

PART 3 (of 5)

Complainant states the position was never "re-evaluated". Only candidates are evaluated. Had another applicant been selected, the job may have been offered as a GS-13 or GS-14. The ARS does not follow defined "objective criteria when selecting candidates, nor does it follow its own written criteria. Consequently, hiring decisions can be manipulated, resulting in the current situation within ARS where women scientists are not recruited, promoted, and/or retained at the same rate as their male counterparts.

Complainant states the vacancy was re-announced for five days, August 30th to September 5th, without her knowledge. She was automatically entered into the list of applicants by the agency and ultimately selected for the position. She was merely told that the RPES panel had judged her to be a GS-13. She discovered the 5-day job announcement later.

Complainant states she is a hard worker, a skilled scientist and highly creative. She accepted the job and headed to Alaska a few weeks later, willingly putting aside the RPES panel's error because she was confident that she could regain the promotion through her own efforts. She started working for SARU on October 4, 2004.

Claim 3: "Since you began, your supervisor has not promoted you."

Complainant states one out of every three scientists is judged incorrectly by the RPES panel, according to RPES panel chair, Dr. Eric Jang. She states she meets ARS criteria for GS-13 (and in some aspects, GS-14 and GS-15 level qualifications as well), according to the only written description she has ever found. Unfortunately, RPES panels do not follow objective, "measurable" criteria when assigning GS-levels. Currently there are no established "objective" criteria for assigning GS-levels. Since there are no measurable qualifications, RPES panels are relatively free to promote (or hold back) whomever they please. In 2004 she qualified as a GS-13 scientist but was hired at a lower level. Now, in 2009 she still is a GS-12 and she has lost her opportunity to ever be promoted beyond GS-13 due to the subjectivity of the RPES.

Complainant states immediate promotion to GS-14, Step 8 would initiate the process of restoring her professional status, as well as shield her (to some extent) from the reprisal she has experienced (and will continue to be subjected to) from ARS personnel because of her EEO activities. This is because GS-14's and GS-15's are accorded a higher degree of protection within the ARS. Directive 461.5 Misconduct, Discipline, and Adverse Action specifies that ARS does not have delegated authority over GS-14 level and higher. Her request to be reclassified as a GS-14 should be viewed as a legitimate attempt to protect myself from further abuses of power by agency supervisory personnel.

Complainant states fortunately her promotion can be easily processed at the PWA level since it falls within ARS policies (P&P 420.J Merit Promotion, concerning "Promotions resulting from the upgrading of a position without a significant change

in duties and responsibilities when the action results from the issuance of a new classification standard or the correction of an initial classification error.”)

Complainant states a GS-14 step 8 rank would restore some of her professional status and provide a degree of financial enumeration over time. It was inordinately difficult for her to move forward in her research program with so many behind-the-scenes impediments, damaging her reputation and devaluing her work. She will never know how much damage has been inflicted by Agency supervisory personnel. Promotion to GS-14 is a necessary first step toward repairing her ARS-damaged career.

Complainant states her supervisor does not control promotions. He indicated (on two different occasions) that he did not support her promotion when he was contacted by the RPES panel. She is a Category-1 Research Scientist and could therefore (theoretically) attain a rank of GS-15. However, women scientists rarely find themselves promoted to GS-15 despite the Research Grade Evaluation Guide's promise that scientists have an “unlimited ceiling”. Additionally, after over 4 years of discrimination, harassment, and career damage, she probably lost her opportunity to be promoted to GS-13 before retirement. The subjectivity (and secrecy) of the RPES has proven to be an effective means for holding back specific classes of scientists (e.g. women) thereby ensuring that relatively few will ever achieve the higher ranks within the ARS. Not coincidentally, RPES panel members are drawn from these higher ranks, thereby allowing the cycle to continue.

