

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 5 (of 5)

allow users to continue to input, update, and retrieve research project information. He has actively assisted complainant in processing and approving proposals that did not pass the peer reviewed process or did not pass the scrutiny of the National Program Staff (Exhibits 11u and 11v). In some cases, complainant did not respond to document requests and the process has not been completed. Scientists are expected to be pro-active and develop specific personal and team research plans that are comprehensive and scientifically sound.

FALSE

As RL Dr. Pantoja states he coordinates the development and implementation of individual CRIS projects and the Unit's overall research program. He also recommends and implements needed changes in research priorities and goals for the Unit and keep the Area Direction and National Program Staff informed of the Unit's research plans and progress. He requires scientists to inform him on collaboration so he can perform his duties and facilitate interaction and collaboration with other Units and across CRIS projects in the Unit.

He states he has not disrespected complainant's credibility with co-workers or peers. He states there was a group meeting on January 15, 2008. All SY's in the Unit made a professional and technical presentation of their research accomplishment to the group. After each presentation, he asked questions related to the presentation and its relation to the approved project plan. On December 28, 2007, he informed speakers on the objectives and format of the presentations. He expected scientists to be prepared to answer question related to their research projects and their presentation as indicated in the December 29th e-mail. Some scientists, including complainant, had difficulties in answering questions. Complainant had specific difficulties identifying her customers or stakeholder and how her research will impact customers. He states to this day, complainant has difficulties identifying stakeholders. The presentations and the question and answer sections were witnessed by J. Schmidt, USDA, ARS Cooperative Resolution Program and rest of the USDA ARS Group in Fairbanks.

FALSE

Two participants were compelled to intervene during Dr. Pantoja's verbal harassment of one of the women. This incident was well-documented in ARS complaints and witness affidavits.

He states at this meeting he was in charge of introducing the speakers and directing the question and answer sections. He conducted the session in a professional manner, following principles used in professional society's presentations. The intention of the presentations and the question and answer section were to exchange research results and to rehearse for a professional meeting. Scientists that could not provide satisfactory answers to his questions became defensive. He was not confrontational. Since the result of the Q and A was different (defensive posture) than what he expected (interaction), after the meeting he apologized to all members of the Unit and discussed his intentions versus the outcome.

FALSE

He states all scientist behaved professionally in the meeting. Many were excited to learn details about other's research programs. Others were concerned that they could not answer questions. After the meeting, scientists that could not answer questions expressed embarrassment and became defensive. The inability to answer questions after presentation is not unusual in scientific gatherings.

FALSE

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The objective of the meeting was the exchange of information and research results between scientists and support personnel in the Unit. He states they have a diverse group of scientists conducting research in several areas to include fish waste, pest management, weed management, and germplasm collections. He states it is important that all in the Unit are aware of the work conducted by others.

Claim 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."

Dr. Pantoja states he never yelled at Complainant or any other member of the Unit. He does not know what meeting complainant is referring to. He has no recollection of a private or workplace meeting in which participants were yelling.

- **Dr. Edward Knipling, ARS Administrator**
- **Dr. Antoinette Betschart, ARS Associate Administrator**
- **Dr. Andrew Hammond, ARS PWA Director**
- **Dr. Dwayne Buxton, ARS PWA Director, retired**
- **Dr. Robert Matteri, Associate Area Director, ARS PWA**
- **Dr. Molly Kretsch, Acting Associate Director, ARS, PWA**
- **James Bradley, ARS Deputy Director**
- **Karen Brownell, Director of Human Resources**

Complainant also identified the individuals named above as respondents in her complaint. The investigator did not interview these respondents due to time constraints. See Exhibit 25.

➤ **Complainant's Rebuttal**

Complainant was provided the opportunity to review the sworn statement of respondent, Dr. Alberto Pantoja, and submitted her Rebuttal Statement dated February 13, 2009 (Exhibit 10)

Complainant states she did not receive the attachments that Dr. Pantoja referenced in his affidavit. Viewing those documents are essential and she cannot write an effective rebuttal statement without them. The most she can offer is a list of the elicited false statements from Dr. Pantoja's affidavit for his responses to questions #19, 20, 41, 47, 69, 70, and 71. She states an addition 29 of his 81 answers are misleading to the extent that a reasonable person would draw an inaccurate conclusion from his responses to questions #4, 15, 27, 18, 21, 22, 28, 38, 39,40, 42, 43, 44, 45, 46, 48, 49, 52, 53, 54, 55, 56, 58, 61, 63, 68, 72, 74, and 76).

