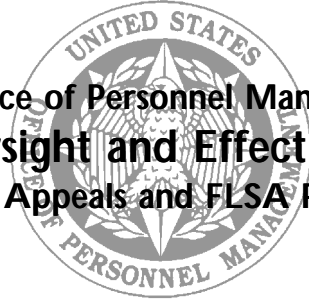


U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs



Dallas Oversight Division
1100 Commerce Street, Room 4C22
Dallas, TX 75242

Classification Appeal Decision
Under Section 5112 of Title 5, United States Code

Appellant: [appellant]

Agency classification: General Attorney
GS-905-13

Organization: Office of Counsel
[name of appellant's district]
U.S. Army Corps of Engineers
[location]

OPM decision: General Attorney
GS-905-13

OPM decision number: C-0905-13-04

/s/ Bonnie J. Brandon
Bonnie J. Brandon
Classification Appeals Officer

4/28/99
-
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's name and address]

[address of servicing personnel office]

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Introduction

On December 18, 1998, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) received an appeal from [the appellant] contesting his agency's classification of his position as General Attorney, GS-905-13. The position is located in the Office of Counsel, [name of specific Corps of Engineers district], U.S. Army Corps of Engineers, [location]. The appellant believes his position should be classified at the GS-14 grade level because his duties have expanded to include environmental areas within the Defense Environmental Restoration Program. He feels the higher grade is warranted because the work is more complex and requires a greater depth of knowledge; broader policy guidelines must be dealt with; personal contacts include municipal, state officials, news media, and the public; and, there is a great degree of risk for litigation if environmental issues are not successfully resolved through negotiation. The appellant further justifies the upgrade based on procurement fraud work involving environmental areas. He indicates that these cases are unusually delicate and subject to greater public awareness. Finally, the appellant states that the contract claims cases he is assigned are designated at the highest level of difficulty. All involve very large sums of money and complex technical and legal issues and are represented frequently by extremely capable legal talent. The appellant agrees that the official position description accurately reflects his major duties.

To help decide the appeal, we conducted a telephone audit of the appellant's position. The audit included interviews with the appellant and his immediate supervisor. In reaching our classification decision, we reviewed the audit findings and all information of record furnished by the appellant and his agency, including his official position description number [number].

General issues

The appellant requests us to compare his functional areas and advisory role with that of a higher-graded position in the [appellant's activity]. We cannot compare the appellant's position to others as a basis for deciding his appeal because comparison to standards is the exclusive method for classifying positions. By law, we must classify positions solely by comparing their current duties and responsibilities to OPM standards and guidelines (title 5, United States Code, sections 5106, 5107, and 5112).

Position information

The appellant is one of nine employees in the Office of Counsel [in a specific District]. The professional staff includes the GS-15 District Counsel (the appellant's immediate supervisor), one GS-14 General Attorney, three GS-13 General Attorneys (Contracts), and the appellant. The remaining three employees are support personnel.

The Office of Counsel renders assistance and advice to the Commander and to all components of the [appellant's District] on all legal matters. The Office of Counsel also handles legal matters regarding Potentially Responsible Party environmental projects involving hazardous, toxic, and

radioactive wastes for [two specific Corps of Engineers Divisions]. This responsibility was delegated to the District in 1994 as part of the Army Corps of Engineers' decentralization policy.

The appellant's assignments primarily focus on three functional areas: (1) environmental matters relating to the Defense Environmental Restoration Program, including Formerly Used Defense Sites (FUDS) and Potentially Responsible Parties (PRP's); (2) the District's Procurement Fraud Program; and (3) contract claims, disputes, appeals, and advice on contract performance activities.

The appellant is the lead attorney for FUDS/PRP environmental projects and for the Defense Environmental Restoration Program. These duties require a working knowledge of major environmental statutes such as the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, and the National Environmental Policy Act. Environmental project work requires the appellant to visit sites; conduct discovery; interview fact witnesses; represent the agency at public meetings; and negotiate with PRP's, various State regulatory agencies, the Environmental Protection Agency, and private attorneys. The appellant is also responsible for evaluating the Government's financial liability; developing the legal position and overall strategy for complex PRP issues; and drafting partnering agreements, interim cost sharing agreements, cost allocation agreements, and final settlement agreements for higher level approval.

