

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

Atlanta Oversight Division
75 Spring Street, SW., Room 972
Atlanta, GA 30303

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

Appellant: [appellant]

Agency classification: Legal Instruments Examiner (Indebtedness)
GS-963-9

Organization: Veterans Affairs Service Center

OPM decision: Legal Instruments Examiner
GS-963-9
(Parenthetical specialty at the agency's discretion)

OPM decision number: C-0963-09-01

/s/

Kathy W. Day
Classification Appeals Officer

12/01/00

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]

[appellant's agency]

Deputy Assistant Secretary for Human
Resources Management
Department of Veterans Affairs
Washington, DC 20420

]

Introduction

On August 15, 2000, the Atlanta Oversight Division, U.S. Office of Personnel Management (OPM), accepted a classification appeal for the position of Legal Instruments Examiner (Indebtedness), GS-963-9, [agency] Veterans Service Center, [city/state]. The appellant believes that the work she is performing should be classified as Program Analyst, GS-343-9.

The appeal has been accepted and decided under section 5112 of title 5, United States Code (U.S.C.). This is the final administrative decision on the classification of the position subject to discretionary review only under the limited conditions and time outlined in part 511, subpart F, of title 5, Code of Federal Regulations.

General issues

The agency audited the appellant's position and determined that it should be reclassified from Program Analyst, GS-343-9, to Legal Instruments Examiner (Indebtedness), GS-963-8. They reassigned the appellant to the GS-963 series but left the grade at GS-9 as long as the appellant occupies the position. The appellant disagrees with the agency determination. She believes that she should remain classified as a Program Analyst, GS-343-9.

The appellant provided a copy of a Program Analyst, GS-343, position description that she believes is similar to the work she performs. By law, OPM must make classification determinations solely by comparing the current duties and responsibilities of the position to OPM standards and guidelines (5 U.S.C. 5106, 5107, 5112). Since comparison to standards, not other positions, is the intended and exclusive method for classifying positions, we may not consider the classification of other positions as a basis for deciding an appeal. In addition, OPM's decisions are independent of any agency evaluations. Therefore, we have considered the appellant's statements concerning the agency evaluation only insofar as they are relevant to our decision.

Position information

The appellant is assigned to position description number 06532A. The appellant and her supervisor would not certify the accuracy of the position description because they disagree with the series and grade determination. We find the position description accurate for classification purposes.

The appellant is a member of the Committee on Waivers and Compromises (COWC). She considers waiver and compromise requests for debts related to compensation and pension, education, loans, medical salaries, and wages for veterans. She reviews and processes overpayment cases, and she makes the determination of the veteran's (debtor's) ability to pay back the overpayment or whether the debt must be compromised or waived. The appellant determines when an action does not meet technical requirements and can or cannot be granted, and she makes fair and equitable decisions by measuring who is at fault for the overpayment, i.e., the system or the veteran. She may advise veterans on how to meet requirements and provide alternative options for them to consider. The appellant is considered the technical expert and

provides technical assistance to others. She reviews and processes complex cases and has signature authority for debts up to \$20,000.

The Supervisory Veterans Claims Examiner (EMT Coach) assigns the work. The appellant independently resolves most conflicts and keeps the supervisor informed of controversial matters. The appellant's judgment is accepted as technically sound and the supervisor reviews the work for effectiveness in meeting expected results.

Series and Title determination

The agency determined that the appellant's position is properly classified in the GS-963 series and titled *Legal Instruments Examiner*. The appellant believes that the work she performs should be classified in the Program Analyst, GS-343, series.

Program Analysts primarily serve as analysts and advisors to management on the evaluation of the effectiveness of government programs and operations or the productivity and efficiency of the management of Federal agencies or both. Positions in the GS-343 series require knowledge of the substantive nature of agency programs and activities; agency missions, policies, and objectives; management principles and processes; and the analytical and evaluative methods and techniques for assessing program development or execution and improving organizational effectiveness and efficiency. Some positions also require an understanding of basic budgetary and financial management principles and techniques as they relate to long range planning of programs and objectives. The work requires skill in application of fact-finding and investigative techniques; oral and written communications; and development of presentations and reports.

The primary purpose of the work of a Program Analyst, GS-343, is to provide line managers with objectively based information for making decisions on the administrative and programmatic aspects of agency operations and management. The appellant does not perform program analysis work as described. She examines, on a case-by-case basis, requests for waivers and compromises of debts.

