



MERIT SYSTEMS PROTECTION BOARD FORM 185-1

Please type or print legibly.

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MERIT SYSTEMS PROTECTION BOARD FORM 185-1

Please type or print legibly.



MERIT SYSTEMS PROTECTION BOARD FORM 185-2

Complete this form and attach it to MSPB Form 185-1 if you are appealing an agency personnel action or decision (other than a decision or action affecting your retirement rights or benefits) that is appealable to the Board under a law, rule, or regulation. If the personnel See 5 CFR 1201.3(a) for a list of appealable personnel actions and action or decision is appealable to the Board, you should have received a final decision letter from the agency that informs you of your right to file an appeal with the Board.

Please type or print legibly.

OMB No.

Please submit only the attachments requested in this form at this time. You will be afforded the opportunity to submit detailed evidence in support of your appeal later in the proceeding.

Name (last, first, middle initial)

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MERIT SYSTEMS PROTECTION BOARD FORM 185-2

Please type or print legibly.

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Merit Systems Protection Board Form 185-2 Appeal of Agency Personnel Action or Decision (Non-retirement)

Continuation Sheet

6. Explain briefly why you think the agency was wrong in taking this action or making this decision.

Wrongful negative suitability: my mid-term performance review was 460/500; all feedback I received indicated I was doing a good job; I was never documented, counseled, given a chance to improve or told I needed a Performance Improvement Plan, all required for poor performance under NOAA policy (I was a covered employee). I was selected for/ attended HQ-level employee orientation (40 people/ year from NMFS) two weeks before dismissal. My mid-term and year-review accomplishments list were never discussed. When I questioned the basis the day I was dismissed, my supervisor refused to provide a single instance or detail. I know my employment was subject to trial period termination. However, I believe the negative suitability determination was the result of discrimination against me by my supervisor, based on my age and marital status; and pursuant to prohibited personnel practices.

I initiated a discussion with my supervisor 5 months after my hire. Every project I turned in was praised, but I felt left out. I asked to discuss my performance, to question why I was excluded, and determine if my age, drilling reserve status, affiliation with the US Coast Guard, or my performance were at issue. She denied she had any problem with my work and said my performance was "great, very good". However, her attitude deteriorated even further afterwards.

She cancelled my formal performance review a month later and said we had discussed everything already. She had me sign a blank performance review. I never got a copy of the one I signed, although I tried. Finally, she e-mailed me an unsigned pdf filled in with performance marks totaling 460/500. That was our last communication about performance.

Other prohibited: (Influence) My supervisor's behavior was designed to make me quit so she could replace me with a young female intern, whom she favored and replaced me with on key assignments/ training under my job description, but not hers. My supervisor mentored and fostered communication with and between other younger co-workers, including contract, intern and GS-employees. The result of these actions was to influence me to withdraw from continuing in my job (in fact I excelled in my work specifically to compete for permanent GS positions outside of her branch); and to favor prospects for the non-GS employees to take my job.

(Influence) The treatment given the intern was unauthorized (I think): she was sent to government-sponsored out-of-town training although she is not a GS-employee (ie, possible use of government training funds for non-government employee).

(Personal conduct) I believe my supv was inflamed by my personal conduct, including creative writing/ freelance publishing, and non-branch personal relationships. These did not affect my work but she perceived them as "right-brained" and disloyal to her. Examples include sharing literary/ journalistic pieces with co-workers (receiving theirs in return); publishing a story in the local paper that discusses my parent's painful divorce; forming relationships outside of work with sister-branch employees (she perceives differential attention is given to the other branch); working out with her boss (who she demeans behind his back), and non-branch co-workers at lunch.

(Other) I received my SF-50 today (Nov 7, last date of MSPB appeal) and saw that my termination code is "385; L5M, Conduct or delinquency and b/c of unacceptable performance during trial period". In no way does this reflect my conduct, what I was told during my termination or what was written on the termination memo! (Also, was terminated 08 Oct, SF-52 dated 09 Oct and SF-50, which was only today received, approved 09 Oct, after the fact.)

