

U.S. Office of Personnel Management
Division for Human Capital Leadership & Merit System Accountability
Classification Appeals Program

Dallas Field Services Group
Plaza of the Americas, North Tower
700 North Pearl Street, Suite 525
Dallas, TX 75201

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

Appellant: [appellant]

Agency classification: Chemist
GS-1320-12

Organization: Quality Assurance and Safety Team
Division of Technical Services
[name] Technical Center
Directorate of Science, Technology, and
Medicine
Occupational Safety and Health
Administration
Department of Labor
[location]

OPM decision: Chemist
GS-1320-12

OPM decision number: C-1320-12-02

Marta Brito Pérez
Associate Director
Human Capital Leadership and
Merit System Accountability

July 21, 2004

Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), 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]

Human Resources Officer
Office of the Assistant Secretary for
Administration and Management
U.S. Department of Labor
[HR office address]

Director
Human Resources Center
U.S. Department of Labor
200 Constitution Avenue, NW., Room C5526
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Introduction

The Dallas Field Services Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant] on March 18, 2004. The appellant's position is currently classified as Chemist, GS-1320-12. He believes the position should be classified at the GS-13 grade level. The position is assigned to the Quality Assurance and Safety Team; Division of Technical Services; [name] Technical Center; Directorate of Science, Technology, and Medicine; Occupational Safety and Health Administration (OSHA); Department of Labor; in [city and state]. We received the agency's administrative report on April 6, 2004. We have accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.).

Background information

The appellant requested that his servicing human resources office review the classification of his position and a desk audit was completed. The agency's evaluation, dated January 22, 2004, determined that the position was appropriately classified as Chemist, GS-1320-12, by application of the Job Family Position Classification Standard for Professional Work in the Physical Science Group, GS-1300, (JFS). The appellant disagreed with their findings.

To help decide this appeal, we conducted telephone audits with the appellant on May 13 and 19, 2004. We held a joint interview with the new acting supervisor and the Center's Deputy Director on May 24, 2004. We also interviewed the team leader for the Applied Industrial Hygiene and Chemical Procedures Team on May 27, 2004. These individuals have first-hand knowledge of aspects of the appellant's work. In addition, on May 28, 2004, we contacted a Department of Labor representative familiar with the appellant's participation on special projects.

General issues

The appellant believes he is performing work similar to other Center positions classified at the GS-13 grade level. By law, we must classify positions solely by comparing their current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Since comparison to standards is the exclusive methods for classifying positions, we cannot compare the appellant's position to others as a basis for deciding his appeal. If the appellant believes his position is classified inconsistently with other positions, then he may pursue this matter by writing to his human resources office. He should specify the precise organizational location, series, title, grade, duties, and responsibilities of the positions in question. The agency should explain to him the differences between his position and the others, or grade those positions in accordance with this appeal decision.

The appellant makes various statements about his agency's evaluation of his position, i.e., the agency did not sufficiently understand the position's duties and responsibilities. In adjudicating this appeal, our only concern is to make our own independent decision on the proper classification of his position. By law, we must make that decision solely by comparing his 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.

Position information

The Center is separated into three Divisions: Industrial Hygiene Chemistry, Technical Services, and Program Support. The Division of Technical Services is further divided into the Computer Applications and Information Technology Support Team and the Quality Assurance and Safety Team, to which the appellant is assigned. Briefly, that team is responsible for maintaining and assuring laboratory accreditation, administering the Center's safety and quality assurance programs, evaluating industrial hygiene chemistry laboratories, and maintaining performance records of laboratories conducting biological monitoring and distributing lists of OSHA-approved laboratories. The appellant's work involves analysis of the composition of physical and chemical properties to solve problems associated with instrumentation used to monitor air samples for hazardous substances. The appellant works under the direction of a Chemist (Leader), GS-1320-13, and is supervised by the Director of the Technical Services Division.

At the time the appeal was filed, the Deputy Center Director was designated as the supervisor since both the Leader and Division Director positions were vacant. The Division Director position has been determined by the agency to be an interdisciplinary GS-601, 690, or 1320-14. A GS-13 Chemist from the Program Support Division has been temporarily assigned to the Technical Services Division Director position. Currently, of the five chemists assigned to the Quality Assurance and Safety Team, two are classified at the GS-13 level, including the leader, one at the GS-12 level and two at the GS-11 level.

