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October 19, 2009

Buck Sutter, M.S.
Deputy Regional Administrator
Southeast Region National Marine Fisheries Service
263 13th Avenue South
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Re: NOAA memo dtd Oct 8, 2009 from Laura Engleby to Anne E. Ney

Dear Buck:

I write this letter to inform and protest the circumstances of my recent “termination” from employment in the Southeast Region (SER) Protected Resources Division (PRD) Marine Mammal Branch (MMB), on October 8, just 20 working hours before the end of my one-year trial period. Laura (Engleby) handed me the referenced memo (enclosure 1) and told me that my skills were “just not a good fit” for the MMB. Her memo also states I have trouble following directions and retaining information critical to my job, which result in substandard work products and missed deadlines.

During the brief session, with Laura and David (Bernhart), I had no opportunity to defend my accomplishments, that I wrote and submitted to both ahead of the review. There was no discussion. When I questioned what I had done (or not), Laura only repeated I was not a good fit.

I was stunned. I had looked forward to a good review: discussing steps to a grade increase, additional responsibility, and broader career opportunities within NMFS. Instead, I did as I was told: turned in my NOAA badge, handed over my laptop and key, cleared out of my office and vacated the building immediately. I could not say good-bye to colleagues. I did not clear through human resources. Because I did not receive an SF-50 or SF-8, I cannot file an unemployment compensation claim.

This letter addresses three issues: the terms of my removal, Laura’s pattern of discrimination against me based on my age and marital status; and the under-handed dismissal process. I turn to you as SER leadership to help me resolve these issues at the lowest possible level. I note that, if they cannot be resolved in this way, my filing deadlines through formalized channels are November 7th and 22nd with the Office of Personnel Management (OPM) and the NOAA Equal Employment Opportunity (EEO) Office, respectively.

Terms of removal. I had every reason to believe, and continue to believe, that I have no problems following directions, retaining critical information or producing on-time work that meets or exceeds my performance plan expectations. My mid-term overall performance mark was 460 (enclosure 2). I had a solid list of accomplishments for review (enclosure 3)¹. I had numerous e-mails from internal and external customers that imply or say outright I produced good work on time. When I queried Laura directly about my performance, she always said positive things. I attended UFish201 in September, two weeks before my removal; there, I met a cross-section of NOAA employees, and heard presentations and

¹ my 14 Oct 08 – 31 Mar 09 list of accomplishments is in my NMFS archived documents so cannot be included here

participated in question and answer sessions with NMFS national leadership, including Jim Balsiger. These things all suggest to me that my performance was at *least* acceptable.

Conversely, I have never received any counseling or written documentation that my performance did not meet or exceed standards. I was never given a Performance Improvement Plan and/or its opportunity to improve. NOAA Administrative Order (NOA) 202-430, Section 8.07 (enclosure 4) specifically states that supervisors of employees with performance below acceptable standards will ensure those, and other, corrective actions are taken. I am a covered employee under NOA 202-430 Section 4 (enclosure 5). If a poor performance was never documented to me, I submit that it did not exist.

Discriminatory treatment. Let me preface my comments with personal history. I am a 51-year-old, 30-year U.S. Coast Guard (USCG) veteran, with almost 16 years of active duty (14 more as a reservist). I rode the bleeding edge of USCG women in the service; was one of their first females trained as a quartermaster (ship navigation); and served on one of the first gender-integrated cutters. I have broken barriers throughout my career. I am also an experienced leader. I have directly supervised up to 10 subordinates during operational tours; commanded up to 15 boats and their crews during inter-agency security operations; and managed upwards of a hundred recruits at a time as a company commander. I earned my officer commission (chief warrant boatswain) 20 years ago, and have specialized since 2002 in field intelligence.

I know what discrimination looks like. I also know what good management practices and acceptable work and deadlines look like. I have never filed a formal EEO complaint although I have had to resolve human relations conflicts from both victim and mediator standpoints. My work has always earned exceptional marks and evaluations. I pride myself on leadership and on jobs well done.

