

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the *Introduction to the Position Classification Standards*, appendix 4, section G (address provided in appendix 4, section H).

Since this decision changes the classification of the appealed position, it is to be effective no later than the beginning of the fourth pay period after the date of this decision (5 CFR 511.702). The servicing personnel office must submit a compliance report containing the corrected position description and a Standard Form 50 showing the personnel action taken. The report must be submitted within 30 days from the effective date of the personnel action.

Decision sent to:

[the name and address of the appellant]

Personnel Officer
U.S. Army Air Defense Artillery Center
and Fort Bliss
1733 Pleasonton Road
Fort Bliss, TX 79916-6816

Director
Southwest Civilian Personnel Operations Center
Office of the Assistant Secretary (Manpower and
Reserve Affairs)
301 Marshall Avenue
Fort Riley, KS 66442-5004

Chief, Classification Branch
Field Advisory Services Division
Defense Civilian Personnel Management Service
1400 Key Boulevard, Suite B-200
Arlington, VA 22209-5144

Director, U.S. Army Civilian Personnel
Evaluation Agency
Crystal Mall 4, Suite 918
1941 Jefferson Davis Highway
Arlington, VA 22202-4508

Director of Civilian Personnel
U.S. Department of the Army
Room 23681, Pentagon
Washington, DC 20310-0300

Introduction

On August 12, 1997, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) received a classification appeal from [the appellant]. His position is currently classified as Attorney-Adviser (Labor), GS-905-13. The appellant believes his position should be graded as GS-14. He works in the Civil and Administrative Law Division, Office of the Staff Judge Advocate, U.S. Army Air Defense Artillery Center and Fort Bliss, at Fort Bliss, Texas. We have accepted and decided his appeal under section 5112 of title 5, United States Code (U.S.C.).

General issues

The appellant makes various statements about a GS-14 attorney position that he previously held at [a military installation] and equates the level of that work with the work he is currently performing. He also submitted a copy of a GS-14 position description from [the installation] that he believes is so similar to his current position that the two positions should be graded the same, i.e., GS-14. By law, we must classify positions solely by comparing the appellant's current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Since comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's current duties to past duties or other positions as a basis for deciding his appeal.

In his letter requesting the appeal, the appellant expressed concern that the OPM standard for the GS-905 series does not sufficiently cover the area of labor law. Although the standard may not provide detailed information on labor law, it provides a sufficient range of legal functions and corresponding criteria so that the intent of the standard is understandable and proper evaluation of the appellant's position may be made by comparison with similar or related duties that the standard does describe. Thus, careful application of the standard to the work performed by the appellant should yield the correct grade for his position.

In reaching our classification decision, we have carefully reviewed all information provided by the appellant and his agency in the written record and information obtained during telephone interviews with the appellant and his supervisor.

Position information

The appellant's duties and responsibilities are described in position description (PD) number 22869, which was classified on December 4, 1990. On September 22, 1997, pen-and-ink changes were made to the PD to delete the appellant's duties as the installation's Environmental Law Advisor and to change the percentages of time spent on labor law counselor and trial attorney duties to 40 percent and 50 percent, respectively. Both the appellant and his supervisor certified to the accuracy of this PD. The appellant's PD lists the major duties and responsibilities assigned to the position and is, therefore, adequate for classification purposes.

The purpose of the appellant's position is to provide advice and assistance to officials at Fort Bliss and all other agencies or activities within the jurisdictional or command responsibility of Fort Bliss.

Most of the appellant's time is spent serving as a labor law counselor and representing the Department of the Army as a trial attorney before arbitrators, investigators, and administrative judges.

Duties as a labor law counselor include:

- providing oral and written advice concerning civilian personnel law, employment discrimination law, and all labor relations matters;
- reviewing proposed activity regulations for legal sufficiency impact on other regulations, programs, procedures, and methods of operations;
- informing management officials of the impact of changes in civilian personnel and labor law and regulations;
- advising managers and supervisors on informal resolution of grievances and providing advice to line management and the Equal Employment Opportunity (EEO) Officer on resolving informal discrimination complaints; and
- advising or participating on the management negotiation team before and during union contract negotiations.

Trial attorney activities include:

- conducting research in connection with cases to analyze factual and legal issues and to determine what additional facts are needed and what legal sources are applicable;
- preparing and presenting briefs on factual and legal issues, including motions, requests for admissions and discovery, and subpoenas;
- preparing litigation reports for civilian personnel, labor relations, or EEO civil actions;
- determining which witnesses are necessary, conducting pre-hearing examination of witnesses, and examining and cross-examining witnesses;
- preparing and presenting hearing conferences, arguing motions, and presenting opening statements and closing arguments;
- reviewing cases to determine whether to recommend settlement and negotiating settlements and stipulations with employees' attorneys; and
- evaluating adverse decisions for possibility of appeal.

