

RUTH A. ETZEL v. ENVIRONMENTAL PROTECTION AGENCY

Docket # DC-1221-19-0827-W-2

Agency's Pre-Hearing Statement

Summary Page

Case Title : RUTH A. ETZEL v. ENVIRONMENTAL PROTECTION AGENCY

Docket Number : DC-1221-19-0827-W-2

Pleading Title : Agency's Pre-Hearing Statement

Filer's Name : Merrick D. Cosey

Filer's Pleading Role : Agency Representative

Details about the supporting documentation

N/A

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Online Interview

1. Would you like to enter the text online or upload a file containing the pleading?

See attached pleading text document

2. Does your pleading assert facts that you know from your personal knowledge?

Yes

3. Do you declare, under penalty of perjury, that the facts stated in this pleading are true and correct?

Yes

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
OFFICE OF REGIONAL OPERATIONS**

RUTH ETZEL,)	Docket No.
Appellant,)	DC-1221-19-0827-W-2
)	
v.)	
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY,)	
Agency.)	Administrative Judge
)	Joel Alexander
)	

AGENCY PRE-HEARING STATEMENT

Pursuant to the March 18, 2021 *Order and Notice of Hearing and Prehearing Conference* issued in the above-captioned appeal, the United States Environmental Protection Agency (“EPA” or “Agency”), through the undersigned Agency Representatives, hereby files this Agency Pre-Hearing Statement. A key health initiative, the Federal Lead Action Plan, issued in December 2018, was a major focus and significant accomplishment not only for EPA but for all of the 17 federal departments and offices involved in its creation.¹ While Appellant Ruth Etzel has alleged that EPA’s former administration delayed implementation of the Action Plan with the premise that it did not care about children and lead exposure issues, the profuse record and witness testimony will illustrate that Appellant’s allegations are grossly unfounded. *See Appeal* (filed Sept. 11, 2019). Indeed, Appellant may have personally preferred to have an earlier issuance date for the Action Plan or to be the final approver of that draft plan, however,

¹ The Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts was issued in December 2018 and was created to “help federal agencies work strategically and collaboratively to reduce exposure to lead and improved children’s health.” The Task Force consisted of 17 federal departments or offices. The Secretary of the Department of Health and Human Services and the EPA Administrator co-chaired the Task Force. https://www.hud.gov/sites/dfiles/HH/documents/fedactionplan_lead_final.pdf

testimony will show that Appellant was just one of many individuals in one of the 17 agencies, including the Department of Health and Human Services and the Department of Housing and Urban Development, involved in the completion of the Federal Lead Action Plan. Together, this community of critical federal stakeholders had ardent interests in reducing lead exposure and improving children's health.²

In this appeal, Appellant alleges that her protected disclosures were contributing factors in the Agency's decision to take the following personnel actions: placement of Appellant on administrative leave on September 25, 2018; rating Appellant's fiscal year 2018 performance Critical Element "Leading People" a level 1 "Unsatisfactory;" reducing her rate of pay by 10%; removing her from the Senior Executive Service; charging her with two hours of Absence Without Leave (AWOL) for her failure to attend her scheduled investigative interview and transferring her to the Office of Water in March 2019.³ *See March 27, 2020 Order.* In direct opposition to Appellant's varied claims, the May 19-21, 2021 administrative hearing will show that none of Appellant's disclosures were contributing factors in the Agency's six actions at issue in this case, nor were they based on any retaliatory motives. *See 5 U.S.C. § 2302(a).* Instead, the Agency had legitimate, non-retaliatory reasons for its challenged actions, each of which it would have taken separate and apart from any of Appellant's alleged protected disclosures.

