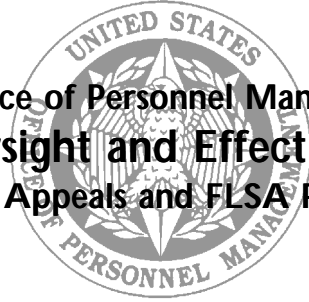


U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs



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's name]

Agency classification: Physical Scientist
GS-1301-11

Organization: [appellant's activity]
Bureau of Land Management
Department of the Interior
[city, state]

OPM decision: Physical Scientist
GS-1301-11

OPM decision number: C-1301-11-01

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

8/20/99
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]

[servicing personnel office]

Director
National Human Resources Management
Center
Bureau of Land Management
Department of the Interior
P. O. Box 25047
Denver, CO 80225-0047

Director of Personnel
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Introduction

On April 2, 1999, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [the appellant], an employee in the [activity], Bureau of Land Management (BLM), Department of the Interior, [city, state]. [The appellant] is currently employed as a Physical Scientist, GS-1301-11. He believes his position should be classified as Physical Scientist, GS-1301-12.

In March 1998, the appellant's servicing personnel conducted a desk audit of the appellant's position and found that the position was properly classified as Physical Scientist, GS-1301-11. The appellant appealed this classification to BLM's National Human Resources Management Center. In March 1999, that office sustained the series and grade of the position.

We have accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.). To help decide the appeal, an Oversight Division representative conducted telephone audits with the appellant and his immediate supervisor. In reaching our classification decision, we have reviewed the audit findings and all information of record furnished by the appellant and his agency, including his official position description, [position description number].

General issues

Both the appellant and his supervisor certified that the appellant's current position description adequately describes the duties and responsibilities of the position. However, both believe that the appellant performs complex and unprecedented assignments which warrant the position being graded at a higher level. The appellant also compares his position to similar positions in other BLM offices throughout the western states. In adjudicating this appeal, our concern is to make our own independent decision on the proper classification of the appealed position. By law, we must make that decision solely by comparing the appellant's current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Therefore, we have considered the appellant's statements only insofar as they are relevant to making that comparison. Since comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's current duties to other positions as a basis for deciding his appeal.

Like OPM, the appellant's agency must classify positions based on comparison to OPM standards and guidelines. However, the agency also has primary responsibility for ensuring that its positions are classified consistently with OPM appeal decisions. If the appellant considers his position so similar to others that they all warrant the same classification, he may pursue the matter by writing to his agency's personnel headquarters. In doing so, he should specify the precise organizational location, classification, duties, and responsibilities of the positions in question. If the positions are found to be basically the same as his, the agency must correct their classification to be consistent with this appeal decision. Otherwise, the agency should explain to the appellant the differences between his position and the others.

The appellant believes he should receive GS-12 pay retroactive to December 1991 because his agency did not (1) process his appeals for a higher grade within the required timeframe, (2) consider an accretion-of-duties statement submitted with a request for promotion in July 1997, and (3) follow program recommendations that Abandoned Mine Land team leaders should be at the GS-12 level. In respect to the issue of retroactive pay, the U.S. Comptroller General states that an “. . . employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties performed. When an employee performs the duties of a higher grade level, no entitlement to the salary of the higher grade exists until such time as the individual is actually promoted. This rule was reaffirmed by the United States Supreme Court in *United States v. Testan*, 424 U.S. 392, at 406 (1976), where the Court stated that ‘. . . the federal employee is entitled to receive only the salary of the position to which he was appointed, even though he may have performed the duties of another position or claim that he should have been placed in a higher grade.’ . . . Consequently, back pay is not available as a remedy for misassignments to higher level duties or improper classifications” (CG decision B-232695, December 15, 1989).

Position information

The [appellant’s activity] is headed by a GS-340-13 Field Manager and has two divisions: [names of the divisions]. The appellant is one of 21 employees in [one of the divisions], which is headed by a GS-12 Supervisory Land Use Specialist. Other staff in the division include 2 GS-1350 Geologists (a GS-12 and a GS-11), 4 GS-1170-11 Realty Specialists, 1 GS-880-11 Mining Engineer, 1 GS-193-11 Archeologist, 2 GS-102-7 Archeology Technicians, 1 GS-802-9 Civil Engineering Technician, 1 GS-817-7 Surveying Technician, 1 GS-301-9 GIS Specialist, 3 GS-023 Outdoor Recreation Planners (2 GS-11’s and 1 GS-9), 2 WG-4749-5 Maintenance Workers, and 1 GG-455-4 Range Technician.