As the District Procurement Fraud Advisor, the appellant investigates, researches, analyzes, and recommends disposition of fraud cases which could result in criminal prosecution, civil suit, contract action, or administrative action to include suspension or debarment. The multifaceted nature of the District's fraud program requires expertise in criminal law, procurement law, fiscal law, environmental law, and administrative law. Duties often involve direct coordination with the Department of Justice and Federal investigatory agencies such as the Air Force Office of Special Investigations (AFOSI), the U.S. Army Criminal Investigation Division (CID), and the Federal Bureau of Investigation (FBI).

The appellant investigates contract claims and disputes which may involve large sums of money and legal problems that lack closely applicable precedent. He provides legal advice during contract formation and contract performance on particularly complex and sensitive contracts. Work in this functional area requires the appellant to examine contract records; interview Government personnel involved in engineering, construction, contract administration, and inspection activities; perform legal research of Federal and State court decisions, Boards of Contract Appeals decisions, and current statutes and regulations; and participate in settlement conferences with contractors and their attorneys.

Series, title, and standard determination

The appellant's work is properly classified in the General Attorney, GS-905, Series which includes professional legal positions that render legal advice about questions, regulations, and practices in the purview of a Federal agency; prepare cases for trial before a court or administrative body

having quasi-judicial power; draft, negotiate, or examine contracts or other legal documents required by an agency's activities; and draft and review decisions for consideration and adoption by agency officials. The prescribed title for positions involving two or more functional areas is General Attorney. The appellant's position is appropriately titled General Attorney because of the advisory nature of the work and the appellant's involvement in preparing cases for trial and/or providing technical guidance to other persons preparing cases before a court or administrative body. Classification criteria in the GS-905 standard are used to determine the grade level of the appellant's position.

Grade determination

The General Attorney, GS-905, Series position classification standard, dated October 1959, is appropriate for classifying the appellant's position. It describes, in a narrative format, a number of elements which together determine the difficulty and responsibility of attorney positions. These elements fall under two main factors: (1) *Nature of the case or legal problem* and (2) *Level of responsibility*. While there is some relationship between the two factors, each is measured separately to recognize the fact that they do not necessarily appear in attorney positions in proportionate degrees. The level assigned to one factor together with the level assigned to the other factor determines the grade of the position according to the conversion table set forth in the position classification standard.

Nature of the case or legal problem

This factor incorporates all elements of a case or problem which tend to make it more or less difficult to resolve satisfactorily. In measuring the inherent difficulty of legal and factual questions, the interrelationship between the elements is an important consideration. This factor is measured in terms of three levels of intensity: simple (Type I), difficult (Type II), and most difficult (Type III). If a case or problem does not satisfy the requirements of one type, it is identified at the next lower type because each type is described in terms of the minimum characteristics of the range of difficulty it represents. The elements considered in evaluating the nature of the case or legal problem are as follows:

- complexity of legal and factual issues;
- economic, social, or political impact on the public, relations with State or local governments, national defense, private interests, and agency operations or authority;
- importance as legal or administrative precedent;
- nature of the competition;
- nature and availability of precedent decisions;
- delicateness of the problem;
- extent of public interest in the particular legal matter; and
- amount of money involved.

Type I

Legal work at this level is characterized by one or more of the following features.

- (1) Legal questions or factual situations are easily resolved in light of well-established facts and clearly applicable precedents.
- (2) The impact of cases or legal problems is local or limited to the parties directly concerned because no new precedents of wider potential impact are involved.
- (3) Relatively limited sums of money are involved (e.g., a few thousand dollars). Cases have no widespread social or political impact. There is limited public interest in the case or legal problem.

Type II

Legal work at this level is characterized by one or more of the following features.

- (1) Difficult legal or factual questions are involved because of the absence of clearly applicable precedents due to the newness of the program or the novelty of the issue; or it is highly arguable which precedents are applicable to the case at issue 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 impact of the case or legal problem affects, economically, socially, or politically, either directly or as a legal or administrative precedent, a significant segment of private or public interests (e.g., a large corporation, the residents of a large geographical region of the United States as in a large public works project, a class of Government contractors, i.e., suppliers of a particular service or product, or an important program of a Government agency).
- (3) Large sums of money are directly or indirectly involved (e.g., about one hundred thousand dollars), or the case is strongly contested in formal hearings or informal negotiations by the private individuals, corporations, or Government agencies involved.