Specifically, the record will show that Appellant had significant and documented performance deficiencies in leading people as Director, Office of Children's Health Protection (OCHP); as such, Appellant's 2018 performance rating in Critical Element 2 "Leading People" reflected those shortcomings. As a result of Appellant's poor leadership acumen and her 2018

² See https://www.hud.gov/sites/dfiles/HH/documents/fedactionplan_lead_final.pdf

³ Specifically, Appellant alleges that the Agency failed to provide her with duties and a position description in March 2019; additionally, she alleges that she was inappropriately assigned to work in a cubicle.

performance rating, her pay was decreased, she was removed from the Senior Executive Service (“SES”) and reassigned to a General Schedule-15 position in the Office of Water. Finally, when Agency leadership received a four-page written document of claims against Appellant, the Agency had a responsibility to investigate the claims and appropriately made the decision to place Appellant on administrative leave during that investigation. When Appellant failed to attend her scheduled interview, an interview that had already once prior been rescheduled per her request, the Agency appropriately charged her with AWOL. The prolific record evidence and witness testimony in this case wholly support the Agency’s actions and Appellant is unable to show any retaliatory animus by the Agency.

I. STATEMENT OF FACTS AND ISSUES

A. Climate Assessment for the Office of Children’s Health Protection.

1. In 2017, based on Agency leadership’s concerns about persistent office morale and climate issues in the Office of Children’s Health Protection (OCHP), Office of Administrator, the office for which Appellant served as Director, the Agency contracted to have an independent, outside consulting firm perform a Climate Assessment of OCHP. Agency Exhibit (Ex.) 25 at 24-25. Consultant and Leadership Coach Catherine Allen conducted the Climate Assessment, and in September 2018, Ms. Allen reported her findings to Helena Wooden-Aguilar, then Acting Deputy Chief of Staff, who served as Appellant’s first-level supervisor. Id.

2. Ms. Allen’s September 2018 Climate Assessment report noted that Appellant, who served as the OCHP Director and member of the Senior Executive Service (“SES”) at the time, “consistently fails to demonstrate the basic leadership competencies necessary to successfully carry out the responsibilities of the Office Director role” and has “lost the trust, respect, confidence and leadership credibility of her managers, staff and agency colleagues.” Id. at 25.

Ms. Allen’s report also found that “[t]he impact” of Appellant’s “leadership ineffectiveness is significant.” Id.

B. Appellant’s 2018 Critical Element 2 “Leading People” Performance Rating of Level 1, “Unsatisfactory.”

3. Ms. Wooden-Aguilar served as Appellant’s first level supervisor and rating official for Appellant’s Fiscal Year (“FY”) 2018 performance assessment or “PARS.”⁴ Agency Exhibit No.

25. The rating scale for each of Appellant’s five Critical Element components of the FY 2018 PARS ranged from Level 1 (“Unsatisfactory,” the lowest rating) to Level 5 (“Outstanding,” the highest rating). Id.

4. In rating Appellant on Critical Element 2, “Leading People,” for the FY 2018 performance period, Ms. Wooden-Aguilar rated Appellant a level 1 (“Unsatisfactory”) and stated that she found that Appellant had demonstrated “ineffective leadership of people” and noted Appellant’s “communication challenges” and her “inability to foster cooperation, teamwork and resolve conflicts.” Agency Exhibit No. 25 at 16.⁵ The rating also noted that it considered observations of Appellant’s leadership capabilities provided by the Climate Assessment contractor who documented that Appellant had “lost the trust, respect, confidence and leadership credibility of her managers, staff and agency colleagues.” Id. at 19. Ms. Wooden-Aguilar also stated in the rating that while the SES was designed to be “a corps of executives selected for their leadership qualifications,” Appellant had been ineffective in leading people and thus, received a Level 1 (“Unsatisfactory”) for Critical Element 2, “Leading People.” Id. For SES performance

⁴ EPA calls its annual performance ratings (based on the fiscal year cycle) “PARS,” which stands for “Performance Appraisal and Recognition System.”