Other duties include providing advice on matters involving Freedom of Information Act requests and application of the Privacy Act, reviewing research resources for currency, and ensuring maintenance of a reference filing system of all written opinions that are rendered.

Series, title, and standard determination

The GS-905 General Attorney Series includes positions that involve rendering legal advice and services with respect to questions, regulations, practices, or other legal matters when the work requires admission to the bar. This is descriptive of the appellant's position. The functional title of General Attorney is appropriately assigned in light of the advisory nature of the work and the fact that it involves the preparation of cases for trial and/or providing technical guidance to other persons preparing cases for trial before a court or administrative body. Because the position is responsible for providing legal advice and services pertaining to Federal labor law and related matters, the parenthetical subject-matter title of Labor is warranted. The position is, therefore, appropriately classified to the GS-905 series and titled General Attorney (Labor). Classification criteria in the GS-905 standard are used to determine the grade level of the appellant's position.

Grade determination

The GS-905 standard is written in a narrative format, with grade level criteria expressed in terms of two main factors: (1) nature of the case or legal problem and (2) level of responsibility. The final grade of an attorney position is determined on the basis of the combination of the highest factor levels that are representative of the position to a significant extent. The two factors combine to produce a grade level by use of a grade conversion chart provided in the standard.

Nature of cases or legal problems

This factor incorporates those elements in a case or problem that tend to make it more or less difficult to resolve satisfactorily and is described in terms of three levels or ranges of difficulty, i.e., Types I, II, and III. These levels are described in terms of the minimum characteristics of the range of difficulty each represents. Therefore, if the requirements of one level are not fully met, then the next lower level must be assigned, even if the position exceeds those criteria in certain respects.

Type I legal work is characterized by such features as the following: (1) the legal questions or factual situation can be easily resolved because the facts are clear and the precedents are clearly applicable; (2) the impact of the cases is local or limited to the parties directly concerned (private individuals or a local industry); and (3) relatively limited sums of money are involved and there is consequently limited public interest in the case.

Type II legal work is characterized by one or more of the following features: (1) there are either no precedents because of the newness of the program or novelty of the issue, or it is highly arguable which precedents apply because of the complexity of the facts or the different possible constructions which may be placed on either the facts or the laws and precedents involved; (2) the case affects,

either directly or as a legal or administrative precedent, a significant segment of public or private interests (e.g., a large corporation or labor group, a class of Government contractors, or the producers of a given farm commodity); or (3) large sums of money are directly or indirectly involved, there is considerable public interest, or the case is strongly contested in formal hearings or informal negotiations by the parties involved.

Type III work is characterized by one or more of the following features: (1) extremely complex and difficult legal questions or factual issues are involved in the drafting or interpretation of legislation or regulations, requiring a high order of original and creative legal endeavor to balance conflicting interests (e.g., balancing national security versus civil liberties, determining the legality of State and local taxation, preparing anti-trust litigation), or the issues involve extensive research, analysis, and expert testimony in controversial scientific, corporate, or financial areas; (2) the case may substantially broaden or restrict the activities of an agency (e.g., the enforcement of tax laws or food and drug laws), or it may impact a major industry whose economic position affects the stability of the general economy (e.g., large mergers or reorganizations), or it has an important impact on private or public interests (e.g., a substantial change in veterans benefits, a major revision to a nationwide retirement system); or (3) very large sums of money are involved, or the cases are contested by top legal talent (e.g., a major antitrust case), where interest is generally nationwide.

The appeal file contains information on cases for which the appellant has been responsible during the past two years. The agency credited the appellant's position at Type II and characterized the majority of his cases as those involving difficult legal or factual issues because of the absence of applicable precedents. The agency also acknowledged that some cases involved issues that were strongly contested in either formal hearings or informal negotiations by the individuals or unions as described at Type II. Further, the agency indicated that the appellant's work does not involve to any significant degree broad issues of public policy, agencywide impact, very large sums of money (e.g., about a million dollars), or comparable complexity as envisioned by Type III legal work in the standard.

On the basis of the criteria described in the standard and examination of the cases cited in the appeal, we find the cases for which the appellant has been responsible to range from Type I to Type II with most of the work being consistent with Type II legal work. For example, the appellant's work is often performed in an emotionally charged environment where the facts of the case are strongly contested and the parties are resolute in their competing positions. This presents greater difficulties for the attorney in attempting to negotiate settlement of the case. As such, it is comparable to the criteria in Type II legal work in the standard where cases are strongly contested in informal hearings or informal negotiations and different possible constructions of either the facts or the laws are involved. The legal thought and judgment involved in negotiating, defending, or prosecuting one side of a labor issue or dispute is not the equivalent of the difficulty of balancing conflicting interests characteristic of Type III cases. While there may be differences of opinion or intent during negotiations or hearings, these differences do not apply to technical subjects dealing with "controversial areas" as exemplified in the standard. In justifying his request for a higher grade, the appellant maintains his case assignments sometimes set precedent. The standard credits at the Type II level cases that affect, either directly or as legal or administrative precedent, a significant segment

of private or public interests, which is descriptive of the extent of impact of the appellant's case assignments.

