

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)

PART 1 (of 5)

UNITED STATES DEPARTMENT OF AGRICULTURE

REPORT OF INVESTIGATION

TITLE:

Cynthia Bower
Research Food Technician
GS-1382-12
U. S. Department of Agriculture
Agricultural Research Service
Subarctic Agricultural Research Unit
University of Alaska Fairbanks
Fairbanks, Alaska 99775

CASE NUMBER:

ARS-2008-00696

CONTRACTOR:

Morales and Associates, LLC

INVESTIGATOR:

Martha M. Tsutsui

BASES AND CLAIMS:

Sex (female) – Disparate Treatment
Sex (female) - Discriminatory Harassment

HOME ADDRESS:

P.O. Box 81964
Fairbanks, Alaska 99708

REPRESENTATIVE:

Joe Josephson
Josephson & Associates
912 W. Sixth Avenue
Anchorage, Alaska 99501

USDA fragmented my original EEO complaint by selectively accepting for investigation only issues that would NOT constitute a valid legal claim of discrimination. Although I submitted a clarification of my discrimination and reprisal claims, USDA failed to acknowledge the corrected claims and included only their fragmented claims in this final Report of Investigation.

I. CLAIMS IN THIS COMPLAINT:

“Whether the agency subjected the complainant to discriminatory harassment based on sex (female), and limited her career advancement when (Exhibit 3):¹

1. On July 2, 2004, after she accepted the verbal offer of the Research Food Technologist position, GS-13/14, her supervisor told 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;

¹ On December 6, 2008 complainant notified the Division Chief, Employment Complaints Division, Office of Adjudication and Compliance, USDA, that the acceptance letter dated November 17, 2008 did not adequately reflect the discrimination complaints filed with the agency.

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;
5. Since starting her research programs, her supervisor has damaged her reputation, devalued her work, actively sabotaged her program 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 acceptance letter was not amended because complainant requested an EEOC hearing. On February 5, 2009 the investigator was notified to proceed with interviews of complainant, management, and witnesses (Exhibit 25).

II. SUMMARY

Discriminatory Harassment (sex-female)

- ✓ Whether the complainant belongs to a protected group is addressed at Exhibit 9.
- ✓ Whether the complainant was subjected to on-going harassment (non-sexual) is addressed at Exhibit 9.
- ✓ Whether the harassment complained of was based on sex (female). But for the fact of this basis, she would not have been the object of harassment is addressed at Exhibit 9.
- ✓ Whether the harassment complained of affected a term, condition, or privilege of employment is addressed at Exhibit 9.
- ✓ Whether the complainant can show the employer knew or should have known of the harassment in question and failed to take prompt remedial action is addressed at Exhibit 9.

Disparate Treatment (sex-female)

Actually, the acceptance letter was not amended because USDA failed to complete its investigative report on time (i.e. within 180 days). After receiving the corrections, USDA had two months to amend the complaint, but instead they chose to retaliate by retaining the "non-claims" (which even minimally-trained EEO personnel would recognize as non-actionable).

Whether complainant was treated differently from similarly situated employees not in her protected group is addressed at Exhibits 9 and 11.

Whether compared employees are in the same work unit as complainant is addressed at Exhibits 7 and 9.

Management's Response

Whether management's responses to the reason for its treatment of complainant and compared employees is addressed at Exhibit 11.

Pretext

Whether there is direct or circumstantial evidence that the agency's reason for its treatment of complainant is pretextual is addressed at Exhibit 11.

III. DESCRIPTION OF INVESTIGATION:

Place of Investigation: Fairbanks, Alaska
Palmer, Alaska
Beltsville, Maryland

Dates of Investigation: November 25, 2008 to February 13, 2009

Investigative Method Used: Telephone interviews

IV. DESCRIPTION OF EXHIBITS:

Exhibit 1: Formal complaint of discrimination of Cynthia Bower, hereinafter complainant, dated July 25, 2008

Exhibit 2: EEO Counselor's Report dated July 17, 2008

Exhibit 3: Letter acknowledging receipt and acceptance of discrimination complaint to complainant from Kenneth J. Baisden, Sr., Division Chief, Employment Complaints Division, Washington, DC, dated November 17, 2008

Exhibit 4: Letter of Authorization to the investigator dated December 5, 2008²

Exhibit 5: Letter from complainant to Kenneth Baisden, Division Chief, Employment Complaints Division, USDA, Washington, DC dated December 6, 2008 stating issues

² Exhibits 1 through 4 were received in case file with request for investigation.

accepted for investigation did not adequately reflect her discrimination complaints and e-mail attachment to the investigator dated December 8, 2008 (Source: Complainant)

Exhibit 6: Workforce Profile. ARS. SARU. Fairbanks, Alaska as of February 2, 2004³

Exhibit 7: Workforce Profile, ARS, SARU, Fairbanks. Alaska as of February 29, 2008

Exhibit 8: Relationship of Affiants Chart (Source: Investigator)