I protested these matters (all but the code, just received) by letter with my next-superior supervisor and the regional administrator, requesting a discussion to figure out what went wrong and low-level resolution. I have not received any response.



Merit Systems Protection Board Form 185-2 Appeal of Agency Personnel Action or Decision (Non-retirement)

Continuation Sheet

7. What action would you like the Board to take in this case (i.e., what remedy are you asking for)?

1. Reinstate me to complete my 13 month term, in a different branch within the NMFS Southeast Region.
2. Remove the unsuitability code on my SF-50.
3. Order my supervisor, department head and regional director to explain their process, information and method of determining my unsuitability.
4. Place a letter of reprimand in my supervisor's file.



MERIT SYSTEMS PROTECTION BOARD FORM 185-4B

Complete this form and attach it to MSPB Form 185-1 if you are raising a claim—in connection with an appeal of an agency action or decision for which you have completed MSPB Form 185-2 or MSPB Form 185-3—that the agency action or decision was the result of prohibited discrimination.

If you have previously filed a discrimination complaint with the agency under the procedures of the Equal Employment Opportunity Commission (29 CFR Part 1614), you may file an appeal with the Board after you have received the agency's final decision on your complaint or, if the agency has not issued a final decision on your discrimination complaint within 120 calendar days after the date you filed it, at any time after the end of the 120-day period. See 5 CFR 1201.154.

Please type or print legibly.

OMB NO.

Name (*last, first, middle initial*)

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REQUEST FOR COMPENSATORY DAMAGES

7.



Merit Systems Protection Board Form 185-4B Claims of Prohibited Discrimination

Continuation Sheet

2. If you believe you were discriminated against by the agency, in connection with the matter appealed, because of your race, color, religion, sex, national origin, disability, or age, explain why you believe it to be true.

Examples of my supervisor's discriminatory behaviors: sidelining from work considered important (hot-topic outreach, presentations, and paper co-authorship) ; assigning menial tasks not in my job description (posting branch mail, coffee-and-donut duty during conferences); making herself available to other branch employees while excluding me, including from off-hours strategy sessions; replacing me on off-site research/ network opportunities and advanced training within my job description (but not theirs); leaving questions, phone calls, e-mails and visits to her office ignored, unanswered or dismissed; giving conflicting guidance on projects then conveying I was incapable of understanding the work, leading to co-workers' lowered expectations and perceptions of my work; shelving my work that required approval in spite of my continuous prompting. Because of these discriminatory practices, I was usually not assigned "good work" which resulted in the (incorrect) perception that my work was not good.

I believe my work was above reproach. Above-my-grade projects were assigned on short notice just before the co-worker departed on leave; all were completed correctly and on or ahead of schedule. My supervisor ignored these higher-visibility successes.

The day I was terminated, my supervisor said I was "not a good fit with the branch". From day one, she was uncomfortable with my age, work/ federal government experience, and reserve officer status: opposites of her "good fit" young, unmarried, perky women. She is in her mid-40's, "acts young" and clearly favored hanging out with younger co-workers. Eight of 9 current/ former branch employees (mostly her hires) fit this. I am 51 with a working spouse and (for 6 weeks) legal custody of my nephew. She bristled when I took family sick leave/ annual leave for school meetings. She suggested I should cancel plans to attend an important out-of-town conference because of family obligations (I attended).



MERIT SYSTEMS PROTECTION BOARD FORM 185-4C

Complete this form and attach it to MSPB Form 185-1 if you are raising a claim—in connection with an appeal of an agency action or decision for which you have completed MSPB Form 185-2 or MSPB Form 185-3—that the agency action or decision was the result of one or more of the statutory prohibited personnel practices. See 5 U.S.C. 2302 b .

