

Claim 1: "On February 26, 2008, she was issued a letter of caution."

Dr. Seefeldt states he was away at the Area Office doing a shadow assignment. He was gone for about a week. He did not hear about the letter of caution until sometime later. Complainant showed him the letter around April 14, 2008. They talked about the letter. In that conversation he discussed having had some conflicts with a past boss. He told her there is a certain amount of things one can do to try to make things better, but at some point it is just not possible. Then he told her she would have to move on. He states he has done that in the past. They talked along that line and he offered her the thought of looking for another position.

He states he has had problems with Dr. Pantoja but it mostly is a language issue. English is not his first language. Dr. Pantoja will say something and he will take it to mean what he thought it to mean. Sometimes it was not what Dr. Pantoja was trying to get across. Then misunderstandings break out. It makes it difficult because he wants to have a clear understanding of what was being said. Then he states you find out a week later that Dr. Pantoja meant something entirely different. He has had a few misunderstandings with Dr. Pantoja, three or four, and he is still working on a couple of them. He states he has not been threatened with a letter of caution.

He states a couple of times his response about language has been jovial because it was not over a serious issue. He states he worked in the Peace Corps and knows how difficult it is to communicate in a second language. He states they go back and forth on things. One time Dr Pantoja actually let him read some of the things he had written just to make sure it said what he really wanted to say. And he had Dr. Pantoja change a word or two and explained why.

Claim 2: "She was subjected to threats of termination."

Claim 3: "She was subjected to public humiliation."

Claim 4: "She was subjected to disrespectful behavior."

Claim 5: "She was subjected to open hostility."

Claim 6: "She was subjected to intimidation."

In response to Claim 2, Dr. Seefeldt states he has not witnessed any threats of termination. The only knowledge he has is what complainant told him.

In response to Claim 3, he states on January 15, 2008, all of them did a presentation on each of their research projects. There were some people listening in and they were trying to do a really good job in presenting their research in a coherent and concise fashion. Dr. Pantoja uncharacteristically asked them questions in a hostile way. When Dr. Pantoja asked him questions, he had the answers he wanted and that ended the questioning. When complainant was questioned, she didn't quite understand what he was asking and offered an unsatisfactory answer. Dr. Pantoja repeatedly asked the question and began to speak louder and louder. He states he found it quite humiliating for the complainant the way he was asking the same thing and not explaining himself. He states he was about to

stand up and attempt to defend complainant but he was afraid he would be using profanity to put a stop to the situation. Another scientist, Dr. Conn, beat him to it and did it in a much gentler way. The point did not get across to Dr. Pantoja and he defended his questioning. That is something that has been hard for all of them in the Unit.

There were two other women scientists who had to give their presentations as well and Dr. Pantoja was just as hard on them as he was with complainant. The incident particularly concerned complainant and himself. He was upset by the situation. Dr. Pantoja's questions were definitely hostile. In a scientific meeting one sometimes get those kinds of questions and have to be ready for them (that was Dr. Pantoja's reasoning). He states he disagrees strongly that it was called for in this meeting. He states Dr. Pantoja has a little bit of a temper and he has encountered this display a couple of times but was able to work through it. He states he has also seen Dr. Pantoja treat Dr. Conn in the same way.

In response to Claim 4, Dr. Seefeldt states this is nit picking but given the history he thinks it is important. On December 5, 2008, they were in the process of developing their five year plan. They had a meeting of their group, the integrated pest management group. That group includes complainant, Dr. Pantoja, Dr. Conn, Dr. Fielding and himself. Dr. Pantoja had brought in a couple of other people from the Forest Service. They were on a short time line and were trying to get through their presentations quickly. The male scientists were allowed to make their presentations and then Dr. Pantoja skipped complainant and went directly to the Forest Service person who then said, "I am uncomfortable going before Lori (Winton). I think I should hear what she has to say before I give my presentation." Given the things that have gone on before, it seemed surprising that Dr. Pantoja was happy to skip her, like she was wasn't there. He did allow complainant to give her presentations.

