

U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs

San Francisco Oversight Division
120 Howard Street, Room 760
San Francisco, CA 94105-0001

Classification Appeal Decision
Under section 5112 of title 5, United States Code

Appellant: [The appellant]

Agency classification: Environmental Protection Specialist,
GS-028-11

Organization: [Appellant's organization/location]
U.S. Coast Guard
U.S. Department of Transportation

OPM decision: Environmental Protection Specialist,
GS-028-11

OPM decision number: C-0028-11-03

Carlos A. Torrico
Classification Appeals Officer

July 24, 2002
Date

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).

Decision sent to:

Appellant:

[The appellant's address]

Agency:

[Servicing personnel office]
U.S. Department of Transportation

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Introduction

On February 27, 2002, the San Francisco Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [the appellant]. On May 1, 2002, the Division received the agency's complete administrative report concerning the appeal. His position is currently classified as Environmental Protection Specialist, GS-028-11, but he believes it should be classified as Supervisory Environmental Protection Specialist, GS-028-12. The appellant works in the [appellant's organization/location], U.S. Coast Guard, U.S. Department of Transportation. We have accepted and decided this appeal under section 5112 of title 5 United States Code (U.S.C.).

General issues

This decision is based on a review of all information submitted by the appellant and his agency. In addition, an Oversight Division representative conducted separate telephone interviews with the appellant and his second-level supervisor. Both the appellant and his second-level supervisor have certified to the accuracy of the appellant's official position description (PD) [number]. The appellant's immediate supervisor was unavailable for an extensive interview due to his heavy travel schedule. However, our Oversight Division representative briefly talked with him and was informed that he agrees with the appellant's official position description. In reviewing the PD we noted that the discussion of Factors 5, 8 and 9 (Scope and Effect, Physical Demands, Work Environment) does not reflect how the position actually functions. Therefore, the agency should revise the PD to reflect our findings in this decision.

The appellant compares his position to another Environmental Protection Specialist, GS-028-11, position that was appealed to OPM and which our office recently adjudicated. He contends that his position is similar but should be graded higher than that position for various reasons including (1) he has one additional program coverage area, and (2) he believes his position should be rated higher under Factor 2 because he has complete responsibility and authority to plan, design, schedule, and carry out major programs, projects, studies, or other work independently on a regular basis. He contends his added responsibility and authority clearly meet a higher level under Factor 2, thereby raising the grade of his position to the GS-12 level. In adjudicating this appeal, our only concern is to make our own independent decision on the proper classification of the appellant's position. By law, we must make our decision solely by comparing the 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 position to others as a basis for deciding his appeal.

Position information

The appellant performs environmental protection duties and responsibilities which involve performing and managing the environmental program at [the appellant's installation]. His responsibility includes ensuring that the installation complies with all environmental acts, regulations and laws for the portion of the military installation under [the installation's] control. He carries out that responsibility by ensuring that regulatory requirements are met at [the installation] for all Hazardous Material (HM), Hazardous Waste (HW), Clean Air Act (CAA),

Clean Water Act (CWA), Non Point Discharge Elimination Program (NPDES), Above Ground Storage Tank (AST), Toxic Substance Control Act (TSCA), Oil Pollution Act (OPA), Emergency Planning and Community Right to Know Act (EPCRA), Hazard Communication Program (HAZCOM), Waste Minimization, recycling, and Pollution Prevention (P2) programs. He monitors, controls, improves, eliminates and/or prevents environmental and/or hazardous situations by frequent inspections of areas and buildings located at the military facility. The appellant provides technical expertise and environmental oversight to all personnel associated with the construction project currently underway in which facilities are being improved or removed in order to meet assigned pollution or industrial health standards. He also advises and keeps the Commanding Officer informed on all environmental issues, and acts as the Emergency On-scene Incident Commander for [the installation]. The latter involves coordinating and taking appropriate measures if a spill occurs and ensuring trained personnel carry out appropriate spill control duties. The appellant represents the Commanding Officer at various meetings, discussions, and liaison visits concerning environmental matters.