I truly believe that my sudden, inexplicable removal from NMFS was not the result of poor work, but was the result of discriminatory conduct against me as an older, experienced, married employee (i.e., with a working spouse and, for a portion of the period, legal guardianship of a special needs family member). I also suspect, although I can't know, that Laura bore me ill will because she had to hire me, over other "better fit" candidates, under veteran's preference regulations of the Veteran's Employment Opportunities Act (VEOA).

From the day I started at SER, I feel Laura's goal was to replace me with her perception of a "better fit" employee: a young, good-looking, female who is unaffiliated with the military or reserve; and who, in her mind, has greater outreach appeal, more travel availability, and more willingness to work uncompensated overtime. I suspect her definition also includes "inexperience" so she will not be questioned on her management skills. I note that most MMB employees during and within the two years preceding my tenure meet Laura's fitness criteria: young, single, attractive and without military or family obligations.

Laura's posture toward me began in November, 2008 with aloof, dismissive behavior that rapidly created a difficult work environment. In March, I spoke directly to her about this; the result was her accelerated, not ameliorated, discriminatory behavior. By May, she effectively created a hostile work environment for me. Over the summer, Laura guided, mentored and gave regular social access, training and experience opportunities to her other employees. In contrast, I was excluded. In addition, she ensured I missed deadlines by holding up my memos, white papers and other products until past-due dates while focusing her attention on the work of other employees and their projects, which she deemed more worthwhile. My NMFS-held archived documents and e-mails, and my personal notes, document specific instances where Laura ignored my requests for guidance and opportunity even as I continued to produce high-quality, on-time work.

I suspect my “inability to follow directions” goes to my hesitation to make suggested changes in white papers, responses to comments and analyses when I could not reconcile what I was being told to put down with contrary written guidance (invariably, I did what I was told). In this respect, I believe that my federal government experience and willingness to question conflicting guidelines also flew in the face of Laura’s “better fit” worker.

In summary, Laura gave EEO-prohibited preferential treatment to “better fit” employees over me. Her discriminatory practices created a hostile work environment, attempted to challenge my co-workers’ view of me as a competent team member, and denied me opportunities to perform at the highest levels and advance my career.

Dismissal timing, method, and delivery. I was removed without notice five days before completing my one-year trial period, and four weeks before the end of my 13-month term (enclosure 6). I had no opportunity to meet with human resources staff. I was dismissed without paperwork that, under OPM procedures, should have been signed by an appointing authority prior to my removal (i.e., SF-50). I was given no chance to defend my record. I had to vacate the building in a way that suggests to other employees I had done something wrong.

The removal’s timing and delivery were apparently meant to be punitive. The memo and official record will likely show my unfitness to work for NMFS and overshadow my eligibility to fill other federal positions. My reputation is tarnished, both as a developing NMFS conservation manager and as a USCG Reserve interagency task force and intelligence liaison throughout west-central Florida. My professional relationships are injured. I was humiliated in front of my friends and colleagues. My year spent working hard to establish credibility and experience within NOAA is lost.

Because of the tremendous respect I have for NMFS, and my belief that all conflicts should be handled at the lowest possible level, I request that you arrange a time we can discuss and hopefully resolve this issue. I also ask that you arrange for a sworn law enforcement agent (1811 series) to be present to ensure that an impartial third party witnesses our discussion. I note again the deadlines for filing grievances through other processes (November 7th and 22nd).

I thank you so much for your time and attention to this matter. I look forward to your reply.

Sincerely,

Anne Visser Ney

Cc: David Bernhart

Encl:

- (1) NMFS memo dtd 08 October 2009, from Laura Engleby to Anne Ney
- (2) CD-430 received on e-mail from Laura Engleby in lieu of a mid-term performance review
- (3) List of Accomplishments for October 2009 Performance Review
- (4) NOAA Administrative Order 202-430, Section 8.07, Actions Based on Unacceptable Performance
- (5) NOAA Administrative Order 202-420, Section 4, Coverage
- (6) DOC letter dtd 10 September 2008, letter of hire