

Final Agency Decision

"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."

Dr. Knipling's Statement is False.

From the date of Dr. Alberto Pantoja's arrival in Alaska in 2003, he refused to appoint female scientists as "acting" Research Leader in his absence, whereas he appointed every male research scientist in Fairbanks regardless of GS level, length of time in the unit, and even probationary status. No legitimate non-discriminatory reasons for this disparate treatment were ever offered by the Agency, (i.e. even they recognized Dr. Pantoja's actions as discriminatory and in violation of Title VII of the Civil Rights Act of 1964, as amended).

Dr. Edward Knipling,
Administrator
Agricultural Research Service
May 23, 2008

Mr. Schmitt directly witnessed harassment and disparate treatment of the women research scientists by Dr. Pantoja during a group meeting. Mr. Schmitt also heard complaints of discrimination individually from the women.

Did Mr. Schmitt file an accurate report?

OR

Is this another false statement by Dr. Knipling?

Challenging Grievance decisions made by the USDA Agricultural Research Service (ARS)

Background

According to the ARS's Administrative Grievance System (www.afm.ars.usda.gov/ppweb/PDF/463-02.pdf), an employee who disagrees with the outcome of a Formal Grievance may request that the grievance be reviewed again, either by the Agency Administrator or by a Grievance Examiner.

All women research scientists in ARS's Alaska unit documented unlawful harassment and discrimination being perpetrated by their supervisor. However, despite the evidence, every complaint submitted through the Administrative Grievance System was dismissed. Two of the women challenged the ARS's unjustified rulings, with one requesting a Grievance Examiner and the other requesting a Final Agency Decision.

Here are the results:

Grievance Examiner

In November 2009, the scientist's grievance (submitted February 2006) was dismissed without ever being investigated, since ARS policy allows grievances to be ignored until they are destroyed after four years.

Final Agency Decision

Dr. Knipling ruled that a "hostile environment for women" and "discriminatory treatment" by an ARS supervisor are "nongrievable matters".

Is it ethical for the ARS's grievance system to dismiss employee complaints, even when the evidence is overwhelming that a supervisor is routinely participating in unlawful activities?



United States Department of Agriculture
Research, Education, and Economics
Agricultural Research Service

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)

DEC 11 2009

Dr. _____

Dear Dr. _____

This letter is to inform you of the Final Agency Decision on the formal grievance you filed on February 28, 2006, concerning a performance rating for the period from January 1 through December 31, 2005.

I have read and reviewed your grievance along with the findings and recommended decision received from Melvin D. Sessa, Grievance Examiner, Officer of Human Resources Management. After considering all documentary evidence, I concur with Mr. Sessa's report. Your grievance has been denied, since your performance appraisal for the period will be beyond the 4-year retention period as of December 31, 2009. Additionally, the 2005 rating will be destroyed in accordance with the provisions of OPM/GOVT-2.

Accordingly, I hereby adopt the Grievance Examiner's recommended decision that the grievance relief be denied for the reasons described in the report. This completes the grievance process and constitutes the Final Agency Decision in this matter.

Sincerely,

EDWARD B. KNIPLING
Administrator

Enclosure:
Formal Grievance Findings

This ARS woman research scientist's grievance (submitted February 2006) was denied because the ARS failed to investigate it within four years.

[After four years, grievances can be legally destroyed by the Agency, which is what they chose to do instead of investigating the complaint.]

Does Dr. Knipling's method seem like an ethical process for handling complaints within the ARS?????



**United States Department of Agriculture
Office of Human Capital Management
Washington, D.C. 20250**

Formal Grievance Findings and Recommended Decision

Agricultural Research Service

I. Background

_____ Ph.D., is a Research Plant Pathologist with the USDA Agricultural Research Service (ARS).

Dr. _____ filed a grievance over her performance rating for the period from January 1, 2005, through December 31, 2005. She has grieved her overall rating of "Marginal." She is also grieving her rating for Critical Element (CE) 1, "Conceives, Plans and Conducts Research," in which she was rated "Meets Fully Successful," and CE 4, "Represents Agency, Program Development, Personal Development," rated as "Does not Meet Fully Successful."

As her personal relief, Dr. _____ requested that CE 1 be changed to "Exceeds Fully Successful," and CE 4 to "Meets Fully Successful." These requests were denied at the informal and formal stages of the grievance procedure. Dr. _____ also requested that her rating in CE 3, "Resource Management," be changed from "Meets Fully Successful" to "Exceeds Fully Successful." This requested relief was granted at the informal stage of the grievance procedure.

