

PART 2 (of 5)

- Exhibit 16: Optional Application for Federal Employment, OF 612, Complainant, Research Food Technologist, GS-13/14, dated July 19, 2004 with Resume and Declaration for Federal Employment dated July 21, 2004
- Exhibit 17: Position Description, Research Food Technologist, GS-1382-12, dated October 3, 2004
- Exhibit 18: Notification of Personnel Action, SF-50 and Request for Personnel Action, SF-52, Career Conditional Appointment, Complainant to Research Food Technologist, GS-1381-12, effective October 3, 2004
- Exhibit 19: E-mail from Franky Reese to Cynthia Bower, Subject: Job Offer, USDA-ARS, dated July 23, 2004 and EOD Letter dated September 17, 2004
- Exhibit 20: Letter from Franky M. Reese, Human Resources Specialist to complainant notification of selection for a position in ARS dated September 17, 2004
- Exhibit 21: USDA, ARS, SARU, University of Alaska Fairbanks personnel assigned in Fairbanks and Palmer, Alaska
- Exhibit 22: Letter to complainant from Edward Knipling, Administrator, Subject: Final Agency Decision, dated May 23, 2008
- Exhibit 23: Position Management and Classification, Policies and Procedures dated October 2, 2002
- Exhibit 24: Agency's FY 2008 Anti-Harassment Policy Statement
- Exhibit 25: Investigator's Memo for the Record dated February 15, 2009 with various e-mails, various dates
- Exhibit 26: Investigator's Document Request with Agency's responses

V. BACKGROUND STATEMENT:

➤ **Complainant's Contentions**

Dr. Cynthia K. Bower, hereinafter **complainant** (female), Research Food Technologist, GS-1382-12, U.S. Department of Agriculture (USDA), Agricultural Research Service (ARS), Pacific West Area (PWA), Arctic Agricultural Research Unit (SARU), University of Fairbanks Alaska, Fairbanks, Alaska has been in her

present position since October 4, 2004 and has been a Federal employee for the same amount of time. Her major duties include conducting research in Aquaculture (ARS National Program 106) in a project titled Converting Alaska Fish By-Products into Value Added Ingredients and Products. Research in this broad and complex subject area includes developing economical methods to stabilize discarded fish for later processing, as well as producing new value-added products for industrial uses, agricultural animals, domestic pets, and human consumption. Her immediate supervisor is Dr. Alberto Pantoja, Research Leader (RL). Dr. Pantoja has been her immediate supervisor since October 2004. Until January 2008, Dr. Andrew Hammond, SES, Associate Area Director was her second line supervisor. However, after Dr. Hammond's promotion to Area Director, a series of ARS employees filled that position in a temporary capacity. Recently, Dr. Robert Matteri, GS-15, was promoted to Area Director. She further affirms in an affidavit dated February 9, 2009 to the following in substance (Exhibit 9):

Complainant describes her working relationship with Dr. Pantoja as friendly until December 2007. She was aware of problems between Dr. Pantoja and other women but she tried to follow all the rules, respond promptly to his requests, and stay on his "good side" so that she would not be targeted for the same abuse that the other women were receiving. However, she was painfully aware that women scientists in the unit were treated differently than their male counterparts. Women scientists were denied the career building opportunity of serving as Acting RL and women scientists were give a disproportionate amount of low-level committee assignments.

Complainant states in 2007 she was required to undergo the Research Position Evaluation System (RPES), which is the de facto "promotion" system within ARS, since there are no other methods offered to scientists to attain a higher GS-level. It was about that time that Dr. Pantoja changed his manner of interacting with her. Previously, when she asked about her chances of being promoted within the ARS, Dr. Pantoja had always said that the step between GS-12 and GS-13 was a small one (implying that she would likely receive a promotion). Since she had earned good performance appraisals each year (and never received any indication from Dr. Pantoja that there were any areas needing improvement), she assumed that she would succeed. However, as 2007 progressed, Dr. Pantoja changed his story and informed her that not every GS-12 is promoted to GS-13 (suggesting that for reasons he was unwilling to disclose, she would probably not be receiving a promotion). She touched upon the subject with him several more times in the summer of 2007 and it became clear to her that he did not support her promotion.

