

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

Chicago Oversight Division
230 South Dearborn Street, DPN 30-6
Chicago, Illinois 60604

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

Appellant: [Appellant's Name]

Agency Classification: Paralegal Specialist (Chapter 7)
GS-950-11

Organization: Department of Justice
Executive Office for U.S. Trustees
Region [#]
[Name of] District Office
[City, State]

OPM Decision: **GS-986**
Title at agency discretion

OPM Decision Number: C-0986-00-01

/s/

Frederick J. Boland
Classification Appeals Officer

9/10/99

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).

The certificate must be implemented no later than the beginning of the sixth pay period following the date of the decision, but not earlier than the date of the decision.

Decision sent to:

[appellant's name and address]

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Ms. Joanne Simms

Introduction

The appellant is assigned to position number T96019, classified as Paralegal Specialist (Chapter 7), GS-950-11, on June 3, 1997. The position is located in the [Name of] District Office, Region [#], Executive Office for U.S. Trustees, Department of Justice, [City, State]. The appellant agrees that the official position description is accurate but believes that her duties warrant greater credit under Factors 2, 4, 5, and 7 (Supervisory Controls, Complexity, Scope and Effect, and Purpose of Contacts) of the GS-950 classification standard.

Position Information

The appellant is one of two Paralegals in her office, which is headed by the Assistant US Trustee (AUST) and additionally includes a Bankruptcy Analyst, two Staff Attorneys, a Data Technician, and two Legal Clerks.

The appellant assists the AUST and legal and professional staff (attorneys and analyst) in the management, supervision, and evaluation of panel trustees who perform Chapter 7 bankruptcy case work. She reviews trustees' Final Reports/Accounts and their Final Distribution Reports in asset cases to ensure proper estate administration. She examines documents such as bank statements and dividend reports, pleadings, inventories, and bond and insurance coverage records. She prepares a variety of memoranda, judicial pleadings, and motions. She handles tax claims, oversees data entry of case petitions, coordinates activities with the bankruptcy court clerk/operations manager, and provides training to support staff.

Her position description references assignments such as analyzing legal problems and recommending solutions, researching all aspects of bankruptcy law, resolving complex claim issues, researching legislative history and cases, evaluating and summarizing substantive information, summarizing analyses, analyzing conflicting opinions, and developing new approaches. However, in response to our request for specific work examples of such assignments, we found little to support the position description statements, as noted in the Series and Title Determination section of this decision. Accordingly, the letter transmitting this decision requests the agency to correct the appellant's position description so it is consistent with our findings.

Analysis and Findings

Series and Title Determination

The *Paralegal Specialist, GS-950, Series* standard, dated August 1986, covers legal assistance duties in connection with functions such as hearings, appeals, litigation, or advisory services, where less than professional level knowledge is required. Paralegal Specialists analyze the legal impact of legislative developments and administrative and judicial decisions, opinions, determinations, and rulings on agency programs; conduct research for the preparation of legal opinions on matters of interest to the agency; perform substantive legal analysis of requests for information under the provisions of various acts; or other similar legal support functions that require discretion and independent judgment in the application of a specialized knowledge of

laws, precedent decisions, regulations, agency policies and practices, and judicial or administrative proceedings.

Though the appellant's official position description includes legal research and similar Specialist assignments, her own claims and our onsite review of the position reveal her work is primarily procedural in nature and largely void of the functions that characterize Paralegal Specialist work.

For example, the agency credited her position for utilizing highly developed, specialized legal skills and proficiency to analyze and evaluate the relevance of particular technical evidence and to thoroughly and extensively research legislative history, precedent cases, decisions, and opinions applicable to bankruptcy matters. Although the official position description echoes such Specialist assignments, there is scarce evidence of the appellant actually performing anything resembling these assignments.

Instead, most of the appellant's work focuses on administrative matters important to Chapter 7 bankruptcy processing. This is borne out in the appellant's own statements concerning the complexity of her assignments, an agency memorandum concerning the same, and her responses to our requests for specific examples of her analytical and evaluative work.

In detailing the most demanding aspects of her work, the appellant states:

Bankruptcy is a highly specialized and technical field of the law. As mentioned in the additional information about the position earlier in this document, the United States Trustee Program was enacted into law in 1986. New precedents and case law have been developed within the various Regions of the United States Trustee Program. Supervision of the panel of trustees has become more technical recently by the enactment of 28 C.F.R. 58.6, effective November 3, 1997, and the revised chapter 7 initiatives effective March 1, 1997. The focus and objectives of the United States Trustee Program are constantly changing as new precedents are set. To effectively perform my job as Senior Paralegal Specialist for chapter 7 case administration, and monitor/supervise the panel of trustees in the [Name of] District of [State], I have to keep abreast of the current trends in bankruptcy.

