

## **Discrimination Claims for EEOC**

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.

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### **#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.***

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### **#2**

### **Discrimination in Career-Building Opportunities**

From my date of hire (Oct 2004) until December 2008 I was 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., until 2008, 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.***

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### **#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)***

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**#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***

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**#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

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***

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#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***

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**#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***

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**#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***

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**#9**

**Reprisal Discrimination by ARS Administrators**

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

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**#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

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**#11**

### **Second Reprisal Discrimination by Research Leader**

I was subjected to reprisal discrimination by the Research Leader, Alberto Pantoja, when he willfully denied me an opportunity to serve as Acting RL on March 20th 2009.

Rule #3 from the official "Rotation Plan to select Acting RL" states that if an SY cannot serve when needed, the next SY in rotation will be selected. The Research Leader was out of the office from 17 December 2008 until 06 January 2009 and three Acting RLs were appointed. The Acting RLs included Joe Kuhl (17-19 December 2008), Lori Winton (22-26 December 2008) and Peter Bechtel (29 December 2008 to 05 January 2009). Therefore, according to the Rotation Plan, the next opportunity for Acting RL should have been offered first to Dennis Fielding, followed by Jeff Conn, Lori Winton, me, and then Steve Seefeldt (since Joe Kuhl had already quit by that time). Whether offers were made to Fielding, Conn, and Winton, I do not know. However, no offer was made to me. Instead, I was excluded from the career-building opportunity of serving as Acting RL and my appointment was inappropriately given to the person listed AFTER me on the rotation plan, Steve Seefeldt.

#### Summary

1. The research leader of SARU discriminated against me and the other women scientists in the unit by refusing to allow women to serve as Acting Research Leader
2. I engaged in a protected activity (grievance writing and EEO complaints)
3. The Research Leader was aware that I had participated in a protected activity, and he ultimately was forced (by USDA) to allow women in the unit to participate in the career-building opportunity of serving as Acting RL
4. During his selection of Acting RLs, the Research Leader willfully excluded me from consideration (which constitutes an adverse action)
5. The adverse action was causally linked to the protected activity as a form of reprisal

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### **#12**

#### **Third Reprisal Discrimination by Research Leader**

I was subjected to reprisal discrimination by the Research Leader, Alberto Pantoja, when he willfully denied me an opportunity to fully serve as Acting RL on April 30th 2009. Dr. Pantoja refuses to assign tangible Acting RL responsibilities to women research scientists and instead delegates power (through WebTA) to a male scientist while he is away. On April 30th I was the acting RL when a problem with one or more timesheets arose. Although it was not disclosed to me at the time, an official approval was required. SARU's secretary, Juli Philibert, contacted the designated male with behind-the-scenes power (Dr. Dennis Fielding) and they



resolved the problem without my knowledge or assistance. Because of the system instituted by the RL, I am only allowed to serve as acting Research Leader in a diminished capacity with no real power and no responsibilities (e.g. I am not made aware of who emailed in sick that day or who took annual leave nor am I informed of problems within the unit and allowed to suggest a solution).

#### Summary

1. The research leader of SARU discriminated against me and the other women scientists in the unit by refusing to allow women to serve as Acting Research Leader
  2. I engaged in a protected activity (grievance writing and EEO complaints)
  3. The Research Leader was aware that I had participated in a protected activity, and he ultimately was forced (by USDA) to allow women in the unit to participate in the career-building opportunity of serving as Acting RL
  4. Although the RL now must allow women to serve as Acting RL, he diminishes our responsibilities by designating a male with behind-the-scenes power (which constitutes an adverse action)
  5. The adverse action was causally linked to the protected activity as a form of reprisal
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