⁵ Please note the Agency’s May 5, 2020 filing on the MSPB docket whereby the Agency noted an administrative error in regard to Agency File, Tab 4(m), The error related to the FY 2018 PARS in the Agency file (which was incomplete). The Agency replaced the incomplete PARS with the complete document, which it attached to its May 5, 2020 cover letter. Said correct document also appears at Agency Exhibit No. 25.

ratings, a rating of Level 1 in any Critical Element results in a summary rating of Level 1, which is what Appellant received for FY 2018. Id. at 1.

5. Just as Appellant had sought a Higher Level Review (HLR) or appeal of Critical Element 2 “Leading People” in her prior FY 2015 performance rating when she was rated a Level 2 “Needs Improvement” in that same Critical Element (*See* Agency Exhibits 28; 29), so too did she seek Higher Level Review of Critical Element 2 “Leading People” for her FY 2018 rating which was “Unsatisfactory.” *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 11 at 5.

6. On November 14, 2018, as part of the Higher Level Review process, Appellant submitted a lengthy response to the FY 2018 PARS rating. Id. While the 2018 PARS rating focused on FY 2018, Appellant’s written response challenging the rating highlighted points well outside of that timeframe and decades prior like a 1992 award and a 2008 medal that she reportedly received from a different federal agency. Id. at 6.

7. On November 18, 2018, Ms. Wooden-Aguilar responded to Appellant’s November 14, 2018 response to her 2018 PARS rating and in doing so, noted that throughout the performance year, she had discussed with Appellant “her performance related to leadership and my expectation that her interactions with colleagues and OCHP staff should be productive and promote respect and cooperation.” *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 57.

8. The matter was then reviewed by Donna J. Vizian, Principal Deputy Assistant Administrator, who served as the Higher Level Review Official. *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 53. Via a February 4, 2019 Memorandum, Ms. Vizian found that while much of Appellant’s submission was “not relevant to her FY 2018 performance rating and in particular CE 2,” Ms. Vizian also noted that the information provided by Ms. Wooden-

Aguilar and the contractor was “compelling.” Id. Ms. Vizian ultimately recommended that the Performance Review Board (“PRB”) uphold the assigned rating. Id.

9. Following Ms. Vizian’s recommendation as the Higher-Level Review official, the next step in Appellant’s FY 2018 rating appeal was review by the PRB, a group of Appellant’s SES peers. The PRB met on February 26, 2018 and reviewed Appellant’s rating, Appellant’s submitted documentation challenging that rating, and the Higher-Level Review Official’s recommendation. Based on that record, the PRB recommended that the 2018 rating issued by Ms. Wooden-Aguilar be sustained. Agency Ex. 26; *see also See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 49.

10. Thereafter, on March 8, 2019, Deputy Administrator Henry Darwin, upheld the rating of “Unsatisfactory” Level 1, an action that was recommend by both the “HLR [Higher-Level Review] Official and [the] PRB.” *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 51.

11. In March 2018, Debbi Hart, Director of the Policy, Planning and Training Division of the Office of Human Resources, notified Appellant that the Higher Level Review procedures were followed; Ms. Vizian recommended that the PRB sustain the rating; the PRB “voted to concur with the recommendation” and the Deputy Administrator sustained the “Unsatisfactory” rating for Appellant’s 2018 PARS. *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 49. As such, three levels of review by Appellant’s SES peers sustained Ms. Wooden-Aguilar’s 2018 PARS rating of Appellant.

C. **September 2018 Written Claims Made Against Appellant, Appellant's Placement on Administrative Leave During the Investigation & Appellant's Interview & Absence Without Leave Charge.**

12. Appellant claims that her September 25, 2018 placement on administrative leave was “to avoid the public embarrassment of the Acting Administrator of the EPA [Andrew Wheeler] refusing to endorse the initiative to prevent childhood exposure to dangerous levels of lead.” *See* Appeal, Complaint to Office of Special Counsel, at 11 of 23.

