



**National
Organic
Program**

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Washington, DC 20250-0268
Telephone: 202-720-1413**

FOR OFFICIAL USE ONLY

DATE: November 23, 2010

TO: Mark D. Keating
Agricultural Marketing Specialist Regulatory, GS 1146/13/01
USDA/AMS/NOP/Standards Division
Washington, DC

SUBJECT: NOTICE OF TERMINATION OF PROBATIONARY APPOINTMENT

You were hired as an Agricultural Marketing Specialist, Regulatory, with the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Programs (NOP), in Washington, DC effective April 11, 2010. You are serving a one-year probationary period. The purpose of this letter is to inform you that you will be terminated effective Tuesday, November 23, 2010. This action is being taken in accordance with Title 5, Code of Federal Regulations (CFR), 315.804.

The reason for your termination is your unacceptable conduct. Despite having been provided with counseling and ample opportunity to improve, you have failed to follow ordinary rules of conduct for federal employees. You have failed to follow instructions. You have conducted yourself inappropriately toward your supervisor. Moreover, through your inappropriate conduct toward your supervisor, you have demonstrated an unwillingness to accept direction and guidance from your supervisor.

My decision is based upon the facts which are summarized below.

On July 20, 2010, you made inappropriate comments at a meeting of the National Organic Standards Board (NOSB) Livestock Committee. Although your comments were about NOSB activities, they were also personal opinions and argumentative. Your comments did not reflect NOP policy positions.

I was on leave when I learned of the July 20, 2010, incident. On August 3, 2010, after my return to the office, we met to discuss your role and responsibilities as an NOP staff member. I reminded you that you are assigned to attend meetings of NOSB in a supporting technical capacity. I also reminded you that you are expected to only make recommendations to the NOSB which are consistent with NOP policy positions. You admitted that your statements had to do with your personal views about NOSB activities.

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On August 4, 2010, during a Standards Division staff meeting, I advised all staff (including you) on our role when working with the NOSB. My comments included the following statements:

"The role of NOP Standards Staff on these calls is to serve as technical experts, provide advice, perhaps pose questions to the NOSB (i.e., have you thought of how we will actually implement this through rulemaking?). Please do not interject personal opinions on issues, especially when no NOP position has been developed."

On September 1, 2010, you directed an email to several NOSB Livestock Committee participants. Despite my having cautioned you, and provided instructions to you, on August 3, 2010, and despite my discussion of staff responsibilities at the division meeting on August 4, 2010, your email message to NOSB committee members recited your personal views about organic standards. You used the terms "*subjective*" and "*personal*" to describe your views. In addition, you had neither vetted nor discussed your positions on organic standards with NOP supervisors or managers prior to sending your message.

On September 9, 2010, I met with you to discuss your improper conduct. Terry Caine, Employee Relations Specialist, also attended the meeting. I reminded you of our previous discussion about your improper representation of personal viewpoints in Agency matters. I noted that you were again in violation of Agency rules. I discussed with you my concerns about the adverse effects your improper conduct could have on NOP's relationships with other AMS programs, and on the Agency's mission.

During our September 9, 2010, meeting, you said that you could see nothing wrong with what you had done. Mr. Caine observed that all of us are hired to represent the needs and interests of the Agency; and that it is standard practice for all of us when representing the Agency to advocate only those actions we have been authorized to take a position on. You responded by saying that if you have to work under such rules, you would rather not work for the USDA. In that regard, I cautioned you that further instances of unacceptable behavior or poor performance could lead to your termination from the federal service.

On October 5, 2010, during a NOSB Livestock Committee meeting, you interjected comments about your September 1, 2010, email message. You informed the meeting participants that there had been "*friction*" as a result of that email, and that "*this resulted in intervention from the Office of Employee Relations.*" You also stated that you "*had the impression that if*" you "*didn't change,*" "*your future at NOP would be threatened.*" In addition, you said that you "*thought this was quite harsh and wanted to discuss it with the committee.*"

I was on travel when the above NOSB incident occurred, but we met to discuss the matter when I returned on October 18, 2010. I reminded you that it is inappropriate for you to voice the NOP's personnel issues to the NOSB. I also observed that you did not seem to be trying to improve upon the manner with which you represent the Program and Agency to the NOSB. I cautioned you once again that continued improper conduct could lead to disciplinary action.

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On October 19, 2010, I updated the staff on recent division activities. After the staff meeting, you sent me an email in which you took "*exception*" to my presentation. You summarized your response by stating: "*I think it was a sloppy performance.*"

On October 21, 2010, we met to discuss your year-end performance appraisal. I informed you that I had determined your performance to have been less than fully successful. The reason was that you had not met the requirements for one of the critical elements in your Performance Plan (Element 3, Working Relationships, Teamwork, Communications, and Civil rights). You were cautioned that the level of your performance was less than fully successful, and that was necessary for you to improve your performance.

On October 25, 2010, you followed up our October 21, 2010, meeting with an email message which expressed your concern for the "*current course of action.*" You expressed your reluctance to follow the instructions you have been provided, while also expressing your belief that you had not failed in any important way to follow instructions. You referred to your improper conduct as "*perceived transgressions.*" You also complained about your supervisor "*...establishing a path for your termination.*" Your comments included the following:

"There is not a single instance in which I either willfully violated your instructions or represented myself in a manner that compromised the program's integrity."

"... I find that muzzling an employee who have (sic.) something to contribute results in a sterile, politically correct status quo."