Complainant states she is required to be judged through the subjective RPES every three years until she is promoted to GS-13, then every 4 years after that. Declining to participate in the subject RPES is currently not an option for research scientists. The Research Grade Evaluation Guide (RGEG) is probably the most applicable manual, however it does not contain objective, measurable criteria for RPES panels to use when judging the careers of other scientists. Instead, it provides guidance for grading “nonsupervisory professional research work”. Among the many contradictions accessible through ARS manuals is that she is considered nonsupervisory even though she supervises a technician and assorted student. Also causing confusion is that the RGEG only applies to positions that are “two-grade interval positions.” Her position advances one grade at a time but it is considered a two-grade interval position for the purpose of RPES.

Complainant states two male post-docs in the unit were either appointed as GS-12 (or else rapidly attained that stature). However, as with all post-docs, their research projects were given to them within an established program, unlike the GS-12 female research scientists who were mandated to develop an independent research program. The post-docs were not subjected to the same performance requirements and did not have the same administrative load that is imposed on Category-1 (permanent) Research Scientists. Yet they were accorded the pay and status of a GS-12, while the female research scientists (with twice the workload) were hired at a lower-than-warranted GS-level and denied promotion.

Claim 4: "Since you began you began, your supervisor actively excluded you from mentoring and other career-building opportunities."

Complainant states the RL, Alberto Pantoja, failed to provide "objective measures" (in accordance with the ARS Performance Appraisal System, P&P 418.3) when preparing her performance plan. She twice asked the RL (in writing) for advice and guidance for exceeding on her annual performance rating. The informal EEO counselor made a similar request on her behalf as part of her Informal resolution attempt (ARS Case #08-40). However, the RL refused to provide information and ultimately discounted her extra work in two elements, resulting in a lower appraisal than was warranted.

Complainant states the other female research scientist in Fairbanks was provided a mentor by PWA administrative personnel after she filed grievances against Dr. Pantoja. She was given good advice and encouragement such that she was promoted to GS-13 in December 2007. She was not provided an outside mentor until after she had been denied a promotion (i.e. after the time when a mentor could have offered valuable advice on securing a promotion). Dr. Pantoja simply does not provide mentoring for women.

Complainant states women scientists have been excluded from career building opportunities. Until August 2008 women were automatically excluded from consider when an acting RL was being selected. She has been harmed by the exclusion of mentoring and/or career building opportunities with a loss of promotion, stature, salary, bonuses, resources, networking opportunities, etc. Complainant states she was treated differently from similarly situated employees not in her protected group when Dr. Pantoja lavished attention and resources on Dr. Joe Kuhl in Palmer, Alaska.

Claim 5: "Since starting your research programs, your supervisor has damaged your reputation, devalued your work, actively sabotaged your programs by placing various behind-the-scenes impediments in the way of your programs, and eventually caused your programs to be shut down by disrespectfully:

- **Tying up your Technician 20% of the time;**
- **Interfering through disallowed Current Research Information System relevant projects and curtailed collaborations;**
- **Negatively impacted your credibility with co-workers and peers."**

Complainant states she generally works independently (with her technician), and they have initiated, carried out, and published research from at least 5 projects since she started working with fish by-products in 2004. Fairbanks is located in the interior of Alaska, far from the ocean and fish processing plants, where they obtain their raw materials. Consequently, it is difficult to find collaborators for her research. Her first grievance (December 27, 2007) outlined three collaborations that were disallowed. The details of these collaborations are not important. The issue is that collaborators are hard to find and if she is forced to work in isolation on individual projects (rather

than as part of a team), her career will continue to suffer and she will never be able to overcome the negative effects of having had an ARS RL who discriminates against women.

Complainant states Dr. Pantoja has damaged her reputation. He is a skilled dissembler. As an RL in ARS he is SARU's voice when dealing with ARS administrators, stakeholders, and other scientists. Since he wields considerable power with his ARS position, many people mistakenly accept his words as truth. She has only discovered a few examples concerning damage to her reputation and research, but it is obvious that the practice is pervasive. When she first arrived at SARU, she received false information concerning publication records of some of the current SARU scientists. Dr. Winton and Dr. Robertson have shared some of their experiences as well. They have all heard from co-workers who have been presented with status-damaging information about them by Dr. Pantoja. The extent of the damage to her career and professional reputation can never be known, yet it will impact her for the rest of her life. Meanwhile, the ARS administration appears blissfully unaware that this type of retaliation may be occurring, so they allow the practice to continue unabated.