I directly supervise two Legal Clerks at the Office of the United States Trustee and provide technical advice/assistance to the Paralegal Specialist, Chapter 11, Bankruptcy Analyst, Attorney-Advisors, the Assistant United States Trustee, and the United States Trustee on chapter 7 case administration. Many problems arise with the administration of chapter 7 bankruptcy cases, such as should trustees file a Motion, Notice and an Order or is a Notice required, the availability of a panel trustee to take a case due to conflicts of interest, involuntary petitions filed against individual debtor's or businesses, incorrect procedures being utilized, fee applications not in compliance with applicable Bankruptcy Code and Rules, panel trustee performance issues, unbalanced case loads for panel trustees, panel trustee's inability to timely close cases, the development of bankruptcy crimes, and national bankruptcy issues.

Listed below are positions within the Office of the United States Trustee and how my position, as technical authority, is responsible for a wide variety of depth and interpretation of complicated legal matters as stated in Level 4-5, Factor 4, Complexity.

1. Legal Clerk number 1 is responsible for scheduling chapter 7 dockets with the panel of trustees in the [Name of] District of [State]. Appointing trustees to newly filed chapter 7 bankruptcy cases, entering case information into the computer data base, preliminary review of the interim reports, final reports, and final review of the final accounts. The problems which may arise with this position are listed in the paragraph above. My supervision to this Legal

Clerk involves providing technical and problem-solving analysis and interpretation through the following processes:

- a. Develop her performance work plan against her current job description
- b. Rate her work performance against her performance work elements
 - i. Make sure she understands her job tasks
 - ii. Regularly meet and discuss with her issues and solutions as they arise
 - iii. Inform Assistant United States Trustee of any foreseeable problems with performance
- c. Advise her on chapter 7 case administration matters in accordance with Section 704 and 362(a) of the Bankruptcy Code.
- d. Interpret Section 704(9), Section 726, and Section 507 and of the Bankruptcy Code regarding case closing procedures
- e. interpret and notify her of changes within the Office of the United States Trustee Program, in accordance with the revised chapter 7 initiatives, dated March 1, 1997

2. Legal Clerk number 2 is responsible for chapter 7 filing, preliminary review of chapter 7 fee applications by the attorney for the panel trustee, attorney for the debtor in bankruptcy, accountants hired by the panel trustees, auctioneers hired by the panel trustee, and administrative matters for the office, such as professional time records by all professional staff. My supervision involves providing technical and problem-solving analysis and interpretation to this Legal Clerk by the following:

- a. Develop her performance work plan against her current job description
- b. Rate her work performance against her performance work elements
 - i. Make sure she understands her job tasks
 - ii. Regularly meet and discuss with her issues and solutions as they arise
 - iii. Inform Assistant United States Trustee of any foreseeable problems with performance
- c. Advise her on chapter 7 case administration matters in accordance with Section 704 of the Bankruptcy Code.
- d. Interpret fee applications guidelines prepared by Region [#] and in accordance with 11 U.S.C. Sec. 330 and 362(a) of the Bankruptcy Code.
- e. Interpret and notify her of changes within the Office of the United States Trustee Program in accordance with the revised chapter 7 initiatives dated March 1, 1997

3. Although I do not supervise the chapter 11 Paralegal Specialist, I advise and interpret complicated legal matters regarding the chapter 7 case administrative functions she is assigned to by the Assistant United States Trustee. The advice and interpretations include the following:

- a. Review Reports of Sell filed by the panel of trustees, Orders to Sell Property, Notice to Creditors of the Trustee's Intent to Sell for legal sufficiency and in accordance with Section 704(l) of the Bankruptcy Code
- b. Check asset number references on the documents listed in (a) above to the Interim Report in accordance with the revised chapter 7 initiatives dated March 1, 1997
- c. Train her on reviewing cases for Section 707(b) abuse under the Bankruptcy Code
 - i. Review bankruptcy petition and schedules for disposable income

