you chose to withhold that information from me twice, (July 18th at the mid-year review and again today when I repeated my request).

According to P&P 418.3 (ARS Performance Appraisal System), it is your job to provide "objective measures" for gauging my performance. Objective measures include:

- quality - how well a thing is done
- quantity - how much or how many
- timeliness - how fast or by when
- method - following procedures, policies, technical requirements
- monetary savings in human resources and time

It is my hope that my upcoming performance plan will provide such measures so that the knowledge of how I can exceed Fully Successful will not be a secret that you share only with favored scientists in your Unit.

Finally, it was genuinely disturbing today when you indicated that you saw no conflict of interest in serving as the Rating Official on my performance appraisal (with Dr. Matteri serving as the Reviewing Official), even though I have filed a formal EEO complaint with the USDA listing both you and Dr. Matteri by name. I was also distraught to discover that you had scheduled annual-appraisal appointments to be held today for every female Cat 1 (research) scientist in the unit, even though all the male scientists had received their appraisals (without appointments) several days earlier. Your disparate treatment of the men and women in our unit continues to be a major source of stress for me.

Sincerely,
Cindy

Cindy Bower
Research Food Technologist
USDA Agricultural Research Service
PO Box 757200
Fairbanks, AK 99775-7200
Phone: (907) 474-6732

Attachments:

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From: "Bower, Cindy" <Cindy.Bower@ars.usda.gov>
Subject: Annual Appraisal (Review)
Date: Thu, November 12, 2009 4:57 pm
To: "Pantoja, Alberto" <Alberto.Pantoja@ARS.USDA.GOV>
Cc: "Contento, Janis" <Janis.Contento@ARS.USDA.GOV>

Alberto,

This is to recount our conversation during my annual appraisal with Janis Contento in attendance (11/12/09 at 4:00pm):

- You served as Rating Official and rated me as not exceeding in Element 3.
- You stated that the rating was a direct result of my having violated my technician's performance plan by allowing her to be a co-author on my papers
- I disagreed by pointing out that I was fulfilling Element 3 (a "critical" element) of my own performance plan that states: "Facilitates training and development of supervised employees".
- Since no list describing the limits of "training and development" was provided at our 9/25/09 (08:00am) meeting, I assumed that allowing my technician the "option" of serving as a co-author was not forbidden, as long as I filled out the justification paperwork (which I did).

Naturally, I regard this as retaliation against me for opposing discrimination in this unit.

I also would like to point out (as I have done every year since filing an EEO complaint) that it was a clear case of Conflict of Interest for you (a respondent in my EEO complaint) to serve as the Rating official on my annual appraisal, since retaliation against me would be a predictable outcome.

If you disagree, I welcome an explanations for your actions.

Cindy

Attachments:

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Type:	text/html

Subject: Mid-year Review (23 April 2010)

Date: Friday, April 23, 2010 11:53 AM

From: Bower, Cindy <Cindy.Bower@ars.usda.gov>

To: "Pantoja, Alberto" <Alberto.Pantoja@ARS.USDA.GOV>

Cc: "Contento, Janis" <Janis.Contento@ARS.USDA.GOV>

<<Bower_MidYearReview.pdf>>

Alberto,

To save time at my mid-year review today (Friday, April 23rd at 1:30pm), I have attached an overview of my current accomplishments (Oct 2009 - Apr 2010). Despite the disruption associated with relocating the aquaculture program to Kodiak Island, I believe that I have used my time productively and am on-track to exceed in every element this year. If you do not agree, I hope you'll be prepared to provide suggestions describing how I can exceed in the elements that you feel are being neglected.

I have also included a list of questions, which I hope you will have time to answer today.

See you at 1:30.

Cindy

Cindy Bower, Ph.D.

USDA Agricultural Research Service

PO Box 757200

Fairbanks, AK 99775-7200

Phone: (907) 474-6732

Email: Cindy.Bower@ars.usda.gov <mailto:Cindy.Bower@ars.usda.gov> ,

Element Number 1 - PLANS AND CONDUCTS PERSONAL AND TEAM RESEARCH

➤ Successfully meeting Subobjective 1.3 milestones

(Develop technologies for utilizing seafood-processing byproducts as human food ingredients)

- Bower – Enhancing the strength of fish-skin gelatin without additives, with characterization of physical properties and application to food products
- Avena-Bustillos – physical properties and antibacterial activity of micro-emulsion fish-skin gelatin films
- Chiou – dynamic vapor sorption studies on salmon and pollock gelatin films dried above and below gelation temperature

➤ Successfully meeting Subobjective 2.3 milestones

(Technologies for stabilizing fish-processing wastes for intermediate-term storage)