In addition to managing the environmental protection and prevention program, the appellant has the responsibility of educating and providing HAZCOM training and a wide range of environmental, safety, and industrial health training to all [installation] personnel (civilian and military). He manages the operations and maintenance of the Fuel Farm and all refueler/defueler vehicles. Those responsibilities include supervisory duties over the drivers of all refueler/defueler vehicles. He provides technical and administrative supervision over one civilian Fuel Distribution Operator, WG-5413-09, one Petty Officer who functions as the Hazardous Materials Coordinator (HMC), and four non-rated airmen performing aircraft refueling duties.

The results of our interviews, the appellant's position description, and other materials of record provide more information about his duties and responsibilities and how they are performed.

Series, title, and standard determination

The agency has assigned the appellant's position to the Environmental Protection Specialist Series, GS-028, and the appellant does not disagree. We concur with the agency's series determination. As described in the position classification standard for the Environmental Protection Specialist Series, GS-028, dated March 1995 (reissued in HRCD-7, July 1999), that series covers positions like the appellant's whose duties and responsibilities involve advising on, managing, supervising, or performing administrative or program work relating to environmental protection programs (e.g., programs to protect or improve environmental quality, control pollution, remedy environmental damage, or ensure compliance with environmental laws and regulations). Positions in that series require specialized knowledge of the principles and methods of administering environmental protection programs and the laws and regulations related to environmental protection activities. The appellant's work involves advising, managing, and performing administrative and program work relating to environmental protection programs at the [installation].

As noted above, the appellant supervises some personnel at the fuel distribution center. Using the prefix "Supervisory" in the official title of the appellant's position is dependent on the position meeting the criteria of the General Schedule Supervisory Guide (GSSG), reissued in HRCD-7,

July 1999, for evaluation as a supervisor. As stated in the GSSG, it is used to grade GS supervisory work and related managerial responsibilities that (1) require accomplishment of work through combined technical and administrative direction of others, (2) constitute a major duty occupying at least 25% of the position's work time, and (3) meet at least the lowest level of Factor 3 in the guide, based on supervising Federal civilian employees, Federal military or uniformed service employees, volunteers, or other non-contractor personnel.

Our fact-finding disclosed that the amount of time the appellant spends supervising his subordinate staff does not exceed 5%. Therefore, his supervisory duties do not constitute a major duty consuming at least 25% of his work time and the position cannot be titled and evaluated as supervisory.

Environmental Protection Specialist is the authorized title for nonsupervisory positions like the appellant's assigned to the GS-028 series. The standard contains grade level criteria for evaluating positions in the GS-028 series, which is applied below.

Grade determination

The GS-028 standard uses the Factor Evaluation System (FES), which employs nine factors. Under the FES, each factor level description in a standard describes the minimum characteristics needed to receive credit for the described level. Therefore, if a position fails to meet the criteria in a factor level description in any significant aspect, it must be credited at a lower level. Conversely, the position may exceed those criteria in some aspects and still not be credited at a higher level. Our evaluation with respect to the nine FES factors follows.

Factor 1: Knowledge required by the position, Level 1-7, 1250 points

This factor measures the nature and extent of information or facts the environmental protection specialist must understand to do acceptable work and the nature and extent of skill necessary to apply this knowledge. To be used as a basis for selecting a level under this factor, knowledge must be required and applied.

The appellant's position favorably compares to Level 1-7 described in the GS-028 standard. Like that level his work requires knowledge of program principles and procedures applicable to a wide range of duties in one or more program and/or functional areas. The appellant's areas of concern include air emissions, hazardous materials management, extremely hazardous substance management, hazardous waste management, non-hazardous waste materials management, petroleum/oil/lubricants waste management, solid waste management, special pollutants such as asbestos, lead and noise, toxic emissions and toxic-chemicals management, underground and aboveground storage tanks, waste stream water management, and water quality monitoring. The appellant applies his program and procedural knowledge to perform inspections and oversight activities in those areas. Like Level 1-7, methods and procedures require frequent modification and change because environmental protection laws are continually being established and updated with more stringent requirements.

