

## USDA Can't Escape Forest Ranger's Gender Bias Suit

By **Emmy Freedman**

Law360 (August 24, 2023, 2:00 PM EDT) — A South Dakota federal judge refused to let the U.S. Department of Agriculture escape a lawsuit a ranger brought alleging she was stripped of authority because she's a woman, saying a jury should decide if the agency's inconsistency surrounding her demotion indicated discrimination was afoot.

In an **order** filed Wednesday, U.S. District Judge Lawrence L. Pieroni denied the USDA's bid for summary judgment on Ruth Eperance's Title VII gender discrimination claim, but granted it a win on her hostile work environment allegation.

The USDA argued Eperance was disruptive during leadership meetings and rude to her supervisor, but Eperance argued she was never counseled on the alleged issue and showed she had received good performance reviews.

"If the alleged problems were present in October of 2018 when plaintiff was removed from the ranger position, then it is curious why management did not mention them as the reason for the reassignment until three months later in the January 31, 2019, letter, after plaintiff filed an [equal employment opportunity] complaint," Judge Pieroni said.

Eperance began working for the USDA in 1989, and she worked as the district ranger for the Mytic District of the Black Hills National Forest in South Dakota from 2012 to 2018, according to her September 2020 complaint. She said she was abruptly reassigned to work as a special assistant to the forest supervisor in October 2018, which was at the same pay grade but stripped of supervisory duties.

The USDA told her the reassignment had nothing to do with performance issues, but was instead due to a change in leadership, court filings said. In January 2019, Eperance said she was permanently reassigned to a natural resource specialist position, which again came without any supervisory authority.

That time, her supervisor provided her with a letter that listed various conduct and performance issues that led him to reassign her, according to court records.

Eperance argued that her supervisor was biased against women, as he routinely denied women opportunities for special assignment and diminished input from women who were part of the forest leadership team.

But the USDA said it switched her role because she was often disrespectful during leadership meetings, putting forward other employees' testimony to show that she frequently openly challenged her supervisor.

Judge Pieroni said though Eperance disavowed the USDA's assignment, she failed to put forward any evidence to support her own argument.

However, she did put forward enough detail to show that her supervisor may have been motivated by bias because she shifted his reasoning for her reassignment only after he learned she was considering legal action, Judge Pieroni said.

She also argued that she was treated differently from her male colleague, but the problem is that her supervisor threw out his notes regarding other employees' conduct records, and retained only his

notes on Esperance when he retired, the order said.

But even without the notes, Judge Piersol found Esperance could get this claim heard by a jury due to her arguments that she was not counseled on her conduct before she received the letter in January, and that she had previously received favorable performance evaluations.

However, given her experiences at work that she chronicled in her complaint, Judge Piersol could not determine that her supervisor's conduct toward her rose to the level of a hostile work environment.

"Ruth Esperance's case is significant in that it confronts the gender discrimination and marginalization of women in the USDA's Forest Service," Dan Gebhardt, who represents Esperance, told Law360.

The USDA declined to comment.

Esperance is represented by G. Verne Goodsell, Nathan R. Oviatt and Samuel Strommen of Goodsell & Oviatt Law Firm and Dan Gebhardt of Solomon Law Firm PLLC.

The USDA is represented by Michael S. Hofmann and Alison J. Ramsdell of the U.S. Attorney's Office, South Dakota District.

The case is *Esperance v. Vilsack*, case number 5:20-cv-05055, in the U.S. District Court for the District of South Dakota.

--Editing by Roy LeBlanc.