The GS-963 series includes the examination of legal instruments and supporting documents, other than claims, to determine whether a requested action complies with certain provisions of various laws. The work requires the application of particular regulatory and procedural knowledge that is based on those laws. Some characteristics common to the work include:

- Reviewing legal instruments and supporting documents for completeness of information, proper execution, certification, technical details, and other requirements;
- Obtaining additional data or information to reconcile discrepancies;
- Determining whether the action sought by the party submitting the instrument corresponds with governing regulations, procedures, and other criteria. This may involve searching highly specialized records to ascertain if any conditions exist that might preclude approval;
- Arriving at a decision on the requested action, or if such a decision is not within the scope of the employee's authority, recommending a decision.

Some positions may involve responsibility for notifying the submitting party when the instrument does not meet technical requirements, explaining why the action cannot be granted, and advising the party on how such requirements may be met, or providing information on alternative options. Many positions also involve providing information and assistance in response to inquiries concerning the instruments examined.

The title for positions classified in the GS-963 series is *Legal Instruments Examiner*. The agency may add a parenthetical title that identifies a particular specialty, e.g., (Applications) or (Bonds), if further distinctions are necessary. We agree with the agency's determination that the position is properly classified as a GS-963, Legal Instruments Examiner, with a parenthetical title at the agency's discretion.

Standard determination

Legal Instruments Examiner Series, GS-963, July 1999.

Grade determination

The Legal Instruments Examiner classification standard uses the Factor Evaluation System (FES) format. Under the FES, positions are evaluated on the basis of their duties, responsibilities, and the qualifications required in terms of nine factors common to non-supervisory General Schedule positions. A point value is assigned to each factor based on a comparison of the position's duties with the factor-level descriptions in the standard. The factor point values mark the lower end of the ranges for the indicated factor level. For a position factor to warrant a given point value, it must be fully equivalent to the overall intent of the selected factor-level description. If the position fails in any significant aspect to meet a particular factor level description in the standard, the point value for the next lower factor level must be assigned, unless the deficiency is balanced by an equally important aspect which meets a higher level. The total points assigned are converted to a grade by use of the grade conversion table in the standard.

Under FES, positions which significantly exceed the highest factor level or fail to meet the lowest factor level described in a classification standard must be evaluated by reference to the Primary Standard, contained in Appendix 3 of the Introduction to the Position Classification Standards. The Primary Standard is the "standard-for-standards" for FES.

Factor 1- Knowledge Required by the Position:

This factor measures the nature and extent of information or facts that a worker must understand to do acceptable work, such as the steps, procedures, practices, rules, policies, theories, principles, and concepts; and the nature and extent of the skills needed to apply this knowledge.

At Factor Level 1-5, the highest level described in the standard, the work requires a greater depth of knowledge of the application of laws, regulations, and agency requirements and pertinent aspects of the subject-matter fields involved to examine a type of legal instrument and associated supporting documents. Situation A describes a depth of regulatory, procedural, and program-related knowledge to examine a type of legal instrument and associated supporting documents requiring development and evaluation of the situation behind the documentation submitted; extensive searches of records, reference, or historical material; and comparisons with complex, voluminous, or broadly written criteria. This knowledge enables the examiner to deal with situations that involve varying conditions, circumstances, options, or alternatives and to arrive at a decision or recommendation tailored specifically to the individual case. This knowledge includes sufficient familiarity with the subject-matter field to be able to seek out, interpret, and understand information in subject-matter texts and technical reference material.

At Level 1-6, according to the Primary Standard, the employee is knowledgeable of the principles, concepts, and methodology of a professional or administrative occupation as described at Level 1-5 that has been either (a) supplemented by skill gained through job experience to permit independent performance of recurring assignments, or (b) supplemented by expanded professional or administrative knowledge gained through relevant graduate study or experience, which has provided skill in carrying out assignments, etc.

The appellant's position is comparable to Level 1-5, Situation A. The appellant must be knowledgeable of the many laws, regulations, and processes and procedures for granting or not granting waivers to veterans for various overpayments related to compensation, education, pension, etc. She examines requests to determine the reason the debt was created, and who is at fault for the overpayment, i.e., the Veterans Administration or the debtor, and the debtor's reason for requesting a waiver or compromise. She reviews financial status reports to determine the debtor's ability to repay the overpayment debt without causing hardship, and she prepares single signature waiver decisions for debts up to \$20,000.