The appellant has had two cases, both involving alleged sexual harassment, which he believes meet the criteria for Type III because of their impact . One of these cases has received exposure on two national television programs (CBS's *60 Minutes* and ABC's *Nightline*) as a result of the administrative judge's decision in favor of the complainant. The decision also included an award of \$300,000 to the complainant plus attorney's fees. The appellant used his personal influence to urge Army to contest the judge's decision because he believed the judge misinterpreted a landmark case. He prepared numerous written documents to support his position. As a result of his efforts, Army agreed to review the case and was successful in getting the decision overturned. The complainant subsequently appealed that decision. Consequently, the appellant has briefed the U.S. Attorney who will defend the Army in the U.S. District Court. The other case is one which has evolved into a class action case. The U.S. Attorney will also defend this case in court. To assist the U.S. Attorney with this case, the appellant prepared several litigation reports. Based on the information provided by the appellant, these two cases have been opposed by highly skilled legal talent.

While these two cases may have had wider impact than others handled by the appellant, the standard does not award its highest possible level based on only two or a few cases. One feature of Type III work emphasizes the frequency of very large sums of money (e.g., a million dollars or more), of vigorous contestation by extremely capable legal talent, and of nationwide interest. The Type III nationwide interest refers to interest among the general public, not restricted to a specialized group such as a professional group or a large labor group as characteristic of Type II. The standard also specifies that all of the elements, including public interest, money, nature of the competition, and others, are not independent of one another, and the interrelationship of these elements must be considered in evaluating the nature of the case or legal problem. The frequency of very large sums of money, vigorous contestation, and nationwide interest are absent in the appellant's position. Therefore, even taking into account the two cases the appellant believes were opposed by highly skilled legal talent and to be of nationwide interest, the money and opposing features are not sufficiently strong (in terms of frequency) as to make the cases a matter of nationwide interest, nor cause a greater than Type II impact on the agency's activities, nor require a high order of original and creative legal endeavor in order to obtain a balance of conflicting interests. Type II elements (the elements of large sums of money, cases that are strongly contested, and considerable interest from a significant segment of the population) are more characteristic of the appellant's position.

Collectively, the appellant's case assignments involve all of the complicating features of Type II legal work and do not fully meet Type III. Therefore, this factor is evaluated as Type II.

Level of Responsibility

This level incorporates those characteristics that are indicative of the level at which the work is performed and is expressed in terms of four elements: (1) nature of functions, (2) supervision and guidance received, (3) personal work contacts, and (4) nature and scope of recommendations and

decisions. For each of these four elements, three levels of intensity (Levels A, C, and E) are described. The intervening levels (B and D) may be assigned when a position compares with both the higher and lower levels in differing respects or when a position falls clearly between two of the levels described with respect to the majority of elements.

The agency credited Level D for this factor, and the appellant does not disagree. We find that the appellant's position is best evaluated at Level D and, therefore, will briefly discuss each of the characteristics for this level.

Nature of functions

The appellant is responsible for the full range of research, investigation, and case development on cases assigned to him. He assists the U.S. Attorney in matters before U.S. District Courts and serves as trial attorney in hearings before administrative boards. He participates in prehearing conferences, interviews prospective witnesses, examines and cross examines witnesses, and prepares necessary legal documents, opinions, drafts, or comments. The appellant negotiates settlements. These functions fully meet Level C and fail to meet the scope of case litigation at Level E in which consideration must be given to the importance of the case in terms of precedent and uniform application of the law throughout the land. The appellant's case work has not been shown to be precedent-setting on a national scale. Furthermore, the appellant's position has no responsibility for other functions referenced under Level E, such as drafting and proposing legislation; drafting and reviewing proposed agency final legal decisions; or acting as principal attorney for recommending policies, procedures, and regulations implementing new or amended legislation for the employing agency.

Level C is credited for this element.

Supervision and guidance received

The appellant works under the general technical and advisory supervision of the Chief, Civil and Administrative Law Division; Deputy Staff Judge Advocate; and Staff Judge Advocate. He performs his duties independently, without preliminary instructions or specific technical guidance. He independently researches legal issues and proposes opinions, recommendations, and legal documents within his area of responsibility. The appellant also advises commanders and management and supervisory officials in all matters related to his area of responsibility. When designated as trial attorney, he develops the facts and presents cases on his own initiative in administrative hearings and before other bodies. The appellant is expected to keep his supervisor informed of unusual or sensitive issues, such as matters generating Congressional interest or those affecting policy. His immediate supervisor indicated that she reviews the appellant's completed work on a case-by-case basis for consistency with agency policy, possible precedent effect, and overall effectiveness.