DO NOT use this form for any of the following prohibited personnel practice claims:

- A claim that the action or decision was the result of discrimination based on race, color, religion, sex, national origin, disability, or age, 5 U.S.C. 2302(b)(1); complete MSPB Form 185-4B instead.
- A claim that the action or decision was based on whistleblowing, 5 U.S.C. 2302(b)(8); complete MSPB Form 185-5 instead.
- A claim that the action or decision violated a veterans' preference requirement, 5 U.S.C. 2302(b)(11); complete MSPB Form 185-8 instead.

Please type or print legibly.

OMB No.

Name (last, first, middle initial)

1.

e-Appeal Attachment Transmittal

Appeal Number: 200903877
Appellant Name: Anne Visser Ney
Agency Name: Department of Commerce

Please check the box for each document included with this transmittal.

<input type="checkbox"/>	Name of Attachment	Attachment Processing Status	File Name/Delivery Method
<input type="checkbox"/>	SF-50, Notification of Personnel Action	Upload with e-Appeal	ney.sf-500001.pdf
<input type="checkbox"/>	Agency Decision Letter	Upload with e-Appeal	ney.termination letter.20091008.pdf

2 copies must be submitted of all documents submitted in hardcopy.
Send documents to be submitted in paper form to:
Atlanta Regional Office
401 W. Peachtree Street, NW. Suite 1050
Atlanta, Georgia 30308
United States of America

Phone: (404) 730-2751
Fax: (404) 730-2767

Standard Form 50
Rev. 7/91
U.S. Office of Personnel Management
FPM Supp. 296-33, Subcl. 4

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) **NEY, ANNE E** 2. Social Security Number **285-56-7211** 3. Date of Birth **04/10/58** 4. Effective Date **10/08/09**

FIRST ACTION

SECOND ACTION

5-A. Code **385** 5-B. Nature of Action **TERM DURING PROB/TRIAL PERIOD**
5-C. Code **L5M** 5-D. Legal Authority **REG 315.804 MIX**
5-E. Code 5-F. Legal Authority

6-A. Code 6-B. Nature of Action
6-C. Code 6-D. Legal Authority
6-E. Code 6-F. Legal Authority

7. FROM: Position Title and Number
**FISH BIOLGST
01 SER037**

15. TO: Position Title and Number

8. Pay Plan	9. Occ. Code	10. Grade/Level	11. Step/Rate	12. Total Salary	13. Pay Basis	16. Pay Plan	17. Occ. Code	18. Grade/Level	19. Step/Rate	20. Total Salary/Award	21. Pay Basis
GS	0482	09	01	46,625.00	PA						
12A. Basic Pay	12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay	20A. Basic Pay	20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay				
40,949.00	5,676.00	46,625.00	.00		.00		.00				

14. Name and Location of Position's Organization
**NATIONAL OCEANIC AND ATMOSPHERIC ADMIN
NAT MARINE FISHERIES
SOUTHEAST REGION, NMFS
SOUTHEAST REGIONAL OFC**

22. Name and Location of Position's Organization
**SERVICE
1B
CM 54303000503020000 PP 21 2009**

EMPLOYEE DATA

23. Veterans Preference
2 1 - None 2 - 5 Point 3 - 10 Point/Disability 4 - 10 Point/Compensable 5 - 10 Point/Other 6 - 10 Point/Compensable 30%