The appellant is responsible for implementation and direction of the Abandoned Mine Lands (AML) and Hazardous Materials Management (HMM) programs for [a specific geographic area], which includes the [appellant’s activity and two other activities]. The appellant develops and implements procedures to accomplish AML reclamation and ensures that AML and HMM programs comply with Federal and State laws, prepares and implements action plans for the reclamation of inactive mine sites, and recommends allocation of AML and HMM program funds to Field Office Managers. He advises and assists Field Office Managers on current trends and developments of complex AML and HMM topics and program issues. He reviews or develops options and provides recommendations to management where health risks and hazard mitigation actions are indicated. The appellant coordinates and negotiates reclamation activities with other Federal, State, and local government officials; industry representatives; and environmental enforcement agencies. He develops and prepares procurement actions, including contracts; administers AML and HMM contracts; and provides site management and coordination with contractors. The appellant represents BLM at meetings, conferences, workshops, or symposiums that pertain to the AML and HMM programs as they affect BLM missions. The appellant’s position description and other material of record provide more information about his duties and responsibilities.

The appellant's duties require a knowledge of professional environmental and scientific concepts, principles, and practices in hydrology, soil mechanics, hydrogeology, geology, chemistry, toxicology, and hazardous materials. The work also requires knowledge of resource conservation and recovery laws, regulations, and policies; knowledge of environmental and scientific concepts, principles, and practices applicable to complex technical problems associated with the proper handling, transportation, and disposal of hazardous materials as they relate to natural resources and human health and safety; and familiarity with regulatory agencies' procedures regarding site investigations, remedial investigations, and feasibility studies.

Series, title, and standard determination

The appellant does not contest the occupational series of his position. The agency determined that the appellant's position is properly placed in the General Physical Sciences Series, GS-1301, which covers positions that involve professional work in the physical sciences when there is no other more appropriate series. This series also includes work in a combination of physical science fields, with no one predominant. The appellant's work requires a professional knowledge of a combination of physical science fields (e.g., geology, hydrology, soils) with no one of these fields being predominant. We agree with the agency's assignment of this position to the GS-1301 series.

The basic title for this occupation is Physical Scientist. The agency may include a parenthetical title consistent with guidance in the *Introduction to the Position Classification Standards* to reflect the special type work performed. Information in the appeal record shows that the agency has not included a parenthetical title but has assigned an organizational title of AML and HAZMAT Coordinator to the appellant's position.

The GS-1300P Job Family Standard for Professional Physical Science Work provides grading criteria for nonsupervisory professional positions in the physical sciences, including the GS-1301 series. The appellant indicates that the General Schedule Leader Grade Evaluation Guide should also be applied to his position because he is the team leader for the Abandoned Mine Lands program for the Western Montana Zone. There is no evidence that the appellant's position meets the criteria for application of the Leader Guide, i.e., that he spends at least 25 percent of his time leading a team of other General Schedule employees in accomplishing two-grade interval work and that the position meets the minimum coaching, facilitating, and mentoring authorities and responsibilities required for coverage. Consequently, the appellant's position is best graded by means of the GS-1300P standard.

Grade determination

The GS-1300P standard includes appropriate language from the law and the grade level data, i.e., the standard. The law and the grade level data are supplemented by illustrations of work appropriate to each grade level. Positions are graded as a whole against the criteria found at differing grades in the standard. Positions are classified to the grade that best represents the

overall demands of the work, for example, its knowledge requirements, complexity, scope and effect, responsibility. Our evaluation with respect to the grade evaluation criteria follows.

At the GS-11 level, scientists plan and execute complex studies that usually involve intensive investigations into one or more recognized phenomena. The work typically involves conventional methods and techniques, though going beyond clear precedents. The work also requires adapting methods to the problems at hand and interpreting findings in terms of their scientific significance. Finished products are reviewed for adequacy of conclusions and soundness of the procedures and methods used. Assignments at this level generally do not involve radical departures from past practices or require the development of new, novel, or innovative approaches, methods, or techniques. At the GS-11 level, scientists have wide latitude for the exercise of independent judgment in performing work of considerable difficulty requiring somewhat extended professional, scientific, or technical training and experience which has demonstrated important attainments and marked capacity for independent work.

A summary of illustrations that are included in the standard at the GS-11 level representing the complexity, depth of independence, and scope of assignments follows.

- ▶ Leads or independently performs a multiyear study to assess the occurrence of an important industrial ore as part of a comprehensive land assessment project. Studies background data, analyzes and resolves conflicts in archival information, and locates and obtains substantive unrecorded data from sources such as mine owners and state officials. Leads and performs extensive field work and map alterations around deposits. Evaluates findings to determine the grade of ore, tonnage, quality of reserves, production and milling costs, and environmental measures. Prepares the geologic portion of the report for publication. Recommendations and conclusions are expected to be logical and the product of a trained scientist and reviewed primarily for the adequacy of conclusions presented.
- ▶ Advises on when, where, and how to conduct scientific experiments to produce the best results. Develops cost estimates. Determines the validity of test methods and results and recommends acceptance or rejection of contractor items. Consults with experts on unusual technical problems. Exercises independent responsibility and is held accountable for actions and findings.
- ▶ Analyzes and prepares river volume and flood forecasts for varied river basins with unstable conditions. Disseminates the forecasts to Federal, State, or municipal water resource or emergency management organizations, hydropower and agricultural industries, and the general public. Reviews completed forecasts and adjusts, modifies, or develops complex procedures to improve forecasting accuracy.
- ▶ Plans and coordinates projects involving the analysis and evaluation of the flow and transport of sediment or pollutants in a river basin. Analyzes basin conditions, water volumes and velocities, and municipal, agricultural, and industrial influences. Searches out, adapts, and