In response to Claims 5 and 6, Dr. Seefeldt refers to his statements concerning the incident on January 15, 2008.

Claim 7: "She was denied the opportunity to act as Research Leader."

Dr. Seefeldt states Dr. Pantoja did not allow any of the women to act as Research Leader. It was very clear. At the Palmer site there are two and sometimes three scientists located there. Palmer is about 300 miles away. Dr. Robertson is one of the scientists there. Due to the distance from the Fairbanks site no scientists at Palmer were asked to act as Research Leader. It always has been the male scientists situated in Fairbanks. Now Dr. Pantoja had to develop a rotation to include everyone. He believes the change came about because of the EEO process they are in right now. As a result, he believes Dr. Pantoja was required to change.

Claim 8: "She was subjected to having her peer-reviewed publications downgraded to research notes."

Dr. Seefeldt states this is something he heard about from complainant but never read her publications. He has no direct knowledge.

He states as a scientist he has a clear understanding of what a manuscript needs to be in the field that he works. Typically, it varies from location to location within ARS. At this location he does a study, does an analysis of the data, and writes a draft. Any author on the paper gets to look at the draft. Sometimes authors will write whole sections of what they have to contribute. Then it goes to 2 or 3 ARS scientists for peer review. These are scientists who know something about the field you are working in. You tell them what journal you are going for and get their responses back. They will tell you to analyze it this way, change that figure, re-write the introduction and things like that. You make all the changes that you agree with. There is actually a form that you get back from the scientists and it has written on that what they would like to change on the paper. You make the changes and fill out a 115 form. That essentially is the process.

The package is sent to the RL. It includes the comments the other scientists have made, the new manuscript with all of the changes made, and all of the forms for the people who keep track of all of the publications they have. The RL can ask for some changes. Dr. Pantoja is very clear about this. He acknowledges that he doesn't know their particular branch of science very well. Dr. Pantoja expects that he know his science well enough. Dr. Pantoja mostly reads it for general interest so that he knows what they have been doing. He then signs off on it and it is sent to journal to start another round of peer-review.

He states a research note is fairly short. There are 5 to 10 citations from other people's work and maybe one figure or table. It will be around 3 pages long. It is general information not so much hypothesis driven research.

Claim 9: "She was not allowed to hire permanent technicians."

Claim 10: "She was not allowed to hire technicians at GS-7 level."

Dr. Seefeldt states there were several people who were not allowed to hire permanent technicians. He believes they were complainant, Dr. Bower, and possibly Dr. Kuhl. He states he has been able to hire permanent technicians at the GS-5/7 career level positions. For the longest time their funding was subject to renewal every year. From year to year they did not know if they were going to get funded. He was led to believe as a scientist they did not know if they had jobs from one year to the next and it would not be good to be hiring permanent technicians because after a year they might not have jobs. He doesn't know if that was the right reason to hire temporary technicians. Both complainant and Dr. Bower were only able to hire at GS-5/6 level and not allowed to hire at the GS-5/7. He thinks these decisions originated at the Area Office in California. He believes all of that has changed now that they are on hard funding but not 100% sure.

He states complainants claim that she was not able to hire at the GS-7 level is correct. Others were able to hire at the GS-5/7 levels. He states complainant had an excellent technician, Andrew Krohn, who has since moved on to another ARS job in Wisconsin.

Complainant rated Mr. Krohn's work very highly, outstanding, but ARS does not allow you to rate technicians outstanding. It is an unwritten rule. It just doesn't happen. He states this was a real bone of contention. Dr. Pantoja downgraded all of the "Exceeds" out and made them "Satisfactory." He states this is tough when you think you have someone who is performing exceptional work and somebody who does not work with the individual turns around and does not agree with the appraisal. He does not agree with this part. He states this has happened to him from time to time when a RL knocked down a part of his evaluation of a technician.

Claim 11: "She received unfair performance appraisals."