➤ **Responses from Other Witnesses**

Merle T. Cole (male), Human Resources Specialist (Classification), GS-0201-14, USDA ARS, HRD, REE Services Branch, RPE Staff, Beltsville Maryland, has been in his present position since September 1995 and has worked for the Federal

Merle Cole was inappropriately selected by the EEO counselor as a "witness". His sole expertise would have been the RPES system, but Dr. Bower had already established (by email) that Mr. Cole couldn't recognize (or at least, wouldn't admit) that the RPES process involves no objective measurable criteria.

government since September 1969. His major duties include managing the Research Position Evaluation (RPE) staff with responsibility for administering ARS Research Position Evaluation System (RPES). This involves policy, procedures, training and operation of the nationwide ARS peer panel system for classifying (determining the grade level of) professional research scientists position. His immediate supervisor is Katherine R. Hoyle, Chief, REE Services Branch. He affirms in an affidavit signed on February 6, 2009 the following in substance (Exhibit 12):

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 RPES panel.”

Mr. Cole states he had no personal knowledge of this event.

Claim 2: “On September 16, 2004, her supervisor offered her the re-evaluated Research Food Technologist position at the GS-12 level.”

Mr. Cole states he has no personal knowledge of this event. However, the use of the term “re-evaluated” is incorrect for reasons explained below.

Claim 3: “Since she began her supervisor has not promoted her.”

Mr. Cole states in ARS, supervisors of research scientists cannot promote them. As explained below, classification decisions (including those resulting in promotions) are made by peer panels, not by supervisors.

Mr. Cole is aware that the RGEG contains no objective measurable criteria for evaluating scientists.

He states RPES is the ARS mechanism for determining the grade level of its professional research scientist positions. Such positions are graded via criteria of the U.S. Office of Personnel Management Research Grade (RGEG). The RGEG puts special value and weight on a scientist’s impact, stature and recognition in their field of science. This is atypical of other Federal position classification standards, and is known as the “impact-of-the-person-on-the-job.”

He states generally the same procedures are used to fill vacant research scientist positions at all grade levels. The RPL Staff is not involved in advertising vacancies, reviewing applications, making qualification determinations, or other staffing activities. Those actions are performed by Human Resources (HR) Specialists in the HRD operating branches

He states vacant research scientists positions are usually advertised at multiple grade levels, for example, GS-12/14. Note that the grade levels at which a vacancy is advertised do not set the “floor” or “ceiling” at which the position must mandatorily be filled. The final grade level offered to a selectee is contingent on an assessment of the selectee’s record against the RGEG impact, stature, and recognition criteria. It is also important to distinguish between general qualification standards and the RGEG. A selectee can sometimes “qualify” for a higher grade level under the more general

qualification standards than they can reach under the more demanding RGEG criteria. In the event of such a conflict, RGEG criteria take precedence over qualification standards.

He states appointment at GS-12 or below of Ph.D. holding selectees can be made based on the servicing HR Specialist's application of RGEG criteria. If appointment at GS-13 or above is desired by the selecting official, the selectee's impact, stature, and recognition must be reviewed by an RPES ad hoc panel. See Policies and Procedures §431.3 ARS, Exhibit 2. The RPE Staff solicits volunteer service from a pool of trained and experienced panelists. Ad hoc panels are comprised of a Chair, a Personnel Representative (usually the servicing HR Specialist), and three on-board ARS Research Scientists. Two of the scientists are in the same peer group (broad disciplinary grouping) as the vacancy being filled. The third scientist is in a second, unrelated peer group, and is present to provide disciplinary diversity and balance in the review process. The ad hoc panel reviews case materials, deliberates, then reach a consensus on grade level (i.e., the selectee's impact, stature, and recognition). Like all RPES panels, ad hoc panels operate under an absolute delegation of classification authority from the ARS Administrator. Panels make final classification decisions, not recommendations. The grade level decided by an ad hoc panel is the maximum grade that the selecting official can offer to a selectee.

RGEG criteria are not objective and measurable, (i.e. the panel members relied upon their own opinions and biases to assign a rank of GS 12).