The intent of Level 1-6 is not met. The appellant uses basic fact-finding and problem solving skills to apply regulatory and procedural knowledge acquired through on-the-job training and experience. She does not have to apply professional or administrative knowledge.

Level 1-5 is credited for 750 points.

Factor 2- Supervisory Controls:

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibility for carrying out assignments, and how completed work is reviewed.

At Level 2-4, the highest level described in the standard, the supervisor sets the overall objectives and resources available. The work is usually assigned according to a standardized control system or otherwise goes directly to the employee. The employee participates in the development of standing general instructions about timeliness and relative priorities. In addition to performing all aspects of the work independently, the employee is also delegated commitment

authority and takes final disposition action. The employee is responsible for resolving most of the conflicts that arise; coordinating the work with others as necessary; and, on own initiative, interpreting policy in keeping with established objectives. Certain cases may be referred to subject-matter specialists, e.g., medical doctors, engineers, because of legal requirements and/or professional standards of practice. The employee keeps the supervisor informed of progress and potentially controversial matters. The employee's judgment is accepted as technically sound, and completed work is reviewed from an overall standpoint in terms of feasibility, compatibility with other work, or effectiveness in meeting requirements or achieving expected results.

At Level 2-5, according to the Primary Standard, the supervisor provides administrative direction with assignments in terms of broadly defined missions or functions. The employee has responsibility for independently planning, designing, and carrying out programs, projects, studies, or other work. Results of the work are considered technically authoritative and are normally accepted without significant change. If the work should be reviewed, the review concerns such matters as fulfillment of program objectives, effect of advice and influence on the overall program, or the contribution to the advancement of technology. Recommendations for new projects and alteration of objectives usually are evaluated for such considerations as availability of funds and other resources, broad program goals, or national priorities.

The appellant meets Level 2-4. The appellant works independently in reviewing cases, resolving problems, making determinations on the final disposition of overpayment debts, and carrying out all aspects of her assignments. Her recommendations to waive or not waive a debt are accepted as final. The work is reviewed from an overall standpoint of meeting expected results.

Level 2-5 is not met. The appellant works within a framework of established program objectives. Unusual situations that do not have clear precedents are discussed with the supervisor. This falls short of Level 2-5, where the employee is subject only to administrative and broad policy direction concerning overall major program priorities and objectives. The well-defined framework under which she works limits the discretion and judgment the appellant has to determine objectives and the scope of her work. Neither the absence of immediate supervision in the day-to-day operations nor the fact that the appellant has authority to take final disposition action serves to support a level above 2-4.

Level 2-4 is credited for 450 points.

Factor 3 - Guidelines:

This factor covers the nature of guidelines used, and the judgment needed to apply them.

At Level 3-3, the highest level described in the standard, the guidelines are numerous and varied, and consist of general and uninterpreted references, such as basic and unabridged laws or regulatory material, technical manuals, court or other legal decisions, and other precedents. These guidelines may contain, for example, frequent and extensive amendments or revisions, or superseded laws that continue to have certain applicability. They may contain differing provisions of overlapping jurisdictions, i.e., requirements of Federal, state, county, municipal, and/or international or foreign laws that must be applied; or they may contain legislative, regulatory, or administrative exceptions that possess certain unique and deviant requirements. Some guidelines may include technical or professional literature of a difficult and advanced level, or other similar complicating conditions. The employee chooses from among a variety of guidelines, selects those that are most appropriate, and interprets and/or adapts them in relation to specific problems encountered in the examination process. The employee searches through complex and voluminous reference material

and may encounter precedents that are incomplete or not specific to the situation and that require careful analysis and interpretation. The employee describes problem conditions and recommends changes or additions to examining procedures that are inadequately covered or are missing from existing guidelines.

At Level 3-4, according to the Primary Standard, administrative policies and precedents are applicable but are stated in general terms. Guidelines for performing the work are scarce or of limited use. The employee uses initiative and resourcefulness in deviating from traditional methods or researching trends and patterns to develop new methods, criteria, or proposed new policies.

The appellant meets Level 3-3. She uses statutory and regulatory guidelines which are broadly stated, with varying degrees of specificity and applicability. She must exercise judgment in interpreting and applying the guidelines to specific circumstances.

The appellant does not meet Level 3-4. Guidelines are generally available and typically there are many related precedents. She does not deviate from accepted methods and procedures nor develop new methods or policies when performing her duties.

