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Whistleblower Retaliation Narrative

Dr. Jonathan Lundgren, Senior Research Entomologist, USDA-ARS

Background

Dr. Lundgren is a Senior Research Entomologist GS-14 (Lead Scientist and Lab Supervisor) for the U.S. Department of Agriculture's Agriculture Research Service (USDA-ARS). Dr. Lundgren's cutting-edge research has drawn national attention for his findings that certain widely-used pesticides (neonicotinoid insecticides or "neonics") adversely affect pollinators, and that industrialized agriculture practices, such as the use of genetically modified crops, harm soils and beneficial insects. His research and numerous peer-reviewed publications have implications for the agribusiness industry that the USDA must often regulate.

He has worked for USDA ARS for eleven years with great success—until recently.

Summary

On August 3, 2015, the USDA imposed a 14-day suspension on Dr. Lundgren in a decision issued by Plains Area Associate Director Dr. John McMurtry. This was a reduction of the 30-day suspension originally proposed by Dr. Lundgren's direct supervisor, Dr. Sharon Papiernik, on May 7, 2015. This reduction had the effect of denying Dr. Lundgren immediate access to the Merit Systems Protection Board as it fell one day short of the MSPB direct jurisdiction limits.

The suspension was imposed in connection with two events:

- A. Submission of manuscript by Dr. Lundgren on the non-target effects of clothianidin on monarch butterflies to the scientific peer-reviewed journal *The Science of Nature* (DOI 10.1007/s00114-015-1270-y).
- B. A paperwork error in Dr. Lundgren's travel authorization for his invited presentation about his research to a panel of the National Academy of Sciences, as well as to a USDA stakeholder group, the Pennsylvania No-Till Alliance.

These actions were not justified, and the discipline was not proportionate to any perceived offense. In addition, the suspension constitutes retaliation for his protected disclosure: a formal scientific integrity complaint Dr. Lundgren submitted in September 2014 that detailed numerous ways USDA managers had abused their authority and improperly interfered with Dr. Lundgren's research and professional activities in violation of Agency regulations.

Rebuttal of Charges

Submitting manuscript by Dr. Lundgren on the non-target effects of clothianidin on monarch butterflies to the scientific peer review journal *The Science of Nature*.

On December 20, 2014, Dr. Lundgren submitted to Dr. Papiernik a draft manuscript on a study that showed that clothianidin, a neonicotinoid seed treatment, kills monarch butterfly larvae in the laboratory.

The typical procedure for publications at ARS is as follows:

- (1) The scientist submits the draft to his/her manager by email;
- (2) The manager sometimes suggests revisions;
- (3) Unless the manager flags the paper for additional scrutiny or specifically prohibits the scientist from submitting for publication until (s)he adopts all of the suggested revisions, the manager instructs the secretary to submit the paper into the ARIS system, and the scientist submits the paper to the journal for publication.

Typically, the scientist receives no confirmation of final approval or notice that the paper was entered into ARIS; this is presumed. In other words, if the manager's response suggests revisions without any further caveats, this is typically a green light for the scientist to adopt appropriate suggestions and then submit the article for publication without further consultation.

On January 6, 2015, Dr. Papiernik sent Dr. Lundgren the following email, reproduced in its entirety:

From: Papiernik, Sharon
Sent: Tuesday, January 06, 2015 11:56 AM
To: Lundgren, Jonathan
Cc: Coombes, Susan
Subject: RE: paper
Jon:
I am returning this paper to you for revision. Please see attached.
Sharon

Dr. Papiernik's January 6 message in no way flagged the paper as containing sensitive information. Accordingly, Dr. Lundgren assumed that the paper had been approved and entered into the ARIS system, per normal agency practice, on January 6. He then, with minor changes, submitted the manuscript to a peer-reviewed journal, per standard procedure.

Dr. Lundgren followed due diligence, and nothing seemed out of the ordinary as this was the same procedure he had followed for nearly 100 peer-reviewed articles that he had submitted for publication as a USDA employee.