Dr. Seefeldt states complainant showed him a couple of her appraisals. He believes she got hammered one time for not being a good supervisor. There was no evidence of that. He states in ARS the RL pretty much runs the show and has all of the power. He states he finds being interviewed by the investigator is rather scary because as scientists they have very little recourse to anything. Everybody's vote counts as one and the RL's vote counts as two. It is just the way the agency runs its business. It makes him nervous to provide testimony. Someday he would like to aspire to a RL position and hopes no harm comes to him because of this affidavit.

Claim 12: "On September 5, 2008, she was threatened for communicating EEO issues to various other people including the designated contact person for Civil Rights and Workplace Violence issues."

Dr. Seefeldt states this is only something he heard about. He states if he had an EEO issue he could find the information fairly quickly. They have had a whole variety of people coming to the Unit and providing EEO training and team building. Sometimes the training is a little bit valuable but mostly not. He states he has talked to Dr. Pantoja that it would be nice to have input so that all of them work together and discuss what they need rather than having things imposed on them.

In closing, Dr. Seefeldt states he can see a little bit of fault here and a little bit of fault there. His question is how do you fix it? How do you make it work? He tries to do a little bit when he talks to Dr. Pantoja or complainant to try to get them to see the other person's side as he sees it and how they could make it less acrimonious. He states Dr. Pantoja has been good about saying, 'hello' to complainant of late. It seems that whenever there has to be any talking done between complainant and Dr. Pantoja, there has to be a third person in the office, Ms. Contento, taking notes. He states it has not always been this way. He states he knows complainant is absolutely fastidious. She keeps all of her records and communications. She has been burned on things and has been questioned on where is the fax or record? He states this process has been hard on complainant. She lost her partner. She lost a lot of weight. She has suffered from this.

At one point he states he talked to Dr. Pantoja during evaluations when he asked him how he might do things better. He told Dr. Pantoja that he liked working with complainant. She is intelligent, she knows what she is doing, and complainant and he have the

potential to do collaborative research. He told Dr. Pantoja that he did not want to work with another pathologist. He states he does not think Dr. Pantoja understood what he was trying to say and turned it around. He states he tried to make it very clear to Dr. Pantoja. He thinks Dr. Pantoja was seeing it as complainant causing the problems. He told Dr. Pantoja that the issue the two of them were having was something he had to fix. Just recently he did hear Dr. Pantoja introduce complainant to someone and in the introduction he complimented her by saying, "She does excellent research."

Cynthia K. Prucha (female), Human Resources Specialist, GS-0201-12, USDA, ARS, Headquarters/Administrative and Financial Management/Human Resources Division, Western Services Branch, Beltsville, Maryland, has been in her present position since February 1985 and has worked for the Federal government for 35 ½ years. She is responsible for providing a full range of human resources operations activities in the areas of position management and classification, staffing, employment and recruitment, compensation, and management and advisory services. Specifically, provide Human Resources services in position classification, position management, leave administration, staffing and pay administration services to management, leave administration, staffing and pay administration services to ARS management and employees of assigned organizations. This requires exercising classification and staffing authority for research professional, scientific and/or technical, and administrative and/or wage grade positions. Work with managers and supervisors to determine long and short-range staffing needs and necessary recruitment strategies to include the use of recruitment and retention incentives. Her immediate supervisor is Helene Saylor, Supervisory Human Resources Specialist. Ms. Saylor has been her supervisor since May 14, 2006. Her second line supervisor is David Love, Human Resources Office. Mr. Love has been her second line supervisor since August 31, 2008. In an affidavit dated February 5, 2009 she affirms to the following in substance (Exhibit 20):

Ms. Prucha states complainant is an ARS employee located at the ARS, Fairbanks, Alaska location for which she provides Human Resources Services. She has worked the Alaska location since February 2006. She has had infrequent contact with complainant. She states Dr. Pantoja is the Research Leader for the ARS, Fairbanks, AK Location for which she provides HR Services. She has never been on-site and has no knowledge of the work environment. She was not aware of complainant's allegation of reprisal.

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Ms. Prucha states she has no knowledge of Claims 1 through 8.

Claim 9: "She was not allowed to hire permanent technicians."