The position description (PD) was described in general categories to reflect the work performed in both the Industrial Hygiene Chemistry and Quality Assurance assignments, following a reorganization of the Center. The Deputy Center Director certified to the accuracy of the duties described in the appellant's PD of record, number [number], on April 5, 2004. In a letter, dated April 5, 2004, the appellant stressed that his PD is not classified accurately, in part, because his agency's evaluation did not give him sufficient recognition of his testing and evaluation of on-site measuring methods. He believes this duty occupies more than 50 percent of his time.

A PD is the official record of the major duties and responsibilities assigned to a position or job by an official with the authority to assign work. A position is the duties and responsibilities that make up the work performed by an employee. Classification appeal regulations permit OPM to investigate or audit a position and decide an appeal on the basis of the actual duties and responsibilities currently assigned by management and performed by the employee. An OPM appeal decision classifies a real operating position, and not simply the PD. This decision is based on the work currently assigned to and performed by the appellant and sets aside any previous agency decision.

In his letter of appeal, the appellant provides a percentage of time for his work assignments. He indicates that the OSHA Blood Lead Proficiency Testing Program occupies 25 percent and Radiation Safety Officer activities occupy 10 percent. The Applied Industrial Hygiene Chemistry Projects (methods development) work is performed in support of another Division's

team based on workload and time available. This work presently occupies 50 percent of the appellant's time. Other special projects, discussed later, occupy approximately 15 percent. These percentages were confirmed by management officials.

OSHA standards require employers to biologically monitor workers who are exposed to airborne lead above the action level, which is typically one-half the permissible exposure level. Samples must be analyzed by laboratories that meet OSHA's accuracy requirements in blood lead proficiency testing. To that end, laboratories enroll in a blood lead proficiency testing program offered by the College of American Pathologists, New York State Department of Health, or the Wisconsin State Laboratory of Hygiene. Survey results are sent to the appellant, who will analyze the data and evaluate the results based on current criteria. The appellant monitors and grades laboratories' performance in blood lead proficiency testing for a 12-month period. Laboratories with at least 89 percent acceptable sample results are placed on OSHA's directory of approved laboratories. The appellant has served as the OSHA coordinator since 2000.

The Nuclear Regulatory Commission (NRC) is responsible for licensing and regulating nuclear facilities and materials as mandated by the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act, as amended. As a Radiation Safety Officer, the appellant serves as a liaison between NRC and the Center. He administers provisions of the radiation safety regulations and the permit; obtains a NRC license authorizing use of radioactive materials in the Center; and maintains a list of their Center's active radioactive sources. As referenced above, this aspect of the appellant's work occupies a minimal amount of time.

The appellant assists the Applied Industrial Hygiene and Chemical Procedures Team under the Division of Program Support, a team of three GS-12 chemists, in identifying products from the private sector with the potential of advancing OSHA's capabilities in performing on-site reviews. However, before OSHA's Compliance Safety and Health Officers (CSHO) can use these instruments for compliance on inspections, the devices are subjected to a number of tests and then results are measured before receiving approval for on-site compliance sampling. The appellant tested three direct-reading instruments, i.e. Dräger Pac III Single Gas Monitors, Quest SafeLog 100 Monitors, and the Biosystems Toxi Ultra Single Sensor Gas Detectors, before finding them suitable for CSHOs to use for compliance sampling of carbon monoxide. The appellant's sampling methods development work was reported in scientific documents made available on OSHA's Web site. The appellant developed two other protocols for carbon monoxide, which are currently in the review process. The appellant indicates that the percentage of time he spends in support of this team has steadily increased to occupy slightly more than 50 percent of his time.

We talked with several individuals regarding the appellant's participation on a particular special project. In the aftermath of the September 11, 2001, terrorist attacks, the Department of Labor assembled a team of employees possessing top-level security clearance with the purpose of establishing procedures for ensuring the continuity of operations for the Department in the event of a national security emergency. Due to the guarded nature of this assignment, interviewees were able to disclose little about the appellant's participation on this project. The appellant, however, states that 15 percent of his time is spent on special projects. It is not clear if this work is to be a regular and recurring part of the job or is of a temporary project nature. If it is to be a

permanent part of the job, the 15 percent of time now spent in that work falls short of the 25 percent threshold for consideration as a grade controlling duty.