The proposed suspension is predicated upon "failure to follow instructions," but neither Dr. Papiernik's email message nor her revisions contained any "instructions" requiring Dr. Lundgren

to seek additional approval before submitting the manuscript, prohibiting him from submitting the article for publication, or stating that the topic addressed was sensitive.

Although on January 5, Dr. Papiernik had sent an email message regarding pollinator papers and the need for them to be “approved before they are submitted,” Dr. Lundgren was under the impression from Dr. Papiernik’s January 6 email message that she had approved his paper for submission to journals.

While it was awaiting review, Dr. Lundgren solicited five additional peer reviews from experts in this area; all of these scientific experts signed off on the experimental rigor of the study and are cited in the acknowledgements. Ultimately, *The Science of Nature* accepted the paper on March 16 and published it on April 4.

On February 26, Dr. Papiernik came into Dr. Lundgren’s office visibly angry. She showed him a transcript of an interview that he had conducted with Minnesota Public Radio on the research, during which he had mentioned that the paper was “submitted.” She asked whether he realized that the paper had not been approved in the ARIS system. Dr. Lundgren replied that he was under the impression that the paper had been approved based on their January correspondence. (Dr. Lundgren does not have access to the ARIS system itself; only managers or their secretaries enter papers into it.)

It was at this February 26 meeting—which, notably, occurred long after he had submitted the paper—when Dr. Papiernik first informed Dr. Lundgren that the manuscript was, in her opinion, “sensitive.” They discussed the reasons why Dr. Lundgren did not see the research as “sensitive” and the vague nature of the term, but at no point did she instruct him to pull the paper from *Science of Nature* for publication.

In addition, this action further violates the USDA’s Scientific Integrity Policy as it is provoked by the content of his research, rather than the nature of the charged offenses.

Travel paperwork for the National Academy of Sciences and the Pennsylvania No-Till Alliance research presentations.

Government scientists travel extremely frequently—often at the last minute depending on the timing of the stakeholder request—and need to fill out different documentation depending on the type of trip. Thus, travel paperwork glitches at USDA-ARS sometimes occur, and, for the sake of efficiency, USDA-ARS can and does approve travel paperwork after the fact, either during the scientist’s trip or after he/she has returned to the duty station.

Several current and former USDA-ARS employees can confirm this, including several whose contact information was provided to the deciding official. For example, in just the six weeks preceding this event, another ARS employee filed travel paperwork for a meeting in Des Moines, Iowa on the day of departure, and two other ARS scientists completely forgot to fill out paperwork for a recent trip to St. Cloud, Minnesota. Management did not deny travel or punish the scientists in any of these cases.

In fact, in eleven years with the USDA, Dr. Lundgren has never heard of a single colleague suspended or otherwise disciplined for submitting contributed travel paperwork on the day of travel or even forgetting to submit paperwork entirely.

Tellingly, Dr. Lundgren's supervisors singled him out for severe punishment for this type of paperwork glitch despite the fact that (1) Dr. Lundgren's error was entirely inadvertent and occurred during a particularly busy four-month period when he had given eight invited presentations, mostly with contributed travel, without issue and (2) the Agency pointed to no other instance in Dr. Lundgren's career with the USDA where he had made an error in travel paperwork, nor does Dr. Lundgren know of any such instance.

Significantly, the Agency *gave no substantive reason* for denying his travel request (nor does Dr. Lundgren know of any reason why such a request would have been denied). The agency's sudden bureaucratic severity with Dr. Lundgren starkly contrasts its established pattern of flexibility and accommodation of his colleagues, strongly suggesting an alternate motivation for the Agency's apparent rancor: whistleblower retaliation. Moreover, the suspension stands in stark contrast to the agency's long-standing practice of allowing after-the-fact correction of paperwork errors.

Finally, this unwarranted discipline represents a double punishment, as Dr. Lundgren was already forced to forfeit his pay and travel reimbursement for his trip because he was charged with Absent Without Leave (AWOL), even though he was presenting research on behalf of USDA at two conferences to which he was invited by stakeholders. Now, ARS is re-punishing him for the same conduct through this suspension.