Ms. Prucha states she helped complainant recruit for a term technician (NTE 4 years) which was approved on the Location's position staffing plan (PSP)

Claim 10: "She was not allowed to hire technicians at GS-7 level."

Ms, Prucha states the Location submitted an SF-52 form, Request for Personnel Action, to recruit a Biological Science Technician, GS-0404-5/6 for complainant. She states complainant's current technician has promotion potential to the GS-7 level.

Claim 11: "She received unfair performance appraisals."

Claim 12: "On September 5, 2008, she was threatened for communicating EEO issues to various other people including the designated contact person for Civil Rights and Workplace Violence issues."

Ms. Prucha state she has no knowledge of Claims 11 and 12.

In closing, Ms. Prucha states complainant was hired on a superior qualification, career-conditional appointment as a Research Plant Pathologist, GS-0434-12/03 on June 3, 2004. She was promoted to a GS-0414-13/02 on December 23, 2007.

➤ **Other Evidence**

Exhibit 21 contains the ARS-115 Form, Instructions, Requirements for any publication to be entered into ARIS.

Exhibit 22 contains Section 6, SY Publications, instructions

Exhibit 23 contains the Standard Job for Biological Science Technician, Biological Science Laboratory Technician, and Agricultural Science Research Technician, GS-0404-07, dated August 14, 1996 showing the major duties, and evaluation factors

Exhibit 24 contains complainant's current Position Description, Research Plant Pathologist, GS-0414-13.

Exhibit 25 contains complainant's Performance Appraisals, for the periods ending December 31, 2005, 2006, and 2007.

Exhibit 26 contains the Area Guidance on Recruitment Actions from Dwayne R. Buxton, Director, Pacific West Area, dated April 18, 2005. The memorandum outlines the process to be used in the recruitment and hiring of various positions in the Pacific West Area

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Exhibit 27 contains SF-52, Request for Personnel Action, Recruit action for various Technicians, various grades, requested by Alberto Pantoja, SARU, from 2004 to 2008

Exhibit 28 contains SF-50, Notification of Personnel Action, of selectees for various Technicians, various grades, various types of appointments at SARU from 2005 to 2008

Exhibit 29 contains a list of disciplinary action taken by Dr. Pantoja against SARU employees, including complainant, from 2003 to 2008

Exhibit 30 contains the list of employees who were designated to Acting Research Leader from April 2003 to October 2008 and the Rotation Plan. SARU, for July 2008

Exhibit 31 contains USDA, Departmental Regulation 4070-735-001, Subject: Employee Responsibilities and Conduct, dated October 4, 2007

Exhibit 32 contains ARS Policies and Procedures, Title: Misconduct Discipline, and Adverse Action, Number 461.5 dated August 12, 1993

Exhibit 33 contains the Agency's 2008 Anti-Harassment Policy dated January 29, 2009

Exhibit 34 contains ARS Policies and Procedures, Title: Preventing Workplace Violence, Number 122.1, dated July 21, 2000

Exhibit 35 contains the Agency Policies and Procedures for the ARS Performance Appraisal System, dated May 21, 1992

Exhibit 36 contains the investigator's Memorandum for the Record dated March 2, 2009

Exhibit 37 contains the investigators Document Requests with Agency Responses

VI. SURVEY OF THE ENVIRONMENT

Exhibit 7 contains the Workforce Profile of SARU, Fairbanks, Alaska as of March 9, 2008. There were a total of thirty-eight (38) employees assigned to the Unit and eighteen (18 or 47.37% are male and twenty (20 or 52.63%) are female. There were twelve (12) scientists of which eight (8 or 66.67%) are male and 4 or 33.33% are female.

This is deceptive. There were only three women research scientists (i.e. women with a promotion potential of GS 15) in the Unit, and all three women were filing complaints against their supervisor in an attempt to stop his unlawful attacks on their careers.

Discrimination against women is an agency-wide problem, since statistics show that women research scientists are not hired, promoted, or retained (as compared to men scientists) within the USDA Agricultural Research Service.