At Level 1-7 the work requires knowledge of statutes, regulations, licensing/permitting requirements, and precedent decisions governing environmental operations sufficient to use in planning, implementing or monitoring environmental programs and services. Likewise, the appellant's work requires that he understands and applies a myriad of Federal, State, and local environmental protection laws and regulations. In addition, as required at Level 1-7, the appellant's work requires management, administration, and coordination knowledge and skill to provide advisory, reviewing, evaluating, educating and/or training, negotiating, or problem solving services on specific problems, projects, programs or functions.

The appellant's work does not require Level 1-8 knowledge. Unlike that level, he is not faced with major problems not susceptible to treatment by accepted methods. He is not required to make decisions or recommendations significantly changing, interpreting, or expanding important agency/national policies and programs which would require expert knowledge of Federal, State and local laws and regulations, documentation and reporting requirements, and lawmaking or rule making processes. He is directly concerned with the installation's environmental protection program and is not involved in changing, interpreting, or expanding the agency's (i.e., Department of Transportation) environmental policies or programs. We found no indication either in the record or during our fact-finding sessions that the appellant's position would require the level of knowledge and expertise described at Level 1-8.

This factor is evaluated at Level 1-7 and 1250 points are credited.

Factor 2: Supervisory controls, Level 2-4, 450 points

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibility, and the review of completed work.

The appellant's position meets Level 2-4, but does not fully meet Level 2-5. As at Level 2-4, his supervisors set the overall assignment objectives, program emphasis, and resources available. He has continuing responsibility for independently planning, designing, scheduling, and carrying out the installation's environmental protection program and projects. The appellant determines the approach to be taken and the methods to be used, and resolves most of the conflicts that arise, coordinating the work with others as necessary. He also interprets policy in terms of established objectives. He keeps the Commanding Officer informed of progress, potentially controversial matters, and problems with far-reaching implications. His PD states that the appellant's supervisor is the [title of immediate supervisor] Officer. However, the appellant keeps the Commanding Officer informed as well because a number of his assignments come directly from that individual.

At Level 2-5 the supervisor makes assignments in terms of broadly defined missions or functions and provides only administrative and policy direction. The specialist is recognized as an authority in a program or functional area, and has complete responsibility and authority to plan, design, schedule, and carry out major programs, projects, studies, or other work independently. Completed work is reviewed only for potential influence on broad agency policy and program goals, fulfillment of program objectives, or contribution to advancement of knowledge in the field, and is normally accepted without significant change.

While we recognize that the appellant works independently, and is free to plan and design his work projects, like Level 2-4 his supervisors set the overall assignment objectives and review his work more closely than described at Level 2-5. The Commanding Officer provides technical supervision as needed, and reviews work products for conformance to program or project requirements, and effectiveness in meeting program goals and objectives. Final work products and recommendations are subject to review and change, as needed.

This factor is evaluated at Level 2-4 and 450 points are credited.

Factor 3: Guidelines, Level 3-4, 450 points

This factor covers the nature of guidelines and the judgment necessary to apply them. The agency evaluated this factor at Level 3-3, but the appellant disagrees.

At Level 3-3, available guidelines include technical and procedural manuals that are not always completely applicable to specific work assignments. At this level, the environmental protection specialist uses judgment in choosing, interpreting, and adapting guidelines and precedents to specific issues or problems in accordance with established policies and accepted practice.

At Level 3-4 guidelines include administrative policies and precedents, laws, regional or area directives, agency regulations, etc., which are stated in general terms. Operating guidance provides a broad overview of program goals and strategies, but does not detail how the identified priorities and activities will be accomplished. The specialist uses initiative and resourcefulness in deviating from, refining, or extending traditional methods and practices. Level 3-4 favorably compares to the appellant's guidelines in that he applies generally stated agency regulations (titles 29 and 40, Code of Federal Regulations) and laws (e.g., NEPA, Clean Air and Water Acts, Toxic Substance Control Act) which he must refine or extend to the environmental situations found at the installation. In doing so he exercises initiative and resourcefulness to determine the intent of existing policies and guidance. For example, he has developed several supplemental plans and instructions tailored to the installation's environmental program including a Pollution Prevention Plan, Spill Prevention Control and Countermeasure Plan, Storm Water Management Plan, and Hazardous Waste Contingency Plan. In developing these plans, similar to Level 3-4 he exercises initiative and resourcefulness to determine the intent of the law or agency regulation, refining them to the installation's needs.