Protected Whistleblower Disclosures

Dr. Lundgren's principal protected disclosure was the formal scientific integrity complaint he filed on September 12, 2014 with the Scientific Integrity Officers for ARS and USDA in response to escalating harassment and interference with his research. It detailed numerous serious alleged violations of USDA's Scientific Integrity Policy (issued by Secretary Vilsack as Departmental Regulation [DR] 1074-001 on May 10, 2013) concerning repeated attempts by ARS managers to impede or deter his research and resultant publications.

This complaint documented clear violations of this departmental policy and abuses of authority by managers named in the complaint and constitutes a protected disclosure under the Whistleblower Protection Act.

Dr. Lundgren filed his scientific integrity complaint with Gita N. Ramaswamy, USDA SIO (later given to Bill Hoffman, USDA-OSEC) and Kay Simmons, USDA-ARS ASIO. ARS investigated the complaint and, in the process, informed the subjects of the disclosure about the complaint.

Retaliatory motivation may be inferred from a variety of factors, including proximity in time between the employee's action and the adverse employment action, inconsistencies between the proffered reason and other actions of the employer, disparate treatment of certain employees

compared to other employees with similar work records. In this case, a variety of factors provide circumstantial evidence of retaliatory motive.

Proximity in time. First is the proximity in time between the disclosure (September 2014) and the retaliation (May 2015 proposed suspension, August 2015 final suspension decision). Eight to eleven months is well within the range of time between a disclosure and a personnel action from which an inference of causation arises.

Exaggerated nature of the charges and the punishment. The charges sustained in the 14-day suspension are patently exaggerated, and the punishment is disproportionate to the alleged wrongdoing. Dr. McMurtry fails to consider the larger context of the incident, including USDA's typical practices with regard to paperwork glitches as explained above as well as the practical implications of this particular glitch. Dr. Lundgren only realized the error on the day he was to travel, with an extremely prominent organization—the National Academy of Science—and hundreds of stakeholders expecting him to appear.

The exaggerated nature of the charges is similarly apparent from two other important factors that Dr. McMurtry failed to consider: the instruction itself and the weather. Dr. Papiernik's initial text message stated, "You must return to your duty station at the earliest possible time." When Dr. Lundgren looked into travel options and informed her that blizzard conditions would make immediate travel impossible, she responded, "We understand the weather issues" and instructed him to return "ASAP." Nonetheless, in the proposed suspension Dr. Papiernik inaccurately characterized her instruction as one to return "on March 2." Severe winter weather made it impossible for Dr. Lundgren to return immediately. Thousands of flights were cancelled on March 2 and throughout the week due to heavy weather affecting the Mid-Atlantic and Midwest.

Even had Dr. Lundgren been able to secure a flight early that week, because of severe weather impacting road conditions in South Dakota, it would not have been safe for Dr. Lundgren to drive the roughly sixty miles from the airport back to his home and duty station in Brookings. His attempts to fly home on Thursday, March 5, as well as on Friday, March 6, were thwarted by circumstances beyond his control (an issue with the plane and a booking error respectively). Bearing all of this in mind, there is nothing in the facts of this matter that suggests Dr. Lundgren did not comply with the request to return as soon as possible.

Regarding the punishment, a 14-day suspension without pay is a serious disciplinary action that will impact Dr. Lundgren's personnel file, harm his reputation, and cost over \$4,500 in lost base pay, not including related impacts to retirement contributions and leave accrual. Given that other colleagues have consistently experienced no repercussions for common human errors of the same nature, this punishment is clearly exaggerated and disproportionate to the wrongdoing, suggestive of retaliatory motive.

The proximity in time, the exaggerated charges and disproportionate nature of the punishment, the inconsistency with the treatment of other employees, and Dr. Lundgren's assertions of misconduct by ARS management all provide strong evidence of retaliatory motive in proposing and imposing this suspension.

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