- Bower –Low temperature stabilization technologies to preserve salmon discards in cool climates, and to utilize the stabilized material as bait or aquaculture feeds

Element Number 2 – REPORTS RESEARCH RESULTS

- Bower –Two peer-reviewed publications are anticipated for ARIS entry by Sept 2010, (i.e. one publication for each CRIS milestone listed above)

Element Number 3 – TECHNOLOGY TRANSFER, ADVISORY & CONSULTING

- Continued food science collaboration (NFCA 58-5341-9-164) with University of Maine professor Denise Skonberg and her culinary student to develop a cheese containing antioxidant-rich smoke-processed salmon oils.
- ComFish (fisheries trade show to demonstrate alternate uses for fish byproducts and seek collaborators from the fishing industry), April 15-17, 2010 in Kodiak, AK.
- Seafood Conference (presenting research to scientific peers), May 10-14, 2010 in Anchorage, AK.

Element Number 4 – PROFESSIONAL COMMUNICATIONS, SUPERVISION & EEO

- Invited to review a NOAA grant proposal
- Continued to review manuscripts for J Food Biochemistry, Food Hydrocolloids, and J Aquatic Food Product Tech.
- Served as a judge for the Association for Women In Science (AWIS), Interior Alaska Science Fair (March 26, 2010)
- Provided pollock skins and served as a resource for a 7th grade student who conducted an experiment for the science fair using fish byproducts

Element Number 5 – RESOURCE, SECURITY, SHEM

- According to the established SHEM committee rotation plan, I will be the SHEM representative from SARU's Kodiak location.

Individual Development Plan

- Two trainings were approved on my IDP. However, at my annual Performance Appraisal I was told that budgetary constraints would prevent me from attending both of the training sessions. Consequently, I selected one (the Federally Employed Women National Training Program) and submitted my SF-182 request on January 4th, 2010. [This training has still not been approved by my supervisor through AgLearn.] Are you planning to approve it?

Questions

- 1) Are you still trying to locate more lab space in Kodiak, or has my space allotment officially been decreased from 200 sq ft to 45 sq ft of benchtop in a shared lab?
 - 2) If I wait until the 2011 ARMPs is approved, will I be able to recruit a tech at a higher GS level?
 - 3) Will my new tech be permanent?
 - 4) Is the Aquaculture budget paying Katie's salary until January 2011? If yes, then I'd like her to continue working for aquaculture (in Fairbanks). She is highly trained and can complete two studies over the summer. Available lab space for her and a few small pieces of equipment has been located at UAF. I submitted this plan on February 12th, but have not yet received a reply to my email.
 - 5) I submitted my future travel requests on February 12th, but I have never received a reply. Can I assume that all travel has been approved?
-

Subject: Mid-year Review (23 April 2010)

Date: Friday, April 23, 2010 2:36 PM

From: Bower, Cindy <Cindy.Bower@ars.usda.gov>

To: "Pantoja, Alberto" <Alberto.Pantoja@ARS.USDA.GOV>

Cc: "Hammond, Andrew" <Andrew.Hammond@ARS.USDA.GOV>, "Matteri, Robert" <Robert.Matteri@ARS.USDA.GOV>, "Whalen, Maureen" <Maureen.Whalen@ARS.USDA.GOV>

Alberto,

This email is to document that we met today (23 April 2010 @1:30) to discuss my mid-year review. I provided you with an overview of my current accomplishments in advance and asked for feedback at our meeting. You provided none.

I also sent you a list of questions (in advance), which I hoped we could discuss. However, your responses were not adequate. For example, you absolutely refused to acknowledge that my actual lab space would be decreasing from 200 sq ft of independent lab in Fairbanks to 45 sq ft of benchtop space in a shared lab in Kodiak. It is unreasonable to believe that this change will not impact my research program.

My future travel requests (submitted to you, as requested on February 12th), were also not adequately addressed. I was told merely to submit them all now with no regard for my travel priorities and no guarantee of approval for any specific request.

I also was not told whether my current technician would continue to draw salary from the Aquaculture program's funding, and therefore continue to work on my research this summer here in Fairbanks. It's true that you are the fundholder and therefore have the authority to reassign her to another program (such as IPM). However, I believe we can both agree that losing my trained technician while waiting for the 2011 ARMPs budget to be approved would be highly detrimental to my research program.

ARS has placed you in a position to severely damage my research program by withholding resources such as space, technical support, and funding. As always, your presence at my mid-year review represents a serious conflict of interest, since I named you as a respondent in all of my (as yet unresolved) EEO complaints. After such an unsuccessful interaction today, I could not in good conscience sign the midyear-review paperwork.