He states the only person he can identify who served on the RPES panel when complainant was hired is the Personnel Representative, Ms. Franky Reese, whose name appears on the panel report. He cannot identify the other panelist because they do not retain records of panel reviews beyond the usual 3-year time frame for administrative records. There was no indication of a complaint, grievance, or other dissatisfaction prior to the expiration of the 3-year retention period. The ad hoc panel met on August 24, 2004, applied RGEG criteria and reached a consensus score of 4-4-6-8 = 22 points. That score is within the RGEG's GS-12 point range.

RPES is the de facto promotion system for scientists in the ARS, (since no other methods for promotion are offered).

He states research scientist positions are subject to mandatory cyclic peer panel review to ensure they are properly graded. He wants to emphasize that the review is **not** for promotion purposes. Promotion is only one of several outcomes from mandatory panel review. See Policies and Procedures 431.3, Section 4. Under the mandatory cyclic review policy, complainant's position was reviewed by a peer panel on December 12, 2007. That panel reached a consensus score of 6-6-4-9 = 24 points which is still within the GS-12 range.

Ted Wu (male), Research Chemist (Post Doc), Series 1, GS-12, USDA, ARS, PWA, SARU, University of Fairbanks Alaska, Fairbanks, Alaska has been in his present position since March 2006 and has been a Federal employee for the same period of time. As a Research Chemist his major duties include research on fish by-products and publish findings. His immediate supervisor is Dr. Peter Bechtel, Research Food Technologist. His second line supervisor is Dr. Alberto Pantoja, Research Leader. He further swears under oath in an affidavit dated February 13, 2009 to the following in substance (Exhibit 13):

Dr. Wu states he works with complainant. She is a peer. They have worked together since March 2006. He states they share a good working relationship. He describes the tenor/morale of the Unit as average. He has not observed that Dr. Pantoja treats females differently from his male counterparts. He states Dr. Pantoja has a female technician in his laboratory and the administrative staff are all female. His observation has been that Dr. Pantoja works productively with them.

Dr. Wu states he has no knowledge of Claims 1, 2, 3, 4, and 5.

Claim 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."

Dr Wu states complainant's office is located next door. He overheard a louder tone of voice one day with the door closed. The word he overheard was "cheese".

➤ **Other Evidence**

Exhibit 14 contains the USAJOBS Vacancy Announcement for Research Food Technologist, GS-13/14.

Exhibit 15 contains the Vacancy Announcement for Research Food Technologist, GS-1382-12

Exhibit 16 contains complainant Application for Employment, Research Food Technologist, GS-13/14

Exhibit 17 contains the Position Description, Research Food Technologist, GS-1382-12

Exhibit 18 contains complainant's appointment to Food Technologist, GS-1382-12 position effective October 3, 2004

Exhibit 19 contains complainant's offer of employment from Franky Reese, Human Resources Specialist

Exhibit 20 contains notification to complainant of selection for a position in ARS

Exhibit 21 contains listing of personnel assigned to SARU Fairbanks, Alaska and Palmer Alaska

Exhibit 22 contains notice of final grievance to complainant of Final Agency Decision dated May 23, 2008

Exhibit 23 contains the agency's Position Management and Classification, Policies and Procedures dated October 2, 2002

The issue raised by all the women research scientists (each of whom filed numerous EEO complaints against Alberto Pantoja) was that Dr. Pantoja did not respect his female peers and he did not treat them fairly (as required by U.S. laws). Office staff and technicians are not perceived by Dr. Pantoja as competition for unit funding and scientific prestige, and therefore were not a target of his harassing, discriminatory, and retaliatory activities.

Dr. Pantoja was obstructing a proposed collaboration involving fish oils as a natural antimicrobial agent in cheese, (which is why he kept shouting the word "cheese") The project was later approved (but only if different, less appropriate collaborators were selected). The other women research scientists reported similar acts of interference by Dr. Pantoja in their collaborations.

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Exhibit 24 contains the Agency's Anti-Harassment Policy Statement

Exhibit 25 contains the Investigator's Memo for the Record

Exhibit 26 contains the Investigator's Request or Documentation with Agency responses

VI. SURVEY OF THE ENVIRONMENT

Exhibit 7 contains the Workforce Profile of SARU, Fairbanks, Alaska as of February 29, 2008. There are a total of thirty-eight (38) employees assigned to the Unit. Eighteen (18) or 47.37% are male and twenty (20) or 52.63% are female.

Dr. Pantoja indicates there is no Organization Chart for SARU, Fairbanks (Exhibit 26)