Type III

Legal work at this level 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, interpretation, or application of regulations, contracts, decisions, opinions, or other legal instruments and require for their solution a high order of original and creative legal endeavor in order to obtain a reasonable balance of conflicting interests; or

complex factual or policy issues are involved requiring extensive research, analysis, and obtaining and evaluating of expert testimony or information in controversial areas of scientific, corporate, engineering, or other highly technical areas.

- (2) The case or problem is such that it can have the effect of substantially broadening or restricting the activities of an agency; or it has an important impact on a major industry whose economic position affects the health and stability of the general economy. It has an important impact on major private or public interests. Also included in this type are problems of unusual delicacy, such as fraud cases, because of the serious consequence of error and the great burden of proof assumed by the Government.
- (3) Cases or problems of this type frequently involve, directly or indirectly, very large sums of money (e.g., about a million dollars) and/or they are frequently vigorously contested by extremely capable legal talent. Interest in these cases is generally nationwide.

The appeal file lists cases dating back to 1993 that the appellant feels are representative of the three principal functional areas of his assignments: the Defense Environmental Restoration Program; the Procurement Fraud Program; and contract claims, disputes, and appeals. He believes all of these cases should be categorized at the most difficult level, Type III. Our review considers the appellant's more recent assignments, i.e., those occurring in the last three years. The following assessment examines the difficulty of these assignments in relation to the criteria in the classification standard.

In the area of environmental issues and the PRP program, the following case is considered Type III work:

[name of specific facility]. The case involved trichlorethylene groundwater contamination at a Formerly Used Defense Site (FUDS), [a specific facility]. The former base is now a major industrial airport facility for [a small city in a specific state]. Because of the long history of the site, it was necessary to sort out factual and legal issues. Expert testimony was required in toxic waste contamination cleanup to substantiate the Government's position. The original estimate for remediating the site using a pump and treat system of removing contaminants was \$60 million. An agreement to remediate the site using a less costly method of restoration was achieved after investigations, identification of other PRP's, and partnering sessions with the [specific state and city where the facility is located]. The cost to the United States was reduced to \$750,000. However, the Government spent several million dollars studying the problem and getting the problem settled. Two criteria of Type III work are reflected in this case, i.e., complex and difficult factual issues are involved and require a high order of original and creative legal endeavor to obtain a reasonable balance between conflicting interests; and large sums of money are directly or indirectly involved.

The remaining six environmental and PRP program cases we considered are indicative of Type II cases. None of these cases has legal or precedential value. There is an established body of

environmental law to rely upon in analyzing them. The impact of the cases politically and economically affects a significant segment of private and public interests, e.g., residents of a large geographical region of the United States. Interest is not nationwide as is generally true of Type III cases, and they do not involve very large sums of money.

[name of a small city in a specific state]. This case involved determining responsibility and liability for contaminated local groundwater at the former [facility's] site in [the small city]. Preliminary estimates indicated a potential cost of cleanup at \$500,000 to \$1 million. Issues involved how financial responsibility would be shared. The matter was settled with remediation costs of approximately \$35,000 to the U.S. Army Corps of Engineers. The case was settled using partnering and alternative dispute resolution processes instead of litigation. Using a new process, such as partnering, to resolve a case does not, by itself, establish Type III difficulty.

[name of a specific military facility]. This case involves allocating liability and sharing costs for groundwater contamination and free-floating petroleum products discovered at the former base. There are also some issues concerning the landfill. This case will have an impact on relations with the [state where the facility is located] and local government. A successful resolution through partnering will clean up the site at the least cost to the Government. At present the cost of remediation efforts are not known.

[name of a facility]. This is a PRP contribution action involving more than one site located remotely outside of [a medium-size city]. Over the years, the facility has been used for numerous activities, including the production and storage of military weapons during World War II. A local state university and the U.S. Department of Energy are PRP's at the site. The U.S. Army Corps of Engineers does not anticipate any monetary responsibility for remediating the site. However, the Department of Energy has spent millions of dollars on site cleanup.

[name of site]. This is a PRP contribution action over activities that occurred at a FUDS site, [name of a specific site]. The case involves resolving liability and cost sharing issues for creosote, diesel fuel, and benzene contaminants. There is a readily available legal precedent applicable to this case. The Department of Justice supports a no liability position for the Government based on case law about the petroleum exclusion and sovereign immunity for FUDS sites. Opposing counsel asserts that remediation costs for the site are \$828,000 and that the Government's share is \$381,000.