- ii. Discuss with her the different scenarios for Section 707(b) abuse of the Bankruptcy Code
 - iii. Explain to her the different types of secured debts, unsecured debts, and priority debts
 - iv. Advise her if a case would be a good candidate for Section 707(b) abuse
4. The depth and variety of problem-solving analysis and advice I provide to the Bankruptcy Analyst and Attorney-Advisors serves as supportive material and evidence if needed ... for administrative evaluation as described in 28 U.S.C. Sec. 586.
- a. Prepare memoranda and reports using quantitative and qualitative techniques from Lotus Spread Sheets to advise of performance evaluation issues pertaining to the section of the panel trustee evaluation (performance review) which analyzes the trustee case population, total distribution percentages, case status, and reoccurring trustee reporting deficiencies
 - b. Review case statistics from computer data base
 - I. Determine population of chapter 7 cases
 - II. Determine how many open cases
 - III. Determine how many closed cases
 - IV. Determine how many cases have funds on deposit
 - V. Determine how many cases can be closed by the filing of a final report/account
 - VI. Review panel trustees reports and distribution statistics
 - VII. Devise percentage chart from facts and figures
 - c. Notify staff of current litigation actions filed by the panel trustee to determine problems that have been particularly resistant to solutions in the past, such as case closing
 - d. Determine if case is considered "old" (over 3 years old without a final report)
 - e. Reconstruct the history of the case by the following:
 - i. Review Bankruptcy Court file for litigation documents
 - ii. Determine latest adversary action pending i.e., Motion, Order, Judgement or hearing pending
 - iii. Determine action needed by panel trustee
 - iv. Review correspondence from panel trustee on justifications of why case is still open
 - iii. Call or write panel trustee and ask what is the status of the case or litigation
 - f. Advise staff of previous case actions such as how much professionals were paid in a case
 - i. Determine what is the precedent in Region [#] for paying that particular type of professional in accordance with local laws
 - ii. Check case file for employment applications and applications to pay professionals
 - ii. Review fee applications for legal sufficiency in accordance with the fee guidelines prepared by Region [#] and 11 U.S.C. Sec. 330
 - g. Analyze panel trustee case statistics with the statistics prepared by the Executive Office of the United States Trustee against the District, Regional and National totals to determine compliance with Section 362(a) and Section 704(9).
 - i. Review trustee compensation percentage paid
 - ii. Review inside attorney percentage paid
 - iii. Review outside attorney percentage paid
 - iv. Review outside professional percentage paid
 - v. Review inside professional percentage paid
 - vi. Compare percentage to percentage paid to panel trustee from distribution record of trustee
 - vii. Determine if trustee received over or under the District, Regional, or National totals
 - viii. Devise percentage chart as exhibit to include with panel trustee performance review/evaluation
5. The technical assistance I have provided to the United States Trustee for Region [#] involves the

following:

- a. Participate in a three person committee to interview applicants for the Panel of Trustees for Region [#]
- b. Ask questions of applicants to determine how much bankruptcy and court experience they have acquired
- c. Explain the responsibilities a panel trustee has to the Office of the United States Trustee, i.e., various reporting requirements, 341 meeting requirements, case closing requirements, etc.
- d. Nominate who I thought would be an excellent panel trustee

Also, I have been assigned various special projects by the United States Trustee and the Assistant United States Trustee for Region [#]. These special projects involved the following:

- A. Review case files for certain documentation and figures
- B. Review the processes of other Regions to determine the differences in chapter 7 case administration procedures between our office and theirs
- C. Review chapter 7 bankruptcy petitions and schedules for a variety of different issues such as gambling debts, reaffirmed debts with certain creditors, pro se filers, and amounts of unsecured debts
- D. Prepare reports and statistics to support findings of fact and conclusions of law

Technical Authority on chapter 7 case administration by the Bankruptcy Court for the [Name of] District of [State]

The Bankruptcy Court and the Office of the United States Trustee work together in accordance with the memorandum of Understanding Between the Executive Office for the United States Trustees and the Administrative Office of the United States Courts Regarding Case Closing and Post Confirmation Chapter 11 Monitoring ('MOU') dated October 1, 1991. In compliance with the MOU the Office of the United States Trustee appoints trustees to individual chapter 7 cases. The Bankruptcy Court is responsible for the 341 Meeting of Creditor's Notice of Commencement of Case Under Chapter 7 of the Bankruptcy Code, and Fixing of Dates ("Notice") which notifies the debtor of the time, location and panel trustee for their bankruptcy case as directed by Bankruptcy Rule 2002(a)(1).

My responsibility as technical advisor to the Bankruptcy Court involves compliance with Bankruptcy Rule 2002(a)(1) and 28 U.S.C. Sec. 586(a). The advice and assistance I provide to the Bankruptcy Court involves the following:

1. Contact the Bankruptcy court staff to notify them of any non compliance issues
2. Notify the panel trustee or his/her support staff of the compliance requirements
3. Determine if panel trustee can maintain case within the Notice requirement
4. Determine if panel trustee would have to decline case and assign new trustee
5. Notify Bankruptcy Court of which action will be taken to be in compliance with Bankruptcy Rule 2002(a)(1) and 28 U.S.C. 586(a)
6. Meet with Bankruptcy Court personnel to discuss remedies and solutions to problems associated with case filings, docket size, 341 Meeting of Creditors locations, and filing requirements.