24. Tenure
3 0 - None 1 - Permanent 2 - Conditional 3 - Indefinite

25. Agency Use
26. Veterans Preference for RIF
X YES NO

27. FEGLI
II BASIC-IX ADDITIONAL-IX FAMILY

28. Annuitant Indicator
9 NOT APPLICABLE

29. Pay Rate Determinant
0

30. Retirement Plan
K FERS AND FICA

31. Service Comp. Date (Leave)
07/01/93

32. Work Schedule
F FULL TIME

33. Part-Time Hours Per Biweekly Pay Period
0

POSITION DATA

34. Position
I 1 - Competitive Service 2 - Excepted Service 3 - SES General 4 - SES Career Reserved

35. FLSA Category
N E - Except 1 - Nonexempt

36. Appropriation Code Occupied
2196

37. Bargaining Unit Status

38. Duty Station Code
12-2730-103

39. Duty Station (City - County - State or Overseas Location)
ST PETERSBURG PINELLAS FL

40. Agency Data
41. 42. 43. 44.

45. Remarks

FORWARDING ADDRESS=5300 27TH AVE N
" " ;ST PETERSBURG, FL 33710
SF-8 FURNISHED.
LUMP-SUM PAYMENT TO BE MADE FOR ANY UNUSED ANNUAL LEAVE.
SF-2819 WAS PROVIDED. LIFE INSURANCE COVERAGE IS EXTENDED FOR 31 DAYS
DURING WHICH YOU ARE ELIGIBLE TO CONVERT TO AN INDIVIDUAL POLICY (NON-
GROUP CONTRACT).

46. Employing Department or Agency
DEPARTMENT OF COMMERCE

50. Signature/Authentication and Title of Approving Official
E/S BY: EDUARDO J. RIBAS
DIRECTOR, WORKFORCE MGMT OFFICE

47. Agency Code **CM 54** 48. Personnel Office ID **1531** 49. Approval Date **10/09/09**



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

OCT 8 2009

MEMORANDUM FOR: Anne E. Ney, Fish Biologist, GS-0482-09

FROM: Laura Engleby, Supervisory Fish Biologist
Protected Resources Division

SUBJECT: Termination During Trial Period

On October 14, 2008, you received a Term Appointment (NTE 11/14/09) as a Fish Biologist, GS-0482-09. Your appointment requires you to serve a one-year trial period. This is to notify you that your appointment with the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), will be terminated effective October 8, 2009 due to your unacceptable performance. The difficulties you have continued to exhibit in following directions and retaining information critical to the performance of your job, most importantly the fundamental aspects of the Marine Mammal Protection Act (MMPA) have resulted in numerous substandard work products and missed deadlines. Regrettably, your skills are not a good match for this position.

As of the date of this letter, you have not completed your trial period. In accordance with 5 CFR 316.304, a term employee's employment may be terminated at any time during the trial period. The probationary period is an opportunity to determine an individual's fitness for continued employment and I have determined that you have not demonstrated fitness for continued employment.

The nature of your appointment does not provide you the right to file a grievance under the negotiated grievance procedure, nor to appeal your termination to the Merit Systems Protection Board (MSPB) on its merits. However, you do have the right to appeal this action to the MSPB if you allege your termination is based on partisan political reasons or marital status. You may appeal this action to the MSPB on the basis of discrimination due to race, color, religion, sex, national origin, handicapping condition, or age, **but only** if such discrimination is raised in addition to either partisan political reasons or marital status.

You may submit an appeal to the MSPB no later than 30 calendar days after the effective date of this decision, or 30 days after the date of receipt of this decision, whichever is later. Any appeal must be in writing and addressed to:

Merit Systems Protection Board
Atlanta Regional Office
401 W. Peachtree Street, NW
10th Floor
Atlanta, GA 30308-3519

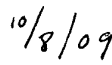


An MSPB appeal form is enclosed. Should you elect to file an appeal electronically, an interactive web application is available at <http://www.mspb.gov>. A copy of the MSPB's regulations and the MSPB appeal form are available at the web site.

Should you be unable to obtain a copy of the MSPB regulations, or if you have questions regarding your appeal rights, you may contact Cecilia Collins, Human Resources Advisor at Cecilia.Collins@noaa.gov or by phone at (757) 441-6476 and she will provide you a copy of the regulations.

ACKNOWLEDGEMENT OF RECEIPT:


SIGNATURE


DATE