[name of a specific military facility]. This is a PRP cost contribution action involving [a specific state's] National Guard. There are issues about remediation cost sharing for the disposal of mercury and lead contaminated ash and monitoring costs for landfill. The facts of the case have given rise to a policy issue of how costs should be shared between an active component of the Army and the National Guard. The case is being handled through partnering

and alternative dispute resolution and is not expected to have any legal or administrative precedential value. The case involves less than \$200,000.

[name and location of a specific Superfund site]. Records pertaining to the Government's involvement at the site show the Department of Defense was involved only in providing for and guarding [certain] Prisoners of War during World War II. This activity is protected by the War Related Activities immunity. This case was resolved quickly with no court action. It has no legal or administrative precedential value. Use of this legal theory saved the Government an estimated expense of \$250,000 for a PRP investigation.

With respect to the appellant's procurement fraud cases, the standard characterizes problems of unusual delicacy, such as fraud cases, as illustrative of Type III cases because of the serious consequences of error and the great burden of proof assumed by the Government. We find that the appropriate level of difficulty for the appellant's assignments in this area is Type III. Fraud cases often result in debarment proceedings and/or civil or criminal prosecution as well. The appellant is responsible for ensuring appropriate investigative agencies obtain substantiating evidence with respect to proving fraud, for conducting legal analyses, and for providing direct support to Department of Justice attorneys on case litigation activities. The following cases are clearly representative of the unusual delicacy mentioned in Type III.

[name of a facility]. This is a major fraud case involving a lease to a very large marina concessionaire. A joint task force investigation by the Federal Bureau of Investigation, the Defense Criminal Investigation Service, the Internal Revenue Service, and the state [where the marina is located] revealed that the marina's operators were depriving the Government of approximately \$600,000 in revenues required under its lease, disposing of waste illegally, and underreporting income on tax returns. Because of the magnitude of the fraud and the popularity of the marina, the case was followed closely by the media, and there was significant public interest. Total fines and restitution in this case were approximately \$11 million.

[name of a construction company]. This case involves allegations of false claims, product substitution, and progress payment fraud for a contract valued at over \$12.5 million to construct a water treatment facility, drill wells to extract contaminated subsurface water, and install double containment piping at [a large military facility]. The degree or potential fraud and the potential impact to the environment due to deficient work on the part of the contractor make this a particularly sensitive case.

[name of a company]. This is a case involving large-scale falsification of environmental lab tests. Information reveals that intentional falsification of equipment calibration impacted the results of volatile organic contaminants at an undetermined number of U.S. Army Corps of Engineers, U.S. Air Force, and Environmental Protection Agency projects. The total value of contracts with Intertech is estimated at \$20 to 30 million. This is a sensitive case because of its widespread nature and the possibility that decisions may have been based on fraudulently produced data.

[name of a company]. This procurement fraud case concerns falsifying test results involving compressive strength of concrete. This is a serious issue because these test results are relied upon to make construction decisions. This was a criminal action and an action for debarment as opposed to a monetary relief case. The contractor was administratively debarred for five years and ordered to pay restitution of \$20,000.

[names of defendants]. This was a criminal case involving kickback; so money was not the key issue. Five defendants were prosecuted for conspiracy. The convictions resulted in prison time and an order of restitution to the Government of \$482,273.

The two contracts cases we considered are indicative of Type II cases. Neither case has legal or precedential value, and there is an established body of Government contract law to rely upon in analyzing them. They do not involve very large sums of money, and interest in them is limited. [Name of a construction company] is a contract claim and appeal case that involves allegations of defective design and specifications and Government-caused delay. The amount of the claim is \$513,000. [Name of a construction company] involves allegations by the contractor that plans and specifications were defective, site conditions differed, and the Government caused delays. The contractor represented his own case without legal representation. The amount of the claim is \$967,367.

The appellant's work as the District's Freedom of Information Act (FOIA) Officer and Privacy Act legal advisor occupies a small portion of his time, i.e., about five percent, and involves mostly routine requests. The legal work involved in determining the releasability of information under either Act fails to meet the criteria established for Type III. It is more typical of Type II cases.