The degree of supervision exercised over the appellant's position falls between Level C and Level E. At Level C, attorneys are expected to independently plan, organize, and conduct studies of the typical

legal problems, cases, or legislative proposals encountered in their respective programs. They are apprised of any unusual circumstances surrounding the case or the problem, any background information which must be considered, and any important policy considerations that will govern development of the case. They normally work independently in investigating the facts, searching legal precedents, defining the legal and factual issues, drafting the necessary legal documents and developing conclusions and recommendations. All written work is subject to review for soundness of approach and argument, application of legal principles, and consistency with governing policies, procedures, and regulations of the employing agency. At Level E, attorneys would be expected to carry out any assignment without preliminary instruction.

Level D is appropriate for this element.

Personal work contacts

Level C indicates that personal contacts are an important characteristic at this level. Effectiveness is required in presentation, exposition, and argument in presenting cases in administrative hearings and to courts. Attorneys participate in pretrial or prehearing conferences with claimants, defendants, or petitioners and their attorneys; explain points of law, charges, or qualifications of claimants; and refer suggested settlements or compromise offers to supervisors with appropriate recommendations. Participation in conferences and negotiations concerning conflicts is an important aspect of Level C contacts. These may include representatives of operating programs, State and local governments, industry, private organizations, or other Government agencies.

At Level E, the nature of the work involves extremely significant contacts, such as conferring or negotiating with top administrative personnel in an agency, advising and assisting congressional committees, or trying cases before courts or administrative bodies.

The appellant's contacts include agency officials, U.S. Attorneys, administrative law judges, witnesses, and complainants' attorneys. His personal contacts as trial attorney are comparable to the Level E criteria in that the trial attorney function of the appellant's position occupies a significant and substantial portion of his time and he represents the installation at every stage of litigation until the case gets to Federal court. Once a case reaches Federal court, the appellant provides litigation support to the U.S. Attorney who will try the case.

Level E is met for this element.

Nature and scope of recommendations and decisions

Recommendations at Level E are similar to Level C, except that advice on the interpretation of law or on proposed changes in legislation, policy, and regulations is often given directly to heads of programs, bureau chiefs, cabinet officers, members of congress, or representatives of State and local governments. Attorneys at Level E often deal with matters of such scope and complexity that they require the concentrated efforts of several attorneys or other specialists. In such circumstances,

attorneys at this level are normally responsible for directing, coordinating, and reviewing the work of the team. In some instances, recommendations are made through supervisors, as at Level C, but these recommendations are usually tantamount to final decisions. This is particularly pertinent to positions concerned with recommending whether to prosecute cases or to appeal adverse decisions in agencies responsible for litigation. The appellant's recommendations are not given to such high-level officials, nor do they deal with matters of the scope depicted at Level E to require a team of attorneys on a regular basis. Although the nature and scope of the appellant's recommendations and decisions do not fully meet Level E, they do exceed Level C in some respects. For example, the appellant deals directly with the U.S. Attorney on recommendations, etc., once the attorney has been assigned to the appellant's case.

Level D is appropriate for this element.

Effect of individual stature

The GS-905 standard states that the stature of an individual is an attainment for management officials to identify. The agency has not credited stature in its evaluation of the appellant's position, and there is no evidence in either the appeal record or information obtained through interviews with the appellant and his supervisor that credit for this element is warranted.

The appellant states in his letter of appeal that "impact of the person on the job" should be considered if this appeal does not result in a higher grade for his position. Section III.K. of the *Introduction to the Position Classification Standards* indicates that the unique capabilities, experience, or knowledge that a particular employee brings to the job can also have an effect on the work performed and therefore on the classification of the position. The impact of the person on the job is reflected in the classification when the performance of a particular individual actually makes the job materially different from what it otherwise would be. On the other hand, the mere fact that an individual in a position possesses higher qualifications or stands out from other individuals in comparable positions is not sufficient reason by itself to classify the position to a higher grade. When determining grade level based on this concept, it is essential that management recognizes and endorses the duties and that the work environment allows continuing performance at a different level. There is no evidence in the appeal record that impact of the person on the job should be a factor in evaluation of the appellant's position.

Summary

Overall, Level D is considered an appropriate assessment of the *Level of responsibility* factor since two elements are evaluated at Level D, one at Level C, and one at Level E. By use of the grade-level conversion chart in the standard, Type II work along with Level D responsibility converts to grade GS-13.

Decision

The appellant's position is properly classified as General Attorney (Labor), GS-905-13.