applies various sampling procedures, schedules, equipment, and analysis methods throughout the study to assess and evaluate the diverse conditions. Correlates data, adapts and applies computer modeling techniques to simulate the hydrologic processes of the river basin, and writes reports and findings. Analyzes difficult, complex, and unusual chemical samples. Modifies established methods and practices as necessary to complete the work.

- ▶ Plans and conducts projects of considerable scope and variety with numerous complications. Establishes, investigates, and reestablishes land and property boundaries. Projects require extensive study, search, and adaptation of records, history, and precedents. Independently plans and completes the work.

At the GS-12 level, positions which are under general administrative supervision, and with wide latitude for the exercise of independent judgment, perform professional, scientific, or technical work of marked difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and attainment of a *high order* in professional, scientific, or technical research, practice, or administration. Work assignments typically involve planning, executing, and reporting on original studies or ongoing studies requiring a fresh approach to resolve new problems. The complexity of assignment requires *extensive* modification and adaptation of standard procedures, etc., *and* development of totally *new* methods and techniques to address problems for which guidelines or precedents are not substantially applicable. Assignments typically include considerable breadth, diversity, and intensity; varied, complex features; and novel or obscure problems. Completed work is reviewed primarily for general acceptability and feasibility, and scientific recommendations are normally accepted as sound without close review unless matters of policy or program resources are involved.

A summary of illustrations that are included in the standard at the GS-12 level representing the complexity, depth of independence, and scope of assignments follows.

- ▶ Uses initiative, resourcefulness, and past personal experience to deviate from established approaches and precedents to develop methods and procedures and to apply basic principles and theories. Often develops new methods, techniques, or precedents to plan and carry out assignments. Work and conclusions are accepted as technically authoritative and are reviewed only for meeting the assignment's objectives.
- ▶ Performs scientific and technical evaluation, correlation, synthesis, and presentation of important data in a complex field of science.
- ▶ Surveys and inspects the watershed areas for adverse conditions, such as landslides or eroded gullies. Utilizes data on water temperature, in stream flow and discharge, and soil stability and studies records of previous watershed conditions and land and water management activities. Analyzes and evaluates the collected data in relationship to desired conditions and regulatory requirements to determine the cumulative effects of previous land management

practices on current watershed conditions. Develops, modifies, and recommends extensive plans, treatments, and projects for restoring conditions and monitors and evaluates the results to ensure achievement and maintenance of health conditions.

- ▶ Develops and monitors the production of geospatial data to support agency geographic information systems and hard copy map generation for a staff unit. Works on inter-and intra-agency committees to develop and/or revise Federal standards for geospatial data. Revises agency cartographic standards and specifications. Provides staff advisory, consulting, and reviewing services.

The appellant's assignments are best evaluated at GS-11. Similar to the illustrations for GS-11 work, the appellant's work involves performing a full range of assignments which require knowledge of State and Federal laws, regulations, and policies used to carry out reclamation activities. As at GS-11, the appellant works independently within a framework of priorities, funding, and overall program policies and objectives to develop, implement, and monitor Abandoned Mine Lands and Hazardous Materials Management Programs. He plans, initiates, and carries out the work, keeping his supervisor informed of ongoing projects and issues of significance. Although the appellant believes the problems he handles are complex and unusual, those problems are not of such complexity or so unique that *new* or *vastly modified* techniques must be developed because there are few precedents to consider, as envisioned at the GS-12 level. As indicative of the GS-11 level, the problems with which the appellant deals may require him to adapt methods and guidelines or choose alternatives from among available guides or techniques. While the appellant may have some controversial and unusual problems, the problems do not fully meet the level of complexity as described at the GS-12 level and the requirement for *development of totally new methods and techniques* as is typical at the GS-12 level to monitor the AML and HMM programs as is typical at the GS-12 level. The appellant may be somewhat innovative in his approach, but he is not developing *new* research techniques to monitor the AML and HMM programs. Consistent with the illustrations at GS-11, the appellant's decisions are based on the availability of resources and the program priorities which may not always come together. Even though the results of his work, including recommendations and decisions, are considered technically authoritative and are usually accepted without significant changes, the independence to carry out the work must be considered in the context of the complexity of assignments. The complexity of the appellant's work is most similar to the illustrations at the GS-11 level. The results of the appellant's work affect goals and objectives internal to the agency as well as the work of State agencies and other Federal agencies. In summary, the appellant's position fully meets the GS-11 level but falls short of the GS-12 level.

Decision

The appellant's position is properly classified as Physical Scientist, GS-1301-11.