"I recognize that there (sic., is) intense top-down pressure for message control and risk avoidance"

On October 26, 2010, you contacted Employee Relations Specialist Terry Caine, and complained about the statements your supervisor had made to you about your failure to properly represent the Agency at NOSB meetings. You also complained about having been cautioned that continuing improper conduct could lead to your termination. In addition, you said your supervisor intended to terminate you. Mr. Caine advised you that your supervisor was just trying to help you correct some problems so that you could be successful at NOP. You responded to Mr. Caine by saying that your supervisor: "*isn't intelligent enough to help me!*"

Rules and Regulations Pertaining to Your Conduct:

As an Agricultural Marketing Specialist employed by the AMS, you are not only required to conduct yourself in a manner which is consistent with Department of Agriculture regulations and rules of conduct, but it is important to the efficiency of the service that you do so. Specialists, such as you, often carry out their duties in the absence of direct agency supervision. The Agency must have confidence that specialists will conduct themselves at work in a professional, trustworthy and credible manner; and that specialists when assigned to represent the Agency are not engaging in conduct which is disruptive to work relationships, Agency activities, and the Agency's mission.

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United States Department of Agriculture, Departmental Regulation 4070-735-001, Employee Responsibilities and Conduct, issued October 4, 2007, requires that you conduct yourself in a manner which is consistent with Department of Agriculture regulations and the rules of conduct, and in compliance with direction from your supervisor and program management.

DR 4070-735-001 states at Section 4 that "*It is USDA's policy that its employees:*"

- (c) Comply with lawful supervisory direction; and*
- (d) Comply with work-related laws, regulations, and policies.*

DR 4070-735-001, Subpart 11, Prohibited Activities, also states: "Employees are prohibited from:

- (1) Displaying discourteous conduct or disrespect to a coworker, another Federal employee, or a member of the public when acting in an official capacity."*

In addition, DR 4070-735-001, at Subpart 21, Disciplinary or Adverse Action, states:

- (a) A violation of any of the responsibilities and conduct standards contained in this directive may be cause for disciplinary or adverse action."*

Your conduct is unacceptable and cannot be tolerated. Although you were instructed to cease your improper conduct, you have failed to do so. You have also demonstrated that you are unwilling to conduct yourself appropriately and in compliance with Agency rules and regulations pertaining to employee conduct. This has caused me to lose my trust in you, and to also lose my belief that there is any chance for your rehabilitation. This action is, therefore, being taken for the efficiency of the service.

Right of Appeal:

You have a statutory right to appeal your termination to the Merit Systems Protection Board (MSPB) only if you allege that this action was taken for partisan political reasons or because of your marital status. In order for your appeal to be considered by the MSPB, it must be submitted no later than **thirty (30) calendar days** after the effective date of this action, or no later than **thirty (30) calendar days** after your receipt of this decision, whichever is later. This period may be extended by 30 days should the parties mutually agree to attempt to resolve the matter through alternative dispute resolution. If your appeal is not timely submitted, it will be dismissed as untimely filed unless you can show a good reason for the delay. If your appeal is untimely filed, the MSPB judge will provide you with an opportunity to show why your appeal should not be dismissed as untimely.

An MSPB appeal should contain the information specified in Part 1201, Section 1201.24(a) of the MSPB's Rules and Regulations. Please note that completion of the form entitled "U.S. Merit Systems Protection Board Appeal Form" constitutes compliance with Section 1201.24(a) and

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Section 1201.31. A copy of this form is enclosed and you may access the MSPB Rules and Regulations on the MSPB web page at www.mspb.gov. You also have the option of filing on-line by using e-Appeal.

If you appeal your termination to the MSPB because you have evidence that your termination was for partisan political reasons or marital status, your appeal should be submitted to:

MSPB Central Regional Office
Washington Regional Office
1800 Diagonal Road
Alexandria, VA 22314

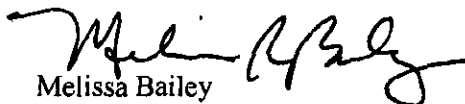
If you believe this action was based on discrimination because of race, color, religion, sex, age, national origin, or physical or mental disability, you may file a complaint of discrimination. You may do this by filing an appeal based on discrimination through USDA's discrimination complaint process. Please note, however, that there is no right for a hearing before the Equal Employment Opportunity Commission (EEOC) if the case is within the jurisdiction of the MSPB.

Should you decide to file a complaint through USDA's discrimination complaint process, you must contact the AMS Civil Rights Staff at (202) 720-0583 within forty-five (45) calendar days of the date of this action.

If you file an appeal either with the MSPB or through the USDA discrimination complaint process, you have the right to be represented and advised by a representative of your choice, or you may represent yourself. Please also note that appealing your removal from federal service will not delay or postpone the effective date of this removal action.

Submission of a copy of your appeal to Martin Gold, Chief, Hearings and Appeals Branch, will help expedite the processing of your appeal but does not replace the need to file your appeal to the MSPB at the above address. The extra copy should be mailed to Mr. Gold's address: USDA, MRPBS, HRD, APHIS, ALB; 4700 River Road, Unit 158, Room 3B-03D; Riverdale, MD 20737.

Please sign below to acknowledge your receipt of the original of this letter. Your signature does not indicate that you agree with the contents of this correspondence but that it was received.



Melissa Bailey
Director, NOP Standards Division

Enclosure: MSPB Appeal Form