Complainant states her supervisor has harassed her and devalued her work, actively sabotaged her programs, placed behind-the-scenes impediments in way of her progress, programs and projects were shut down, tying up her technician 20% of the time, interfered or disallowed Current Research Information System relevant projects, curtailed collaborations, credibility with co-workers and peers was negatively impacted, etc. These questions were handled in her grievances to ARS (starting in December 2007) and the USDA should have copies. Because her discrimination complaints have already been accepted by an EEO administrative judge, these incidents of harassment are of little importance compared to the claims of discrimination she has raised.

Claim 6: "In a closed door private meeting, your supervisor yelled at you so loudly it caused a co-worker to believe that he had missed a workplace meeting."

Complainant states, actually Dr. Pantoja did not "yell." He often speaks loudly and when agitated he speaks with even more volume. In the incident referred to before, his voice was sufficiently loud to carry into the adjacent office. Complainant states the incident was harassment and handled in her grievances by USDA. Dr. Ted Wu, Research Chemist (a post-doc with ARS) was in the adjacent office. The incident happened over a year ago and Dr. Wu claims that he does not remember the incident. Dr. Wu stopped by after Dr. Pantoja had left and asked her what the meeting had been about. She explained the situation to Dr. Wu.

Complainant states 29 CFR §1614.102(a) requires the ARS to identify and eliminate discriminatory practices and policies. However, ARS personnel knowingly allowed discrimination against women scientist to occur (and persist) at SARU. She named the following respondents in her claims of discrimination and reprisal:

Dr. Alberto Pantoja, Research Leader
Dr. Edward Knipling, ARS Administrator
Dr. Antoinette Betschart, ARS Associate Administrator
Dr. Andrew Hammond, ARS PWA Director
Dr. Dwayne Buxton, ARS Pacific West Area Director, retired
Dr. Robert Matteri, Associate Area Director, ARS, PWA
Dr. Molly Kretsch, Acting Associate Area Director, ARS PWA
James Bradley, ARS Deputy Administrator
Karen Brownell, Director of Human Resources

Complainant states she is currently compiling a list of remedies for EEOC in addition to promotion to a GS-14 level discussed above. She also seeks compensatory damages. She states in 2007 she would have settled for just having the discrimination against SARU's women stopped. But now in 2009 her career and well being have been badly damaged that she can never be made "whole."

Complainant states the USDA initially misinterpreted the claims of discrimination that she presented and they did not accept for investigation the clarifications she sent. Therefore, she considers the USDA's "discovery" phase to be wholly inadequate. In January she submitted her complaint to the EEOC. She will request that the EEOC Administrative Judge, Steve Gaffin, will allow her to carry out a more complete discovery phase (i.e. one that actually addresses these issues of discrimination that she raised.

Additionally complainant strongly resents that the quality of her life was diminished on an almost daily basis by the ARS (through continual harassment and reprisal) while the USDA delayed the processing of her discrimination complaint.

> Management's Responses

Dr. Alberto Pantoja (male), Research Leader/and Location Coordinator for USDA and Research Entomologist, GS-0414-15, USDA, ARS, PWA, SARU, University of Alaska Fairbanks, Fairbanks, Alaska has been in his present position since April 19, 2003. He has been employed by the Federal government for the same period of time. His major duties include serving as Research Leader and Location Coordinator for the USDA. He serves as the leading scientist for the integrated pest management and the plant germplasm projects. He is under the direct supervision of the PWA Director. The current Area Director is Andrew Hammond, Area Director, USDA, PWA, Albany, California. Dr. Hammond was appointed Area Director on April 13, 2008. He served as Acting Area Director since January 2008. Dr. Robert Matteri, Associate Area Director is his second line supervisor. Dr. Matteri was appointed Associate Area Director on January 4, 2009. Previously he was the Acting Associate Area Director and Assistant Area Director. He further swears under oath in an affidavit dated February 12, 2009 to the following in substance (Exhibit 11):