The appellant's PD and other material of record furnish more information about his duties and responsibilities and how they are performed.

Series, title, and standard determination

The appellant's position requires professional knowledge of the theories and principles of chemistry in analyzing the chemical and physical properties of substances. The position is properly assigned to the Chemist Series, GS-1320. Neither the appellant nor the agency disagrees. The authorized title for non-supervisory positions requiring professional education and training in the field of chemistry is Chemist. The GS-1300 JFS covers positions in the GS-1320 series. We used the grading criteria in the GS-1300 JFS to evaluate the appellant's work.

Grade determination

The GS-1300 JFS grading criteria include appropriate language from the law and grade level criteria, i.e., the standard. The grade level criteria are supplemented by illustrations of work appropriate for each grade level.

At the GS-12 level, work assignments typically involve planning, executing, and reporting on original studies or on-going studies requiring a fresh approach to resolve new problems. The complexity of assignments requires extensive modification and adaptation of standard procedures, methods, and techniques, 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 and complex features; and novel or obscure problems. Completed work is reviewed primarily for general acceptability and feasibility in relation to the overall program. Scientific recommendations are normally accepted as sound without close review unless they involve matters of policy or program resources, and study reports and scientific papers are considered to be authoritative scientific documents.

Illustrative of this level are positions which plan very significant projects, advise on improvement of instrumentation or procedural methods, and ensure that special equipment is procured, modified and installed. They plan, coordinate, and implement tests and implement the projects. Chemists may serve as advisors to other scientists, and they may also serve as team leaders. They use 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. They often develop 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.

The appellant's work is comparable to the GS-12 level. Previously, OSHA CSHOs utilized sampling devices to collect samples for subsequent analysis in a laboratory. A shift in the way

inspections are conducted occurred, with CSHOs encouraged to use direct-reading instruments that provide information at the time of sampling. The information provided by direct-reading instruments can be used by CSHOs to issue citations on site. While most high-technology monitoring instruments are user friendly, this technological ease masks inherent constraints in their ability to detect hazards, e.g., detecting interference from other substances and consequently giving false readings. Comparable to GS-12 chemists, the appellant develops methods and protocols to assist CSHOs in the proper operation of these direct-reading instruments to detect and measure worker exposure to contaminants suspended in air, as well as in the evaluation of data and other aspects of sampling.

As at the GS-12 level, the team leader assigns the appellant work in terms of objectives and priorities. The leader for the Applied Industrial Hygiene and Chemical Procedures Team indicated that a prioritized list of workplace contaminants was developed, and he assigns work based on these priorities and the chemists' availability. For example, because the appellant completed the testing and evaluation of on-site measuring methods for carbon monoxide, the team leader then tasked the appellant with developing methods for hydrogen sulfide, which was the team's next priority. The appellant exposed direct-reading instruments to test atmospheres with air contaminants to measure results and identify suitable direct-reading instruments for compliance sampling. The appellant plans and carries out projects that require novel approaches, since previous methods do not typically exist or are scarce. This is comparable to the illustrations identified at the GS-12 level since the appellant uses initiative and past personal experience in developing methods and procedures. Instrument methods are published on OSHA's Web site, but each inspection poses its own unique situation, requiring CSHOs to choose one of the available methods for their specific monitoring purpose. The appellant advises CSHOs, industrial hygienists, and other scientists in the public and private sectors, on instrumentation, procedures, and methods. While demonstrating a marked degree of professional independence and technical expertise, the appellant keeps the supervisor informed weekly on progress, accomplishments, and direction of the work. The appellant independently selects the approaches to be used in carrying out his assignments. For example, the appellant designed, procured, and then assembled a glass chamber large enough to accommodate simultaneously testing meters in various gas and liquid test atmospheres. This work is similar to a GS-12 illustration, which describes a position that procures, modifies, and installs special equipment. The appellant's work is reviewed from an overall standpoint in terms of effectiveness in meeting expected results, but written instrument methods are more rigorously reviewed by Center scientists and agency officials before going live on OSHA's Web site.