Dr. _____ requested assignment of a grievance examiner in a letter dated April 11, 2006, to address the issues for which her personal relief was not granted.

II. Analysis and Findings

The central issue in the grievance is whether the ratings in question should stand, or whether they should be raised to the level requested by Dr. _____. Before looking at the merits of the case, the first question concerns the current status of her 2005 performance appraisal.

Governing regulations on the retention of employee performance appraisals are contained in OPM/GOVT-2. Following is a direct excerpt regarding the retention of performance appraisals.

OPM/GOVT-2

System name:

Employee Performance File System Records (June 19, 2006, 71 FR 35347).

Retention and disposal:

Records on former non-SES employees will generally be retained no longer than 1 year after the employee leaves his or her employing agency. Records on former SES employees may be retained up to 5 years under 5 U.S.C. 4314.

- a. *Summary performance appraisals (and related records as the agency prescribes) on SES appointees are retained for 5 years and ratings of record on other employees for 4 years, except as shown in paragraph b. below, and are disposed of by shredding, burning, erasing of disks, or in accordance with agency procedures regarding destruction of personnel records, including giving them to the individual.*

Paragraph b which is referenced above applies to employees placed on Performance Improvement Plans resulting from an unsatisfactory rating, which is not applicable in this case.

As previously noted, Dr. _____ is grieving her performance rating for the period from January 1, 2005, through December 31, 2005. Based on the provisions of OPM/GOVT-2, this appraisal will be beyond the four year retention period as of December 31, 2009, at which point it will be destroyed.

With this in mind, an analysis of the facts surrounding Dr. _____ performance appraisal will not be conducted. Dr. _____ raises a number of significant arguments supporting her request for a higher performance rating. She has provided extensive details regarding her accomplishments, including several letters of support and commendation from her colleagues. Decision officials at both the informal and formal stages of the grievance procedure provided justification to support the ratings in question. However, analyzing the facts would serve no purpose at this point since my findings and recommendations would essentially address whether the ratings of record should stand or be modified. This will become a moot point as of December 31, 2009.

Dr. _____ has also grieved the ARS decision to deny _____ as her personal representative. The ARS decision was based on a determination

that serving in this role might interfere with his work. This issue is also moot for the same reasons previously stated, namely the fact that the retention period for Dr. _____ 2005 performance appraisal will expire on December 31, 2009.

III. Conclusions

I recommend that Dr. _____ grievance be denied since her performance appraisal for the period from January 1, 2005, through December 31, 2005, will be beyond the four year retention period as of December 31, 2009.

I recommend that Dr. _____ receive written confirmation by January 31, 2010, from the appropriate ARS official that the 2005 performance rating has been destroyed in accordance with the provisions of OPM/GOVT-2.



Melvin D. Sessa
Grievance Examiner

11/25/2009

Date



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)

CK B <ckbower319@gmail.com>

It pays to participate in a cover up

3 messages

CK Bower <ckbower319@gmail.com>

Tue, Aug 18, 2009 at 2:58 PM

To: Lori [redacted] Nancy [redacted]

Bcc: ckbower <ckbower@cmug.com>

Hey, I was checking up on our boy Jeff Schmitt, (you know, the one who came to give a Crucial Conversations training and heard from at least four people that discrimination was occurring here). By participating in the cover-up, (e.g. finding no discrimination and writing no report), he's done quite well for himself (i.e. a superior rating each year meriting a quality step increase). In 2006 he was a GS-12.4 making \$71,552; in 2007 he was a 12.5 (\$71,675); and in 2008 he was a 12.6 (\$81,394).

Or maybe HR people automatically get a step increase each year, unlike the scientists who require two years to go up each step at 4, 5, and 6).

Anyway, it's no wonder he won't testify to the truth with ARS "incentives" like that flowing his way...

CKB

Federal salaries are available to the public (http://php.app.com/fed_employees10/search.php). In 2010, Jeff Schmitt was a GS 13 with a salary of \$97,936, despite his participation in Alaska's discrimination cases. The Agency eventually "solved" the problem of unlawful discrimination by removing all the women research scientists from Dr. Pantoja's unit.*

** removal consisted of a transfer for one woman, with the remaining two women being forced to quit their jobs.*

I strongly believe that the harassment, discrimination, and retaliation against ARS's women research scientists in Alaska could have been stopped in 2008 if any of the ARS Human Resources personnel who witnessed Dr. Pantoja's unlawful activities had followed USDA ethical requirements and accurately reported the abuses.