13. Separate from the Climate Assessment and Appellant's 2018 PARS rating and unsuccessful HLR appeal, on September 15, 2018, Ms. Wooden-Aguilar received written claims from one of Appellant's subordinate managers, Angela Hackel, who alleged that Appellant used “explicit language,” “failed to follow agency HR policy,” was unable “to control her emotions,” and on many occasions” became “reactive” and would “bully others.” Agency Ex. No 48.

14. Thereafter, on September 25, 2018, the Agency issued to Appellant a Notification of Administrative Leave which related that Appellant was being placed on administrative leave “until further notice pending review of performance and office matters.” *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 15 at 31-32.

15. On October 9, 2018, the Agency notified Appellant that it would be conducting an administrative investigation. *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 15 at 28-29.

16. On October 15, 2018, as part of its investigation into the matter, the Agency scheduled Appellant's interview with the assigned investigator for October 19, 2018. Agency Ex. No. 44. One day prior to Appellant's scheduled interview on October 18, 2018, the Agency received a request from Appellant's attorney to reschedule the interview, and the Agency granted said request and rescheduled the interview for October 22, 2018. Agency Ex. No. 45. When

Appellant failed to appear on October 22, 2018 for her rescheduled interview, Ms. Wooden-Aguilar charged Appellant with two hours of Absence Without Leave (AWOL). Agency Ex. No. 43.

17. After reviewing the investigative report which investigated Ms. Hackel's claims, Ms. Wooden-Aguilar met with Appellant on March 21, 2019 and related that while she found the claims "serious" and "deeply concerning," she ultimately determined that there was not sufficient evidence to substantiate the allegations. Agency Ex. 49.

D. Appellant's 10% Reduction in Pay & Removal From the SES.

18. At that same March 21, 2019 meeting, Ms. Wooden-Aguilar also noted that because Appellant's request for Higher Level Review of her FY 2018 PARS's Critical Element 2 "Leading People" rating of 1 was unsuccessful, she would be removed from the SES effective April 28, 2019. *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 46-47.

19. Thereafter, via a May 3, 2019 Memorandum to Appellant, Ms. Wooden-Aguilar notified Appellant of a 10 percent reduction in her rate of pay, which was related to Appellant's FY 2018 PARS performance rating. *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 38-39.

20. Appellant appealed the 10 percent reduction in her rate of pay to Ms. Wooden-Aguilar on May 13, 2019 and after further considering the matter and Appellant's appeal, Ms. Wooden-Aguilar, via a May 17, 2019 Memorandum, notified Appellant that she had decided that it was appropriate to reduce Appellant's salary by 10 percent. *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 31-36. Thereafter, in response to Appellant's request for reconsideration of that decision, Doug Benevento, former Associate Deputy Administrator, upheld the 10 percent reduction in Appellant's rate of pay. Agency Ex. No. 41.

E. Appellant’s Detail & Transfer to the Office of Water.

21. Appellant’s detail as an SES to the Office of Water began on March 24, 2019 and on April 28, 2019, it was extended to May 25, 2019. *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 43, 41.

22. Appellant’s detail as an SES to the Office of Water ended on May 26, 2019 and she was converted to a GS-15 employee in the Office of Water. *See* MSPB Electronic Docket, DC-1221-19-0827-W-1, Tab 10 at 28, 26.

II. AGREED UPON MATERIAL FACTS

The Agency Representatives drafted a list of proposed agreed-upon material facts and on April 29, 2020 sent the draft list to Appellant’s Representatives. Appellant’s Representatives did not agree to the draft and sent their own draft which the Agency did not agree to.