Level 3-3 is credited for 275 points.

Factor 4 - Complexity:

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.

At Level 4-3, the highest level described in the standard, the employee reviews the instruments and supporting documents, obtains additional data or information to reconcile discrepancies, and determines whether the instruments conform to governing legal provisions, policies, precedent decisions, procedures, and other criteria. The employee insures that the submitting party has met all requirements, then searches records, data bases, and historical material to determine that no conditions or conflicts exist that might preclude or limit approval. If such conditions are found to exist, the employee may notify the submitting party, explain why the action cannot be approved as requested, advise the party on how such requirements may be met, or provide information on alternative options. The employee decides on the appropriate disposition that may involve limited forms of approval, monitoring, or follow-up actions. Legal instruments are not standardized with respect to: (a) format -- the manner of organization and presentation of information can vary substantially; (b) function -- the same instrument is used for different purposes or actions; and/or (c) content -- successive submissions of the same type of instrument may involve different kinds of information. Supporting documents also require interpretation and analysis in order to be applied to the basic instrument. Such documents may be part of an investigative file, docket, or other record of an agency, or may originate outside the agency in the form of a legal document, an exhibit, a report, a tax return, or some other form of evidence that supports action on the basic instrument. Actions taken on examining instruments may be complicated by situations where the facts are not clearly established; information is likely to be fraudulent; contradictions, conflicts, and inconsistencies must be reconciled; and/or verification or development of information from external sources is required. The employee

evaluates submissions in relation to legal requirements, verifies factual interrelationships that are not always obvious, and assesses a variety of situations that depend on the particulars of the case and the submitting party. The employee chooses an appropriate course of action from among several possible outcomes.

At Level 4-4, according to the Primary Standard, the work typically includes varied duties that require many different and unrelated processes and methods such as those relating to well-established aspects of an administrative or professional field. Decisions regarding what needs to be done include the assessment of unusual circumstances, variations in approach, and incomplete or conflicting data. The work requires making many decisions concerning such things as interpretation of considerable data, planning of the work, or refinement of the methods and techniques to be used.

The appellant meets Level 4-3. The appellant considers and makes final determinations for waivers using a variety of established laws and regulations which can be complicated and may require interpretation. She prepares written decisions that require action either from the debtor or the agency. Factual information may be difficult to get and come from several possible sources. The appellant may use various approaches depending on the requirements of a case. Decisions made by the appellant have a substantial impact on the well being of the debtor, as well as the U.S. Government as claimant.

The full intent of Level 4-4 is not met. While the appellant may encounter conflicts or incomplete data, she is not involved with work which requires many different and unrelated processes. Although each case has unique features, there are common procedures to follow. She is not regularly confronted with unusual circumstances which require her to alter the basic examining process from case-to-case.

Level 4-3 is credited for 150 points.

Factor 5 - Scope and Effect:

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

At Level 5-3, the highest level described in the standard, the purpose of the work is to examine legal instruments and supporting documents to determine whether requested actions meet governing provisions. The work is accomplished in accordance with established criteria and may involve subjective considerations, such as looking for misrepresentations, fraud, or other illegal activity. The work directly affects the ability of individuals, partnerships, corporations, and others to obtain licenses, permits, rights, or privileges; to conduct various financial or contractual matters; to ascertain that persons have ownership or interest in property or securities; or to carry out other transactions that affect personal livelihoods.

At Level 5-4, according to the Primary Standard, the work involves establishing criteria; formulating projects; assessing program effectiveness; or investigating or analyzing a variety of unusual conditions, problems, or questions. The work product or service affects a wide range of agency activities, major activities or industrial concerns, or the operation of other agencies.

The appellant meets Level 5-3. The primary purpose of the appellant's work is to consider and determine all pertinent facts and evidence in deciding the appropriateness of a waiver due to an overpayment. The work includes determining how and why the debt was created, the appropriateness of a waiver, and corrective action. She makes final decisions and composes written documentation to support her determination. The outcome of the work products affects the well being of the debtor and the financial accountability of the agency.

Level 5-4 is not met. The appellant does not establish criteria; she works from established criteria. She does not formulate projects or assess program effectiveness nor does her work typically involve more than the conventional problems or conditions described at Level 5-3. The appellant's work does not impact broad agency-wide operations as described at Level 5-4.

Level 5-3 is credited for 150 points.