The appellant's position does not meet Level 3-5. Unlike that level he is not involved in determining the intent, and in interpreting and revising existing policy and regulatory guidance for use by others within or outside the employing agency. This level encompasses positions found at higher organizational levels within an agency than the appellant's job, and is awarded when the specialist is recognized as an authority in the development and/or interpretation of guidance on environmental planning and administration in one or more national programs or functional areas. The record does not reflect that the appellant is recognized as an authority nor does he develop or interpret the types of guidelines listed to the extent described at Level 3-5.

This factor is assigned Level 3-4 and 450 points are credited.

Factor 4: Complexity, Level 4-4, 225 points

This factor covers the nature, number, variety, and intricacy of tasks, steps, processes, or methods, in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

The appellant's work best meets Level 4-4. At that level the work typically involves full responsibility for well-established aspects of one or more programs and/or functional areas, including a wide variety of duties involving diverse and complex technical and/or program problems and considerations. Like Level 4-4, the appellant is the program manager for a variety of programs at [the installation], covering hazardous material and hazardous waste activities governed by a variety of Federal laws and regulations. In that capacity he conducts hazardous waste inspections, evaluates operating practices and recommends improved procedures, prepares reports, etc. In addition, he manages the operations and maintenance of the fuel farm at the installation. Similar to Level 4-4 and the work illustrations under that level, the appellant plans, develops, implements, analyzes, and evaluates the environmental program, refining existing criteria and sometimes modifying conventional methods and techniques to increase efficiency and effectiveness.

The appellant's work does not meet Level 4-5. At that level the work includes a wide variety of duties requiring many different and unrelated processes and methods applied to a broad range of activities involving a number of facilities, sites, programs, etc. (e.g., planning and conducting/coordinating inspections to identify and evaluate violations in a variety of complex industrial and commercial establishments throughout a multi-state area), or intensive analysis and problem solving (as a recognized expert) in a program or functional area. Decisions made at this level involve major areas of uncertainty in approach or methodology resulting from continuing program changes, technological developments, or new or unconventional methods. At Level 4-5 the work requires devising new methods and techniques to produce effective results or implement advances in such areas as pollution prevention, risk assessment, etc. Specialists at this level establish criteria for administering or evaluating environmental programs, or develop policy guidance and procedural material for use by operating personnel. The appellant's position does not meet the level of complexity described above. Unlike Level 4-5 his work does not require the application of unrelated processes and methods, nor is he faced with major areas of uncertainty in approach or methodology. Responsibility for the establishment of criteria for evaluating environmental programs, and developing policy guidance and procedural materials for use by operating personnel, is not found in the appellant's position.

This factor is evaluated at Level 4-4 and 225 points are assigned.

Factor 5: Scope and effect, Level 5-3, 150 points

This factor covers the relationship between the nature of the work; i.e., the purpose, breadth, and depth of the assignment, and the effect of the work products or services both within and outside the organization.

The appellant's position fully meets Level 5-3 but falls short of Level 5-4. Like Level 5-3, he plans and carries out a variety of projects and program activities to ensure compliance with

environmental laws and regulations or to improve the administration of the environmental protection program at the installation. The work involves identifying, analyzing, and making recommendations to resolve conventional environmental or compliance problems. The work affects the operation of the local installation's environmental protection program, and the elimination of environmental hazards.

The appellant's position does not fully meet Level 5-4. While he formulates projects, develops local guidance, and assesses the installation's program effectiveness, his work does not involve analysis of a variety of unusual conditions, or furnishing advisory or oversight services to regional personnel, State officials, industry representatives, etc. The appellant's duties do not directly influence the effectiveness and acceptability of total environmental protection systems and/or programs affecting a wide range of agency (i.e., Department of Transportation) activities.