Cindy

Cindy Bower, Ph.D.
USDA Agricultural Research Service
PO Box 757200
Fairbanks, AK 99775-7200
Phone: (907) 474-6732

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)

Cynthia Bower
EEOC Appeal No. 0120120069

Exhibit G

Complainant's employer methodically created working conditions that were so difficult, unpleasant, and intolerable (from discrimination, retaliation, and harassment), that Complainant was forced to resign from the agency as the only means offered to her for stopping the agency's unlawful activities

Exhibit 3

In order to be successful in the USDA Agricultural Research Service, every research scientist needs laboratory space, qualified technical help, and sufficient funding to pursue scientific studies. I started out with each of these resources in 2004. But, by August 2010, all of these essential resources (my laboratory, my technical help, and my research funding), had been decreased, delayed, or denied.

- My laboratory space was decreased (page 2)
- My trained technical help was removed (page 3)
- My authority to spend my research funds was denied (pages 4 – 6)

My employer methodically created working conditions that were so difficult, unpleasant, and intolerable (from discrimination, retaliation, and harassment) that a prudent person of normal sensitivity, exercising ordinary common sense, would leave work.

Cynthia Bower
Appeals Hearing (Docket # B 10 2533)
October 2010

My laboratory space was unfairly decreased

The following is an email I sent to my supervisor (and ARS administrators) documenting that Dr. Pantoja had deliberately decreased my laboratory space from 200 sq ft of independent lab in Fairbanks to 45 sq ft of benchtop space in a shared lab in Kodiak. This change impacted my entire research program.

Subject: Mid-year Review (23 April 2010)
From: "Bower, Cindy" <Cindy.Bower@ars.usda.gov>
Date: Fri, 23 Apr 2010 16:36:38 -0600
To: "Pantoja, Alberto" <Alberto.Pantoja@ars.usda.gov>
CC: "Hammond, Andrew" <Andrew.Hammond@ars.usda.gov>, "Matteri, Robert" <Robert.Matteri@ars.usda.gov>, "Whalen, Maureen" <Maureen.Whalen@ars.usda.gov>

Alberto,

This email is to document that we met today (23 April 2010 @1:30) to discuss my mid-year review. I provided you with an overview of my current accomplishments in advance and asked for feedback at our meeting. You provided none.

I also sent you a list of questions (in advance), which I hoped we could discuss. However, your responses were not adequate. For example, you absolutely refused to acknowledge that my actual lab space would be decreasing from 200 sq ft of independent lab in Fairbanks to 45 sq ft of benchtop space in a shared lab in Kodiak. It is unreasonable to believe that this change will not impact my research program.

My future travel requests (submitted to you, as requested on February 12th), were also not adequately addressed. I was told merely to submit them all now with no regard for my travel priorities and no guarantee of approval for any specific request.

I also was not told whether my current technician would continue to draw salary from the Aquaculture program's funding, and therefore continue to work on my research this summer here in Fairbanks. It's true that you are the fundholder and therefore have the authority to reassign her to another program (such as IPM). However, I believe we can both agree that losing my trained technician while waiting for the 2011 ARMPs budget to be approved would be highly detrimental to my research program.

ARS has placed you in a position to severely damage my research program by withholding resources such as space, technical support, and funding. As always, your presence at my mid-year review represents a serious conflict of interest, since I named you as a respondent in all of my (as yet unresolved) EEO complaints. After such an unsuccessful interaction today, I could not in good conscience sign the midyear-review paperwork.

Cindy

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Fairbanks, AK 99775-7200
Phone: (907) 474-6732
Email: Cindy.Bower@ars.usda.gov

Cynthia Bower
Appeals Hearing (Docket # B 10 2533)
October 2010

My trained technical help was removed

Prior to relocation to Kodiak, I provided technical and administrative supervision for a GS-5 Student and a GS-7 Biological Science Technician (although 20% of the technician's time was diverted from my lab by my supervisor for a non-research collateral duty assignment for the Unit). On June 5th, 2010, all trained technical support was withdrawn by ARS when I was transferred from Fairbanks to Kodiak Island. This was just another demonstration of discrimination by my supervisor, since my co-worker (Peter Bechtel) retained both of his trained, Ph.D.-level laboratory personnel during the transfer. In fact, Dr. Bechtel was allowed to "bend the rules" and extend his post-doc (Ted Wu) for six months beyond the maximum 4-year appointment, to continue writing research results and to assist with equipment set-up in Kodiak. Dr. Bechtel's other Ph.D. employee was hired as a post-doc in Kodiak, to ensure research continuity in his laboratory's new location. However, despite my numerous requests to Dr. Pantoja, (asking if my technician would be allowed to continue working for my program in Fairbanks through August 2010), Dr. Pantoja commandeered the other 80% of my trained technician's time, by reassigning her to his own research program on June 4th. His suggestion was that I hire temporary (untrained) technical help when I arrived in Kodiak.