Factor 6 - Personal Contacts and Factor 7 - Purpose of Contacts:

These factors measure the nature and purpose of personal contacts with persons who are not in the supervisory chain. Factor 6 assesses face-to-face as well as telephone contacts with persons not in the supervisory chain. In General Schedule occupations, the purpose of personal contacts ranges from factual exchanges of information to situations involving significant or controversial issues and differing viewpoints, goals, and objectives. The personal contacts which serve as the basis for the level selected for Factor 7 must be the same contacts as those that are the basis for the level selected for Factor 6.

Persons Contacted

At Level 2, the highest level described in the standard, contacts are with various members of the general public, such as individuals and representatives of businesses or corporations, including attorneys; representatives of public, private, or nonprofit organizations; other personnel at different levels in the employee's agency; and employees in other Federal, state, or local entities. The contacts generally occur on a routine basis in the course of normal office activities.

At Level 3, as described in the Primary Standard, contacts are with individuals or groups from outside the employing agency in a moderately unstructured setting. For example, the contacts are not established on a routine basis; the purpose and extent of each contact is different; and the role and authority of each party is identified and developed during the course of the contact. Typical of contacts at this level are those with people in their capacities as attorneys; contractors; or representatives of professional organizations, the news media, or public action groups.

The appellant's personal contacts compare to Level 2. She works with officials in her agency, veterans, the general public and representatives of various organizations and businesses.

The appellant does not meet Level 3. She does not routinely meet with the types of individuals described at this level. In addition, her contacts are not unstructured, but are well defined with

a specific purpose.

Purpose of Contacts

At Level b, the highest level described in the standard, the purpose of contacts is to explain certain provisions of laws, regulations, programs, and policies, and to answer questions that go beyond the procedural aspects of obtaining examination approval. Contacts take into account the particular circumstances of the inquiring party. They may include providing explanations of why approval was not given, discussing measures that might be taken to obtain approval in the future, and/or explaining alternative options that may be available. The employee may have to deal with disgruntled or angered applicants or parties who seek restricted information.

At Level c, described in the Primary Standard, the purpose of contacts is to influence, motivate, interrogate, or control people or groups. The people contacted may be fearful, skeptical, uncooperative, or dangerous. Therefore, the employee must be skillful in approaching the individual or group in order to obtain the desired effect, such as gaining compliance with established policies and regulations by persuasion or negotiation, or gaining information by establishing rapport with a suspicious informant.

The purpose of the appellant's contacts compares to Level b. Her contacts are made to provide or secure information, and to resolve problems. She may have to explain why waivers are denied and deal with angry or disgruntled individuals.

There is no indication in the record that the appellant must influence, motivate, interrogate, or control persons as described at Level c.

The combination of Personal Contacts evaluated at Level 2 and the Purpose of Contacts evaluated at Level b equates to 75 points.

Level 8-1 Physical Demands:

This factor measures the requirements and physical demands placed on the employee in performing the work assignment, including the agility and dexterity required, and the extent of physical exertion.

The appellant meets Level 8-1, where no special physical demands are required. The work is primarily performed while sitting. There may be some walking, standing, bending, and carrying of light items such as files, records, and books. Some movement may be needed to obtain records from files in the office, to visit other offices in the building, or to visit other locations.

Level 8-1 is credited for 5 points.

Factor 9 - Work Environment:

This factor considers the risks and discomforts in the employee's physical surroundings, and the safety precautions required.

The appellant meets Level 9-1, where the work environment involves everyday risks or discomforts that require normal safety precautions typical of such places as offices, meeting and training rooms, libraries, residences, or commercial vehicles. The work area is adequately lighted, heated, and ventilated.

Level 9-1 is credited for 5 points.

SUMMARY		
FACTOR	LEVEL	POINTS
1. Knowledge Required by the Position	1-5	750
2. Supervisory Controls	2-4	450
3. Guidelines	3-3	275
4. Complexity	4-3	150
5. Scope and Effect	5-3	150
6. Personal Contacts 7. Purpose of Contacts	2-b	75
8. Physical Demands	8-1	5
9. Work Environment	9-1	5
	TOTAL	1860

A total of 1860 points falls within the range for a GS- 9, 1855 to 2100 points, according to the Grade Conversion Table in the GS-963 standard.

Decision

The appellant's position is properly classified as Legal Instruments Examiner, GS-963-9. A parenthetical specialty may be added at the discretion of the agency.