This factor is evaluated at Level 5-3 and 150 points are credited.

Factor 6: Personal contacts & Factor 7: Purpose of contacts, Levels 6-3/7-b, 110 points

Factor 6 covers the people and conditions or settings under which contacts are made. It includes face-to-face contacts and telephone and radio dialogue with persons not in the supervisory chain.

The appellant's personal contacts are evaluated at Level 6-3 which is the highest level for this factor described in the standard. Like that level, he contacts persons from outside the employing agency in a moderately unstructured setting. These include contractors, inspectors, community leaders, and persons from Federal and State regulatory agencies. In his position, he attends regular meetings with BRAC (Base Realignment and Closure) officials concerning the transfer of the military installation from the Department of the Navy, Naval Air Station to a U.S. Coast Guard [installation]. He represents the Commanding Officer of [the appellant's installation] in meetings, discussions and liaison regarding environmental matters. The appellant attends the Local Emergency Planning Committee meetings in his role as Environmental Manager on behalf of the Commanding Officer. Environmental inspections are routinely conducted at [the installation] on a regular basis. The appellant meets and deals with the inspectors on behalf of the Commanding Officer. He reports all findings and issues to the Commanding Officer.

Factor 7 covers the reasons for the contacts described in Factor 6.

Factor 7 is evaluated at Level 7-b. As at Level 7-b, the appellant's contacts are to plan or coordinate work efforts or to resolve operating problems by influencing or motivating individuals or groups who are working toward mutual goals and who have basically cooperative attitudes. Contacts are also made to provide guidance, interpretation of regulations, and advice and assistance to facilitate implementation of the environmental program.

Level 7-c is not met. Unlike the appellant's position, the purpose of contacts at Level 7-c is to influence, motivate, or persuade persons or groups who are typically skeptical, resistant, or uncooperative, and who must be approached skillfully to obtain the desired effect. While the appellant may on occasion have contact with persons or groups like that, his contacts are

typically with persons or groups who are working toward mutual goals and have basically cooperative attitudes.

Factor 6 is evaluated at Level 6-3, and Factor 7 is evaluated at Level 7-b. Thus a total of 110 points are credited.

Factor 8: Physical demands, Level 8-1, 5 points

This factor covers the requirements and physical demands placed on the Environmental Protection Specialist by the work assignment.

The physical demands on the appellant meet Level 8-1 as the work is primarily sedentary, although some physical effort may be required. The appellant's work does not meet Level 8-2. We recognize that his duties occasionally require physical exertion (prolonged standing, bending) when climbing up and down ladders and in and out of storage tanks to observe work operations and perform inspections of storage tanks, and sometimes he may wear protective gear. However, our fact-finding disclosed that such physical demands do not occur on a regular and recurring basis.

This factor is evaluated at Level 8-1 and 5 points are credited.

Factor 9: Work environment, Level 9-1, 5 points

This factor considers the risks and discomforts that may be imposed upon employees by various physical surroundings or job situations.

The appellant's work environment is evaluated at Level 9-1. Like that level it involves everyday risks or discomforts that require normal safety precautions typical of such places as offices, training rooms, and libraries. The work area is adequately lighted, heated, and ventilated.

The work environment falls short of Level 9-2. Our fact-finding revealed that the appellant is not exposed on a regular and recurring basis to moderate risks or discomforts requiring special safety precautions typical of the higher level.

This factor is evaluated at level 9-1 and 5 points are credited.

Summary

<i>Factor</i>	<i>Level</i>	<i>Points</i>
1. Knowledge required by the position	1-7	1250
2. Supervisory controls	2-4	450
3. Guidelines	3-4	450
4. Complexity	4-4	225
5. Scope and effect	5-3	150
6. Personal contacts and	6-3 &	110
7. Purpose of contacts	7-b	
8. Physical demands	8-1	5
9. Work environment	9-1	5
<i>Total</i>		2645

A total of 2,645 points falls into the GS-11 range (2,355 - 2,750) on the grade conversion table found in the GS-028 standard.

Decision

The appellant's position is properly classified as Environmental Protection Specialist, GS-028-11.