III. PROPOSED AGENCY WITNESSES⁶

1. Helena Wooden Aguilar, Deputy Associate, Office of Policy, Office of the Administrator, EPA Headquarters, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Ms. Wooden-Aguilar, who formerly served as the Acting Deputy Chief of Staff, EPA, and was Appellant’s former first-level supervisor, will testify in regard to her knowledge of the Climate Assessment conducted for OCHP, Appellant’s FY 2018 performance rating, and Appellant’s subsequent appeal of that rating. She will also testify in regard to her receipt of claims made against Appellant by one of Appellant’s subordinate managers, the subsequent placement of Appellant on Administrative Leave, and the resulting administrative investigation including Appellant’s placement on Absence Without Leave for two hours when Appellant failed to attend her rescheduled interview. Ms. Wooden-Aguilar will also testify in regard to Appellant’s 10 percent pay reduction and her removal from the SES. Ms. Wooden-Aguilar will also testify in regard to the former Administration’s focus and work on the Federal Lead Strategy.⁷

⁶ The Agency reserves the right to amend this list for rebuttal witnesses. Likewise, the Agency reserves the right to object to any of Appellant’s proposed hearing witnesses, including those for whom subpoenas are requested.

⁷ Throughout this litigation, the Agency will refer to the Federal Lead Strategy, yet, for clarity sake, it notes that when it was released in December 2018, it was titled the Federal Lead Action Plan. Any references to the Federal Lead Strategy include, by this reference, the plan that was ultimately released and titled the Federal Lead Action Plan.

2. **Angela Hackel, Senior Advisor, Office of Public Affairs, Office of the Administrator, EPA Headquarters, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.**

Ms. Hackel is the former Division Director of the Program Implementation and Coordination Division (“PICD”) within OCHP, EPA, and worked under Appellant’s supervision from January 2017 until Appellant was placed on administrative leave on September 25, 2018. Ms. Hackel will testify in regard to her knowledge of Appellant’s leadership of OCHP, the list of allegations regarding Appellant she submitted to her second level supervisor, Ms. Wooden-Aguilar, the Climate Assessment conducted for OCHP and her work on the Federal Lead Strategy.

3. **Mike Flynn, former Deputy Administrator, EPA Headquarters, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.**

Mr. Flynn will testify in regard to his knowledge of and discussions regarding the Climate Assessment conducted for OCHP and his work with Ms. Wooden-Aguilar.

4. **Catherine Allen, Consultant, Washington D.C. area.**

Ms. Allen will testify in regard to her role in the Climate Assessment conducted for OCHP in the 2017-2018 timeframe and specifically her conversations and work with OCHP staff, Appellant, and Agency leadership including her findings and recommendations which she provided to Agency leadership.

Of note, Ms. Allen is represented by Brian L. Schwalb, Attorney, Venable LLP, and Mr. Schwalb would like to represent Ms. Allen during her hearing testimony.

5. **Khesha Reed, Deputy Director, Standards and Health Protection Division, Office of Science and Technology, Office of Water, SEPA Headquarters, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.**

Ms. Reed, former Deputy Director of OCHP, will testify in regard to her experiences working under Appellant’s supervision in OCHP including but not limited to Appellant’s performance as OCHP Director, the Climate Assessment that was performed and discussions that she had with senior agency leadership regarding Appellant.

6. **Margot Brown, former PICD Director, OCHP, EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.**

Ms. Brown will testify regarding her experiences working under Appellant’s supervision in OCHP and conversations she had with senior agency leadership regarding Appellant.

7. **Lisa Matluk, Program Analyst, Office of Mission Support, Office of Human Resources, Policy Planning and Training Division, EPA Headquarters, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.**

Ms. Matluk will testify regarding Agency procedures regarding SES performance ratings and requests for Higher Level Review including the Performance Review Board (PRB) process for Appellant's appeal of her 2018 FY PARS rating, and the Agency's record of removing Agency employees from the SES for performance related issues.

8. **Tim Epp, Associate General Counsel, National FOIA Office, EPA, Headquarters, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.**

Mr. Epp will testify in regard to his role as the original Federal Lead Coordinator in 2018, his work on the Federal Lead Strategy and his related work and interactions with Appellant.