Exhibit 9: Affidavit of Cynthia Bower (female), hereinafter Complainant, Research Food Technologist, GS-1362-12, USDA, ARS, Pacific West Area (PWA), Subarctic Agricultural Research Unit (SARU), University of Alaska Fairbanks, Fairbanks, North Star Borough, Alaska dated February 9, 2009

Exhibit 10: Complainant's Rebuttal Statement dated February 13, 2009

Exhibit 11: Affidavit of Alberto Pantoja (male), Research Leader, GS-0414-15, USDA, ARS, PWS, SARU, University of Alaska Fairbanks, North Star Borough, Alaska, dated February 12, 2009 with attachments

- a. E-mail from Alberto Pantoja to Andrew Hammond, Dwayne Buxton, Jeffrey Van Houten, Robert Matteri, Subject: RPES and promotion dated December 13, 2007
- b. E-mail from Cynthia Bower to Alberto Pantoja
Subject: Case write up Action due Sept 19, 2007, dated January 4, 2008
- c. E-mail from Franky Reese to Cynthia Bower, Subject: Job Offer – USDA-ARS dated August 3, 2004
- d. E-mail from Cynthia Bower to Albert Pantoja, Subject: Frankie called, dated September 17, 2004
- e. E-mail from Patty Castle to Alberto Pantoja, Subject Ad Hoc Panel Results, dated August 24, 2004

³ Source of all documentation is Helena Thompson-Thornton, EEO Specialist, ARS, Office of Outreach, Diversity & Equal Opportunity, Washington, DC, unless otherwise indicated.

- f. E-mail from Franky Reese to Alberto Pantoja, Subject: Cynthia Bower, dated September 17, 2004
- g. Letter from Franky Reese, Human Resources Specialist to Cynthia Bower, Subject: Letter of Appointment effective October 3, 2004.
- h. E-mail from Alberto Pantoja to Cindy Bower, Subject: RPES Panel Results (Bower) dated December 12, 2007 with Research Position Evaluation Report
- i. ARS, Agricultural Research Information System, Publication Type by Author. Cynthia Bower dated February 5, 2009
- j. E-mail from Andrew Hammond to Alberto Pantoja, Subject: Retention Review for New Category scientists, C. Bower, dated August 7, 2007
- k. E-mail from Alberto Pantoja to Cindy Bower, Subject: Mentor, dated January 28, 2008
- l. E-mail from Cindy Bower to Alberto Pantoja, Subject: Case Write-up Action due on September 29, 2007, dated September 27, 2007
- m. E-mail from Alberto Pantoja to C. Bower, Subject: Case Write-Up, dated July 19, 2004 with response dated July 20, 2004
- n. E-mail from aglearnsystem@usda.gov to Alberto Pantoja, Subject: SF-182 Request Approval Required for Cynthia Bower, dated January 29, 2009
- o. E-mail from Alberto Pantoja to Peter Bechtel, Cindy Blower and Ted Wu, Subject: News from Denali Bio Technologies, LLC, dated October 2007
- p. Performance Appraisal, Cynthia K. Bower, January 1, 2006 to December 31, 2006
- q. Performance Appraisal, Cynthia K. Bower, January 1, 2008 to December 31, 2008

- r. E-mail from Charmaine Scardina to Alberto Pantoja, Subject: PWA New Scientist Mentoring Program, dated February 26, 2009
- s. E-mail from Alberto Pantoja to Katie Hietala, Subject SHEM duties and res. Support, dated December 5, 2008
- t. Collateral Duty Statement, Environment Management Program
- u. E-mail from Alberto Pantoja to Robert Matteri, Subject: SCA (Ruminant bacteria), dated April 22, 2006
- v. E-mail from Cynthia Bower to Alberto Pantoja, Subject: Ruminant Bacteria SCA (revised), dated May 8, 2006
- w. E-mail from Janis Contento to Alberto Pantoja, Subject: Sea Grant Pre-Proposal, dated February 5, 2009
- x. E-mail from Alberto Pantoja to Cynthia Bower, et al, Subject: Training in January, dated December 28, 2007
- y. E-mail from Alberto Pantoja to Cynthia Bower, Subject: List of MU/location Stakeholders Action due by January 21, 2009, dated January 21, 2009

Exhibit 12: Affidavit of Merle T. Cole (male), Human Resources Specialist (Classification), GS-0201-14, USDA, ARS, Human Resources Division (HRD), REE Services Branch, Beltsville, Maryland, dated February 6, 2009

Exhibit 13: Affidavit of Ted Wu (male), Research Chemist (Post Doc.), GS-1320-12, USDA, ARS, PWA, SARU, Fairbanks, AK

Exhibit 14: USAJOBS Vacancy Announcement ARS-X4W-0138, Research, Education, and Economics (REE), ARS, Interdisciplinary – Chemical Engineer. Research Chemist, Research Food Technologist, Research Physical Scientist, GS-13/14, opened January 12, 2004, closed March 1, 2004, SARU, Fairbanks, Alaska

Exhibit 15: USDA, REE, ARS, Vacancy Announcement ARS-X4W-0403, Research Food Technologist, GS-1382-12, Opened August 30, 2004, closed September 3, 2004.