At the GS-13 level, work is of unusual difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and marked attainments in work assignments. Technical problem definitions, methods, and/or data are highly incomplete, controversial, or uncertain. Typically, scientists at this level represent an authoritative source of consultation for other scientists and program specialists and are called upon to perform a key role in resolving issues that significantly affect scientific programs. Others accept evaluations and recommendations as those of a technical expert. Characteristically, GS-13 chemists represent their organizations, programs, or the government's interests, in some cases including representing the agency before public bodies on controversial projects or in high level forums. Some positions may involve planning, organizing, and leading

teams to prepare requirements and specifications for new, large scale systems or to evaluate overall plans and proposals for significant systems developed by contractors.

The appellant's work does not meet the GS-13 level. While work at both GS-12 and GS-13 levels includes sample analyses and development of new methods, the GS-13 level is characterized by leadership, marked attainment in work assignments, controversy, and critical and novel chemical problems. Our fact-finding revealed that the appellant is given the responsibility of studying and developing methods for a workforce contaminant based on the Center's priority list. We learned through interviews that the appellant has published the most methods of the team. However, the appellant's work is not of unusual difficulty and responsibility. He has not been called upon to perform a key role in resolving issues significantly affecting scientific programs nor have his technical problems typically been characterized as highly incomplete, controversial, or uncertain. Instead, typical, recurring problems faced by the appellant include, but are not limited to, dealing with interference in creating test atmospheres and complications in calibrating instruments, as well as troubleshooting equipment. His work is largely confined to immediate scientific problems involving the work of the laboratory; he does not make decisions or recommendations that would affect major policy or programmatic issues of the agency's broader chemistry initiatives. The appellant is developing more on-site analytical methods, but these methods do not constitute issues, as at the GS-13 level, that significantly affect scientific programs, i.e., alter the program itself. The appellant also does not work within an area where there is a virtual absence of guidelines. Unlike GS-13 chemists, literature is available on the appellant's work, but he must apply judgment to recognize the importance of findings and their applications. The Center's Applied Industrial Hygiene and Chemical Procedures Team established practical guidance to OSHA researchers for evaluating on-site measuring methods. The appellant follows these guidelines, which provides, among other topics, report-writing protocols and a description of the evaluation tests to be conducted on the instruments, e.g., detection limit, linearity of response, and interference from water.

The appellant provides methods, procedures, and instrumentation guidance to industrial hygienists and scientists within the organization, at other governmental agencies, and in private industry. This advisory role is consistent with the GS-12 level and is not comparable to GS-13 level, i.e., authoritative guidance in resolving significant issues. In his role as the Radiation Safety Officer, the appellant's work revolves around securing the Center's license from the NRC. He maintains an inventory of the Center's radioactive materials and is the point of contact between NRC and the Center staff in matters regarding the license agreement. He does not have to resolve issues, in the sense that the people contacted are usually working towards mutual goals and are cooperative. The work does not require the appellant to contact individuals to persuade scientists to accept changes in procedures and methods about which there are technical disagreements, or to justify to agency officials the need for changes in chemistry programs and policies. In addition, the appellant does not normally lead others in project accomplishment. He recommends actions to be taken, but it is the team as a whole or the team leader who makes final determinations on which direct-reading instruments to evaluate or whether other recommendations are accepted.

The GS-13 level does not merely represent a high degree of technical independence but also a corresponding management role that is beyond the authority vested in the appellant's position. Authority is derived not only from an employee's expertise in a given field but also from the position's role in the organization and the authority delegated to define the basic content and operation of the program beyond just the technical aspects of discrete assignments. Unlike GS-13 chemists, the appellant does not operate within the parameters of broadly defined missions in independently planning, designing, and carrying out major activities. As the OSHA coordinator for the Blood Lead Proficiency Testing Program, the appellant is responsible for more limited functions than those typical at the GS-13 level. The program is based on Federal regulations and its procedures are well established. Typically only the number of participating laboratories fluctuates. Defined program requirements limit discretion because a laboratory's performance in blood lead proficiency testing is either acceptable and it is placed on the directory of approved laboratories, or it is not approved. The program's well established requirements do not require or permit application of the senior expert skills and judgment typical of the GS-13 level of the standard.

By comparison to the law and the standard, the position is evaluated at the GS-12 level.

Decision

The appellant's position is properly classified as Chemist, GS-1320-12.