9. **Haley Hughes, Director, Office of Science Coordination and Policy, Office of Chemical Safety and Pollution Prevention, EPA Headquarters, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.**

Dr. Hughes will testify in regard to her role as the Agency's Federal Lead Coordinator (after Mr. Epp) including her knowledge and work on the Federal Lead Strategy, her work with Appellant and her work briefing senior leadership on the progress of the Federal Lead Strategy.

10. **Robin Richardson, Principal Deputy Associate Administrator, Office of Congressional and Intergovernmental Relations, EPA Headquarters, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.**

Ms. Richardson will testify in regard to Congressional inquiries and the Agency's coordination and response to such inquiries.

11. **Deborah Nagle, Office Director, Office of Science and Technology, Office of Water, EPA, Headquarters, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.**

Ms. Nagle, the Office Director of the Office of Science and Technology, Office of Water, will testify in regard to Appellant's detail and then transfer to her group including her role as Appellant's supervisor in the Office of Water and specifically Appellant's claims regarding her list of duties, her Position Description and her initial assignment to a cubicle.

12. **Appellant, Ruth Etzel.**

Appellant will testify in regard to the six accepted claims in this appeal (per the *March 27, 2020 Order*).

IV. EXHIBITS

1. September 6, 2018 Email from Helena Wooden Aguilar to Appellant, Subject: Re: Tasks related to Federal Lead Strategy.
2. September 12, 2018 Email from Helena Wooden Aguilar to Appellant regarding the Federal Lead Strategy.
3. August 2, 2018 Correspondence from Senators Tammy Duckworth and Sherrod Brown to Department of Housing and Urban Development Secretary Carson, SEPA Administrator Wheeler and Department of Health and Human Services Secretary Alex Azar.
4. November 19, 2018 Correspondence from EPA Administrator Wheeler to Senator Tammy Duckworth and Senator Sherrod Brown.
5. December 6, 2018 Elizabeth Witcher Investigative Report -- Fact-Finding Investigation Into Allegations of Inappropriate Misconduct.
6. September 4, 2018 Email from Robin Richardson to Christian Palich, Tony Frye and Sven-Erik Kaiser regarding the Draft Response to the Duckworth and Brown correspondence.
7. April 12, 2018 email from Timothy Epp to Appellant, Subject: Re: Federal strategy.
8. April 4, 2018 email from Timothy Epp to Appellant, Subject: Re: Earth Day & status of draft strategy.
9. September 13, 2018 Email from Haley Hughes to Helena Wooden-Aguilar, Subject: draft Federal Lead Strategy- latest version?
10. March 16, 2018 Email from Timothy Epp to Helena Wooden-Aguilar, Subject: Request for mtg to discuss Ruth.
11. April 13, 2018 Email from Ruth Etzel to Michael Firestone, Subject: Comments on intro to Federal Lead Strategy.
12. August 27, 2018 Email from Helena Wooden-Aguilar to Appellant, Michael Firestone, Subject: Update- Federal Lead Strategy Consolidated Comments and Next Steps.
13. March 18, 2015 John Reeder Note to File.
14. April 13, 2018 Email from Helena Wooden-Aguilar to Appellant, Albert Kelly, Subject: RE: Clarification of roles and responsibilities.
15. February 9, 2018 Email from Barbara Viney to Helena Wooden Aguilar, Subject: RE: OCHP.