Technical Authority on chapter 7 case administration by the panel trustees and their support staff

I provide technical assistance on chapter 7 case administration to the panel of trustees in Region [#]

by the following:

- a. Train panel trustees and their support staff on all chapter 7 case administration functions and requirements of the United States Trustee Program
- b. Receive phone calls daily on different issues such as deposits received, interim report requirements, final report requirements, final account requirements, audit preparations, sale documents and document preparation
- c. Notify trustee of billing mistakes in fee applications, mistakes in interim report forms, final reports, final accounts, audit preparations, sale documents and document preparation
- d. Locate Local Rule, Bankruptcy Rule or Code, or Memorandum from United States Trustee which identifies the requirements of the panel trustee.

While it is undoubtedly true that bankruptcy law is highly specialized and complex, the tasks the appellant cites above largely demand expertise with the procedural, rather than analytical and evaluative, aspects of the field. As she notes, the problems she deals with concern high volume Chapter 7 bankruptcy filings and matters such as directing legal clerks in case processing, explaining filing requirements, and reviewing petition filings, procedural accuracy, record completeness, fee application correctness, workload distribution, processing timeliness, and the like. Similarly, the problems she resolves and the advice she renders largely relate to procedural matters, not the subjective evaluations or convoluted factual analyses that engage Specialists. (Her use of the term technical authority is incompatible with the classification system's use of the term, which equates technical authorities to experts who have mastered a field and who advise on analytical and evaluative matters that perplex even fully competent and fully experienced Specialists in the field).

Extensive experience and training provide the practical knowledge necessary to develop expertise in the procedural matters that occupy most of the appellant's time. The *Legal Clerical and Assistance, GS-986, Series* standard, dated January 1992, covers such work. GS-986 work, like the appellant's, requires specialized knowledge of processes, procedures, and practices to support legal activities; knowledge of the form, content, and use of legal instruments and documents; or familiarity with the steps involved in processing legal actions. The GS-950 standard specifically excludes positions, like the appellant's, that apply established instructions, rules, regulations, precedents, and procedures to track cases, schedule court appearances, compose routine legal forms, etc.

The agency response to the appellant's claims further suggests the appellant's work lacks the analytical and evaluative requirements that distinguish GS-950 from GS-986 work, the official position description notwithstanding. In a memorandum to the Chief, Personnel Management Branch dated May 18, 1998, the U.S. Trustee, Region [#], states:

The area in which [the appellant] works is one of relatively simple cases, with, naturally, some exceptions. The law is well-settled. It would be highly unusual for her to deal with an unusually complicated legal matter or to deal with intricate evidence. Again, referring to the area of the §707(b) case, the evidence is rarely intricate. The work rests more on the evaluation of simple budgets and the credibility of the representations made in those budgets. Experience assists in making those analyses and they do not depend, except in a very rare instance, on utilization of esoteric statutory or court precedence.

In response to our request for specific examples of her analytical and evaluative work, the appellant cited her review of cases for abusive filings [707(b) cases] and assistance in evaluating panel trustee performance. Her culling of potentially abusive filings for professional review demands a modest amount of her time and is based largely upon factual criteria. The professionals in the office typically make the subjective analysis of whether a filing is likely abusive. Even her assistance in evaluating the performance of panel trustees focuses largely on the procedural aspects of the work and such matters as document correctness, completeness, and timeliness. The fact finding (i.e., the development of information to support legal argument) and subjective analyses that preoccupy even entry level Specialists' are mostly absent. Consequently, the GS-986 series best describes her work.

The GS-986 series prescribes no specific titles, hence the agency may assign a title consistent with the instructions appearing in the *Introduction to the Position Classification Standards*, Section III, H, 2.

Grade Determination

Positions classified to the GS-986 series are graded by application of the Grade Level Guide for Clerical and Assistance Work, the Contact Representative Series, GS-962, standard, or another guide or standard containing grade level criteria appropriate to the work. The agency has first level classification authority and the responsibility for determining the grade by applying the appropriate criteria, which differs from that originally used. Once the agency has done so, the appellant may pursue her appeal by addressing the same criteria if dissatisfied with the agency determination.

Decision

The proper series classification of the appellant's position is GS-986, with the title at the discretion of the agency.