This information can all be substantiated through subpoena of ARS administrative personnel and their email records.

Cynthia Bower
Appeals Hearing (Docket # B 10 2533)
October 2010

Email thread showing that my authority to spend my research funds was denied

From: Bower, Cindy
Sent: Thursday, February 18, 2010 7:31 AM
To: Pantoja, Alberto
Cc: Bechtel, Peter
Subject: Amendment of Gasification SCA (# 58-5341-8-411)

Alberto,
As requested, here is a justification (with supporting documents) for amending the gasification SCA with Andy Soria.

Justification:
Specific Cooperative Agreement # 58-5341-8-411 (Gasification of Salmon Processing Waste to Power Greenhouses in Alaska) was initially to be funded at a level of \$25,000 per year for two years (\$50,000 total). Although the title still retains the project's original research intent (powering greenhouses in Alaska), the funding was reduced to \$25,000 for one year, with a corresponding decrease in the scope of work, (see attached SCA_58-5341-8-411.pdf).

The current gasification SCA is active until August 31st 2010, although the work has been completed and all of the objectives have been fulfilled, (see attached AnnualReport_1_Soria.doc). However, despite the original greenhouse-based title, neither of the SCA's two manuscripts describes how this research project can extend the growing season of greenhouses in rural Alaska. Dr. Andy Soria (the SCA's PI) has spent all of the \$25,000 allocated to the project to complete his obligations under the original SCA.

There is an opportunity for Dr. Soria to write an applied publication based on his gasification research. I am proposing that a one-time addition of \$2,500 from my current allocated research, travel, or supplies budget now be transferred to the gasification project. This will result in a peer-reviewed publication that offers a practical design for utilizing gasification technology to extend the growing season of rural greenhouses in Alaska. Dr. Soria has indicated that \$2,500 will enable him to deliver the paper addressing application of the gasification project to energy needs in rural Alaska.

I believe funding Dr. Soria's request represents an excellent use of ARS funds and provides a big bang for the bucks. The practical publication will have relevance to many small and remote native Alaska villages. This project does not require new funding as the money is already in my research budget. Furthermore, no new SCA objectives are required, since a simple application component can be added to an existing objective.

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Infusing \$2,500 into the current gasification SCA will result in a publication that can be used by administrative personnel who are interested in applying this technology to heat greenhouses in rural communities.

I hope you will consider my request.

Cindy

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From: Pantoja, Alberto
Sent: Monday, February 22, 2010 8:53 AM
To: Bower, Cindy
Cc: Bechtel, Peter; alberto.pantoja@ars.usda.gov; Janis Contento (Janis.Contento@ARS.USDA.GOV)
Subject: RE: Amendment of Gasification SCA (# 58-5341-8-411)

Cindy

Soria is max out in matching funds and cannot receive additional funds at this time. The proposed work can be completed in next phase; he will be in a position to receive new funds in July 2010.

alberto

Subject: RE: Amendment of Gasification SCA (# 58-5341-8-411)
From: "Bower, Cindy" <Cindy.Bower@ars.usda.gov>
Date: Mon, February 22, 2010 9:25 am
To: "Pantoja, Alberto" <Alberto.Pantoja@ARS.USDA.GOV>
Cc: "Bechtel, Peter" <Peter.Bechteler@ARS.USDA.GOV>
"Contento, Janis" <Janis.Contento@ARS.USDA.GOV>

Alberto,
Your letter implies that \$2,500 funding will be made available to Andy

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Soria from my research budget in July 2010. If that is not what you meant, please send me a clarification. The matching contribution will again be: 1) Dr. Soria's salary and benefits during his work on this project; 2) Space, computer and library resources through his UAF department (SNRAS); 3) Supplies, as needed, to complete the design and finalize the publication.

I have already submitted a justification for the final phase of this project. Do you require any additional information or can I assume that a \$2,500 check will be deposited in Dr. Soria's SCA in July 2010. Please let me know.

Thanks.

Cindy

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On Feb 22, 2010, at 4:27 PM, bower@sfos.uaf.edu wrote:

Hi Andy,

It looks like Alberto is going to delay (i.e. deny) funding for the paper. He mentioned July, but this is a well-known tactic for delaying his real response, (which I now recognize will be "never"). I'm sorry.

I'm still looking into other options, but since eventually all the approvals go through Alberto, it's a safe bet that he'll stop all progress no matter what I try. (Note to self: it doesn't pay to file an EEO complaint against your boss.) I just wanted to let you know how poorly my attempts have been going. I hope things are better down in Palmer.

Take care,

Cindy