In analyzing the appellant's cases over the last three years, we note that all of his procurement fraud cases are Type III cases. However, all but one environmental law case is assessed at Type II. When contract claim and FOIA/Privacy Act cases are factored in, the preponderance of the appellant's cases only meet Type II criteria. In conclusion, given the fact that 45 percent of the appellant's cases are Type III and that significant potential exists for environmental law cases to rise to a Type III assessment, we find it appropriate to evaluate the first factor, *Nature of the case or legal problem*, as Type III.

Level of responsibility

This factor incorporates elements that are indicative of the level at which an attorney carries out his assignment. It includes the functions performed, the supervision and guidance received, the personal work contacts, and the nature and scope of recommendations and decisions. Three levels of responsibility are described in the standard: A, C, and E. Intervening levels are represented but not described by omitted letters B and D. Unlike the levels described for nature of the case or legal problem, which are described in terms of minimum characteristics, these levels are described in terms of typical characteristics.

Nature of functions

As part of a team consisting of a project manager and Engineering and Construction Division representatives, the appellant is the primary action attorney for FUDS/PRP environmental matters. He is responsible for developing the legal position and overall strategy for handling complex PRP issues and serves as the lead negotiator for the [appellant's] District in dealing with other Federal agencies, State and local governments, and private parties. He prepares litigation reports and administrative reports and actively assists Department of Justice attorneys in the prosecution and defense of environmental cases. The appellant also handles claims and disputes pertaining to Government contracts. This involves examining contract records; interviewing Government employees involved in engineering, construction, contract administration, and inspection activities; and conversing with Government experts. He participates in and conducts conferences with contractors and their attorneys with a view towards settling claims and appeals. He weighs the merits of contractors' legal positions against the Government's defense and advises on settlement offers. He coordinates with and assists U.S. Attorneys in litigation arising out of contract law or fraud. As the District's Procurement Fraud Advisor, the appellant investigates, researches, analyzes, and recommends dispositions of cases involving procurement fraud which could result in criminal prosecution, civil suit, administrative action, and/or debarment. Duties involve direct coordination with the Department of Justice and Federal investigatory agencies (FBI, DCIS, AFOSI). The appellant also serves as the District's FOIA and Privacy Act legal advisor. These duties are consistent with Level C which is characterized in the standard by the following examples.

- Conducting legal research in connection with cases pending administrative hearings, trials before courts of original jurisdiction, or arguments in appellate courts, and with legal questions referred by administrative officials in the employing agency.
- Personally conducting research or investigation of the facts as well as laws, regulations, and legal precedents. This may involve analyzing factual and legal issues presented to determine what further facts are needed and what legal sources are applicable; researching laws, legal opinions, regulations, and precedent cases about the legal issues of the problem or case; conducting pretrial examinations of witnesses; and preparing memoranda or reports outlining the facts and legal issues, explaining the application of legal principles and precedents, and justifying recommendations or conclusions.
- Preparing legal documents, advisory opinions for administrative personnel, and/or recommendations on the advisability of instituting a civil suit, and administrative hearing, or other disposition.
- Preparing and/or presenting or providing technical guidance during the prosecution of the Government's or the agency's case in an administrative hearing or before a court of original jurisdiction or appellate court.

- Negotiating (usually as a member of a team) with representatives of private businesses or State and local governments on contracts and other legal documents.
- Serving as the assigned specialist on a major phase of several major activities.

The functions assigned to the appealed position are not equivalent in scope to the advisory influence of positions characterized by Level E. The appellant prepares memoranda of fact and law and makes recommendations of whether prosecution should be undertaken; however, he does not have the authority to submit such recommendations directly to the individual responsible for authorizing formal legal action. The appellant's position has no responsibility for drafting legislation or preparing reports on changes in basic legislation, drafting or reviewing agency decisions for consideration and adoption by agency officials at the highest organizational echelon, acting as the principal attorney in cases of such magnitude and importance that several attorneys are assigned and professional skills must be matched against some of the most distinguished legal talent in the country, and acting as the legal counsel to the head of a major operating program of the agency. Level D also is not appropriate for the appealed position because the functions the appellant performs do not fall between Levels C and E.