When her promotion was denied in December 2007, all interactions with Dr. Pantoja became unpleasant and she attempted to avoid him entirely. When he initially came to her office to announce that she was going to remain a GS-12, he admitted that he had not supported her promotion. She was distressed by what she perceived as career-sabotaging betrayal and she did not wish to continue talking about it at that time, so she requested they discuss the subject later. He did not leave her office and continued to converse, despite her obvious discomfort. After that incident she

avoided him whenever possible but was sometimes unable to escape his "counseling", where he tried to convey the message that she should just accept what happened and not draw any more attention to a situation that she considered unfair. During this time she carefully perused her official employment records and found that he and RPES panel had previously engaged in misconduct during her 2004 hiring. She filed her first grievance against Dr. Pantoja on December 27, 2007. Her working relationship deteriorated throughout the year as she refused to tolerate the inequities he had established in the unit. She filed grievance after grievance in her futile attempts to align the ARS with U.S. laws (as well as the agency's own regulations). By June 2008, after she filed an EEO claim with ARS, Dr. Pantoja and she continued to interact in a professional but predictably cool manner. Currently she has curtailed her visits to the third floor ARS office (Administrative Officer, unit secretary, and accounting technician) in an attempt to avoid Dr. Pantoja altogether.

Complainant states Dr. Hammond was the recipient of many of her grievances. He has been well aware of the problems facing the women scientists in Alaska ARS until since 2005, but he gives the impression of being supremely unconcerned. He has never contacted her to discuss the situation. During his visit to Fairbanks, last July, he scheduled a one-hour meeting with the aquaculture project's two scientists, then proceeded to talk exclusively to the other scientist for 55 minutes, addressing me only at the end to note that I was awfully quiet. Their topics of conversation did not involve my lab and she could not have gotten a word in edgewise even if she had wanted to join their conversation.

Complainant states the SARU work environment is hostile to women scientists. ARS's own documentation supports the fact that women are treated differently from the men in job-related opportunities. Accepting employment with the ARS has been detrimental to her career, her health, and her well-being, and it grieves her that the abuses occurring here are so widely known, yet year after year, ARS administrators allow the situation to continue. Dr. Pantoja's behavior has inflicted extreme stress on her, not just as another target of discrimination, but as a witness to the discrimination against Dr. Lori Winton, Research Plan Pathologist in Fairbanks, Alaska and Dr. Nancy Robertson, Research Plan Pathologist in Palmer, Alaska. The SARU working environment has degraded the quality of her life to one of constant tension and despair.

She states the Agency knew of the harassment in question and failed to take prompt remedial action. The other women scientists have been bringing it to their attention since 2005 and she noted the inequities in her first grievance in 2007 and now it is 2009. Some of the instances of discrimination were clandestinely corrected (e.g., committee rotation, acting RL), but some still remain and reprisal for their EEO activities continues. The agency did not follow U.S. laws. The agency did not even follow its own regulations. In early 2008, after the situation had become intolerable, she asked for a transfer as part of her grievance relief. As usual, her grievance was trivialized and her relief denied. She states the situation for the women scientists of

SARU is dire, and the only reason it persists is because the ARS administrators are willfully allowing it.

She states she has made many requests for remedial action in her many grievances. She asked for the harassment to stop. She asked for an investigator to be sent to SARU to uncover the truth. She asked for fair and equitable treatments. She asked to be transferred away from the abusive situation. However, ARS administrative personnel always refused to stop the discrimination against SARU's women research scientists. She states the illegal discrimination is targeted against all the female research scientists of SARU has negatively affected her career, her promotion potential, her current and future incomes, her health, happiness, and sense of well-being.

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

Claim 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 Research Position Evaluation System (RPES) panel."