16. October 28, 2017 Email from Catherine Allen to Appellant, Subject: Follow-up to today's climate assessment briefing.
17. September 4, 2018 "OCHP Personnel Matter" Memo from Catherine Allen to Barbara Viney.
18. November 9, 2018 from Khesha Reed to Liz Whitcher, Subject: FW: Acting Director of OCHP.
19. October 31, 2017 (4:56:26 PM) Email from Barbara Viney to Helena Wooden-Aguilar and Reginald Allen, Subject: Re: climate assessment follow up.
20. November 9, 2018 Email from Khesha Reed to Elizabeth Whitcher, Subject: FW New Email Procedures.
21. April 1, 2015 Email from Flo Cee to Margot Brown, Subject: Missing you!
22. April 20, 2015 Email from Appellant to Margot Brown, Subject: Absent without leave.
23. Khesha Reed Investigative Interview Statement, June 10, 2015.
24. Helena Wooden-Aguilar's handwritten Notes from Mid-Year Performance Discussion April 25, 2018.
25. Appellant's FY 2018 PARS by Helena Wooden-Aguilar.
26. 2018 Performance Review Board Meeting Roster, February 26, 2019.
27. Note to File: April 14, 2018 by Helena Wooden-Aguilar.
28. Appellant's FY 2015 PARS Request for Higher Level Review, November 23, 2015.
29. December 21, 2015 Higher Level Review Decision signed by Karl Brooks, Acting Assistant Administrator.
30. Position Description, Biologist, GS-0401-15.
31. April 2, 2019 Email from Deborah Nagle to Appellant, Subject: List of Duties for your OST Detail.
32. Intentionally Left Blank
33. October 2, 2019 Email from Michele Higgs to Appellant, Betsy Behl, Subject: RE: Review of Volume A: Framework.

34. March 28, 2019 Email from Deborah Nagel to Appellant, Subject: Work on fish program.
35. May 9, 2019 Email from Shari Barash to Appellant, Subject Fish Work for Ruth.
36. May 22, 2019 Email from Deborah Nagle to Appellant, Subject: Review of Brominated Flame Retardant Serum Concentrations and Consumption of Selected Foods in the General U.S. Population.
37. July 2, 2019 Email from Deborah Nagle to Appellant, Subject: Work Assignment.
38. September 9, 2019 Email from Deborah Nagle to Appellant, Subject: Alternative Health Relationship TSM attached.
39. January 13, 2020 Email from Deborah Nagle to Appellant, Subject: RSC Distribution: Action Item- HHS/CDC/ATSDR PRA/ICR/Supporting Statement for EPA Review: [PFAS] “Human health effects of drinking water exposures to per- and polyfluoroalkyl (PFAS): A Multi-site Cross-sectional Study.”
40. February 19, 2020 Email from Deborah Nagle to Appellant, Subject: A work opportunity.
41. Decision on Reconsideration Request, Doug Benevento, Former Deputy Associate Administrator, November 20, 2019.
42. July 8, 2019 Letter to Appellant from the Office of Special Counsel.
43. October 23, 2018 Notice of Investigation from Helena Wooden-Aguilar to Appellant.
44. October 15, 2018 Notice of Investigation from Helena Wooden-Aguilar to Appellant.
45. October 19, 2018 Notice of Investigation from Helena Wooden-Aguilar to Appellant.
46. Intentionally Left Blank
47. Appellant’s Deposition Transcript, September 2, 2020.
48. September 18, 2018 Email from Rebecca Wulffen to Bob Coomber, Subject: Confidential & Attached Memorandum titled “High Level Summary of Allegations” by Angela Hackel.
49. March 21, 2019 “Draft Talking Points” by Helena Wooden-Aguilar.

Respectfully submitted,

_____/s/_____
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_____/s/_____
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Certificate Of Service

e-Appeal has handled service of the assembled pleading to MSPB and all of the Parties.

Following is the list of the Parties in the case:

Name & Address	Documents	Method of Service
MSPB: Regional Operations	Agency's Pre-Hearing Statement	e-Appeal / e-Mail
Ruth A. Etzel Appellant	Agency's Pre-Hearing Statement	e-Appeal / e-Mail
Peter T. Jenkins Appellant Representative	Agency's Pre-Hearing Statement	e-Appeal / e-Mail
Paula Dinerstein, Esq. Appellant Representative	Agency's Pre-Hearing Statement	e-Appeal / e-Mail
Alexandra Meighan Agency Representative	Agency's Pre-Hearing Statement	e-Appeal / e-Mail