Supervision and guidance received

The appellant receives assignments and performs duties on his own initiative. The supervisor relies on him to use his expertise in thoroughly researching and analyzing facts and legal precedents and to develop case strategies for negotiations. Before the agency is committed to any action and before position papers are finalized for presentation to the District Commander, the supervisor meets with the appellant to review and discuss proposed strategies and underlying legal principles. The degree of supervision and guidance received by the appellant are equivalent to Level D, because some aspects exceed Level C, but most are not typical of Level E. At Level C, attorneys independently plan, organize, and conduct studies of run-of-the-mill legal problems and cases in their respective programs. They are apprised of any unusual circumstances surrounding the case and background information that must be considered. Beyond this, they normally work independently to investigate facts, search legal precedents, draft necessary legal documents, and develop conclusions and recommendations. Completed work is assumed to be accurate with respect to legal citations, treatment of facts, and other technical aspects. 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. Before a case is presented in an administrative hearing or before a court, the supervisor discusses the presentation, the line of approach, and other aspects of the case to ensure the proper groundwork has been laid. At Level E, attorneys are expected to carry out any assignments within their area of responsibility without preliminary instructions. The supervisor may discuss the significance of the problem when the case is assigned. From this point, attorneys independently plan the approach, develop the completed decision, report, brief, contract, or other product, or represent the Government at the conference, hearing, or trial.

Personal work contacts

In dealing with environmental matters, the appellant primarily interacts with State regulators, local government officials, members of the agency's PRP team, and private contractors to negotiate remediation costs for PRP/FUDS sites. He also has some contact with staff from Congressional offices in the [appellant's District]. He obtains information about sites, e.g., historical data and material about land use, using independent researchers under contract with the agency, e.g., [names of two such agencies]. In some instances, remediation negotiations include representatives from other Federal agencies such as the Department of Energy and the Environmental Protection Agency. Because of his expertise in environmental law, the appellant also receives informal requests for advice and legal opinions from other districts in the [appellant's] Division. In dealing with fraud cases, the appellant maintains close working relationships with the agency's Administrative Contracting Officers and construction representatives as well as with action officers at the same or subordinate level from other agencies, e.g., agents from AFOSI, DCIS. The appellant works closely with and assists U.S. Attorneys in preparing and litigating cases. The appellant provides advice on contracting issues to all levels within the [appellant's] District including various levels of management. The appellant's contacts are typical of those described for Level C. Level C is characterized by attorneys who participate in conferences with representatives of operating programs, State and local governments, industry, and other Government agencies to develop or evaluate proposed changes in legislation or agency policies and regulations. They participate in pretrial or prehearing conferences with industry representatives, private citizen claimants, defendants, or petitioners and their attorneys, explain points of law, and refer suggested settlements or offers to superiors with appropriate recommendations. Level E is not typical of the appellant's contacts. This level is characterized by the most responsible personal contacts, e.g., conferring or negotiating with top administrative personnel in the agency, private business, or State, local, or foreign governments on important legal and policy issues.

Nature and scope of recommendations and decisions

The appellant formulates and presents recommendations for his supervisor about handling assigned cases. The supervisor relies on the appellant to develop appropriate negotiating strategies using his knowledge of environmental law, procurement fraud, and legal aspects of contractual claims and appeals and on his ability to negotiate remediation settlements using partnering techniques. However, before the agency is committed to any action and before position papers are finalized for presentation to the District Commander, the appellant must discuss and obtain approval of proposed strategies and underlying legal principles from his supervisor. The legal opinions of the District Counsel (the appellant's supervisor) are those accepted as authoritative in the District, so he accompanies the appellant to all meetings with the District Commander. After final decisions are reached concerning PRP/FUDS cases, the appellant is relied upon to deliver and explain them to State and local officials and other principal environmental case participants. Level C fully describes the nature and scope of the appellant's recommendations and decisions. Level E characteristics are not descriptive of the nature and scope of recommendations the appellant

makes. At Level C, attorneys make recommendations through their supervisors to those outside the agency or to administrative officials at higher levels. Their recommendations include whether to settle claims against the Government brought by private citizens and settlement of suits brought by the Government against others. At Level E, advice on the interpretation of law is often given directly to heads of programs, bureau chiefs, or representatives of State and local governments. If recommendations are made through supervisors, the recommendations are usually tantamount to final decisions.

Summary

Three subfactors are evaluated at Level C, and one at Level D; overall, Level C is the appropriate assessment of the second factor, *Level of responsibility*.

Using the grade-level conversion chart of the standard, Type III nature of cases coupled with Level C responsibility convert to grade 13.

Decision

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