Complainant states she applied for ARS-X4W-013S in early 2004. In September 2004, she was offered an ARS research position at a lower GS and salary levels than the advertised position (GS-13/14) despite ten years of research experience as a PhD level scientist, an ARS finding of superior qualifications and a suggested salary of \$64,980 specified by the U.S. 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 RPES panel, despite the officially certified GS-13/14 position description. She states Panel members chose to inappropriately lower the point values for Factors I and II (factors which related to the job announcement, NOT her qualifications) to produce a score with a salary almost \$10,000/yr lower than advertised. The decision was fully supported (if not entirely orchestrated) by Dr. Pantoja as evidenced by his initial proposal of the lower salary when tentatively offering her the job two months before the RPES panel met. She was not fully aware of these events until her 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 her and the other two women scientists working Alaska's ARS unit. She strongly believes that she was devalued by Dr. Pantoja (and the ARS administrators who oversaw and approved her initial hiring) on the basis of her gender. She states Dr. Pantoja verbally offered her the position as a GS-13/14 by telephone on July 2, 2004. The verbal offer was not rescinded.

She states the RPES panel is a group of upper GS level ARS employees who assemble in secret to judge the careers of other scientists based almost entirely on subjective criteria. Although ARS freely refers to panel members as "peers", the RPES panel members often have inadequate knowledge in some of the fields in which they are asked to render judgments. This can result in an adverse effect on the

careers of other ARS scientists. Panel members rely to some extent upon the case write-up provided by each scientist, but they never directly contact scientists who are undergoing RPES. Instead, the panel REQUIRES input from the research leader. In cases where a male RL discriminates against the women in his unit, this testimony (never checked for veracity) can be disastrous. Information about a scientist's career can also be sought from friends, colleagues, competitors, and adversaries (although the panel has no method for categorizing the witnesses and weight their testimony accordingly). Consequently, the RPES system is, by design, a highly subjective process, which can result in a violent assault on a scientist's career, such as occurred in her career in September 2004 and again in December 2007. In December 2008, Dr. Eric Jang, an experienced panel chair for RPES, presented promotion information to SARU personnel in Fairbanks. During his presentation, Dr. Jang admitted that the RPES panel makes a correct determination only about two times out of three. Dr. Jang, a GS-15, showed no concern or remorse concerning these statistics and offered no apology for the one-out-of-three scientists whose careers were damaged by the inaccuracy of his secret panel deliberations.

Complainant states the panel members are protected by a cloak of secrecy. Everything is secret, so no records of the panels discussions are kept (i.e. paper is required to be shredded and any CDs containing data are required to be scratched until readable). Cryptic results are issued to the scientist by the panel, but since the panel is not using measurable, object criteria (e.g. number of publications, citations per publication to show impact, etc.) to judge the scientists, they cannot provide meaningful reasons concerning why a promotion was denied. The RPES panel in charge of her initial hire engaged in blatant misconduct in order to achieve the lower GS-level result.

Complainant states Dr. Pantoja informed her by telephone that she would be hired as a GS-12. When she reminded him of the criteria for GS-13 (criteria which they both knew she fully met), Dr. Pantoja reminded her that "there were two other people who wanted this job" (referring to the other applicants). She accepted the job, fully believing that she would receive fair treatment and be rapidly promoted within a year or two. At no time did Pantoja mention that GS-12 scientists are only eligible for promotion every three years, (nor did he mention his abusive treatment to other women scientists, which was already occurring according to the testimony of Dr. Robertson and Dr. Winton).

Complainant states the larger picture must be considered when relating her lower-than-deserved GS-level with discriminatory treatment against women. Statistics clearly show that ARS does not recruit, promote, and/or retain women scientists at the same rate as the men. Taken in that context, the RPES panel misconduct that occurred during her hiring was symptomatic of an established pattern.

Claim 2: "On September 14, 2004, your supervisor offered you the re-evaluated Research Food Technologist position at the GS-12 level."