

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

Appellant: [appellant]

Agency classification: Paralegal Specialist
GS-950-9

Organization: Office of Legal Counsel
Defense Information Technology
Contracting Organization
Defense Information Systems Agency
Department of Defense
[location]

OPM decision: Paralegal Specialist
GS-950-11

OPM decision number: C-0950-11-01

/s/ Kevin E. Mahoney

Kevin E. Mahoney
Deputy Associate Director
Center for Merit System Accountability
Human Capital Leadership
and Merit System Accountability

July 26, 2006

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).

Since the decision changes the classification of the appealed position, it is to be effective no later than the beginning of the fourth pay period after the date of the decision (5 CFR 511.702). The servicing human resources office must submit a compliance report containing the corrected position description and Standard Form 50 showing the personnel action taken. The report must be submitted within 30 days from the effective date of the personnel action.

Decision sent to:

[appellant]
[address]
[location]

[name]
Human Resources Officer
Defense Information Systems Agency
[address]
[location]

[name]
Chief, Civilian Personnel Division
Defense Information Systems Agency
P. O. Box 4502
701 South Courthouse Road
Arlington, VA 22204

[name]
Chief, Classification Appeals
Adjudication Section
Department of Defense
Civilian Personnel Management Service
1400 Key Boulevard, Suite B-200
Arlington, VA 22209-5144

Introduction

On September 26, 2005, the Chicago Field Services Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant]. Her position is currently classified as a Paralegal Specialist, GS-950-9. She works in the Office of Legal Counsel, Defense Information Technology Contracting Organization (DITCO), Defense Information Systems Agency (DISA), Department of Defense, [location]. The appellant requests that her position be reclassified as a Paralegal Specialist, GS-950-11. We received the initial administrative report from the agency on November 1, 2005, and the complete AAR on May 10, 2006. We accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.).

To help decide the appeal, we conducted a telephone audit with the appellant on January 23, 2006, and a telephone interview with her immediate supervisor on February 6, 2006. We conducted follow-up phone conversations with the appellant on May 2, and 10, 2006. In reaching our decision, we carefully considered the audit and interview findings and all other information of record furnished by the appellant and the agency.

General issues

The appellant filed appeals with her agency in February 2004 and in July 2005, and the agency issued decisions sustaining the position's existing classification. She subsequently appealed to OPM. She believes her position warrants a higher grade because she says she has taken on duties previously performed by another employee. In the past, the appellant processed only routine Freedom of Information Act (FOIA) requests that were limited to obtaining the releasable information and then writing the response to the requester and filing that response. She states she now processes the majority of requests at DITCO for the release of information under the (FOIA) and Privacy Act (PA) including many controversial and complex ones. The appellant says the complexity of the paralegal work has increased substantially since the Senior Paralegal Specialist, who is still designated as the FOIA Coordinator, no longer works FOIA cases because she is assigned to a special project to assist agency attorneys with high profile litigation cases.

Implicit in the appellant's rationale is a concern that her position is classified inconsistently with other paralegal positions that perform similar work, but are classified at a higher grade level. She also believes that she has taken over duties previously assigned to and performed by the occupant of a higher graded position in her immediate office. By law, we must classify positions solely by comparing current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Since the comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's position to others, which may or may not be classified correctly, as a basis for deciding the appeal.

A PD is the official record of the major duties and responsibilities assigned to a position by an official with the authority to assign work. A position is the work that makes up the duties and responsibilities performed by an employee. Position classification appeal regulations permit OPM to investigate or audit a position and decide an appeal on the basis of the actual duties and responsibilities assigned by management and performed by the employee. An OPM appeal decision grades a real operating position, and not simply the PD. Therefore, this decision is based on the actual work assigned to and performed by the appellants.

The appellant also emphasizes the increase in the volume of work for which she is responsible. However, volume of work is an issue listed as a factor which cannot be considered in determining the grade of a position (*The Classifier's Handbook*, Chapter 5). She believes she should receive credit for performing at the GS-11 level for the last two years and that it should be documented in her Official Personnel Folder (OPF), but documentation of work experience is not an issue reviewable under the classification appeals process.

The appellant makes various other statements about her agency and its evaluation of her position. Because our decision sets aside all previous agency decisions, the appellant's concerns regarding her agency's classification review process are not germane to this decision. In adjudicating this appeal, our only concern is to make our own independent decision based on the proper classification of the position.

Position information

The appellant works under the general supervision of the Chief Legal Counsel who runs the Legal Office at DITCO [location]. The office reports directly to the General Counsel at DISA headquarters. DITCO is a "shared services" unit within DISA. As a working capital fund activity, DITCO is responsible for the procurement of commercial information technology (IT) equipment and services required by DoD and other Government agencies world-wide. The appellant's supervisor oversees employees in six positions, including four Deputy Legal Counsels, one GS-15, two GS-905-14, one GS-905-13, and two paralegal specialists, including the appellant's position and one GS-950-12.

The appellant and her supervisor certified to the accuracy of the appellant's position description (PD) of record, number D####, which describes the appellant as the FOIA Program Assistant Coordinator for DITCO [location]. However, the appellant states, and the supervisor confirms, that the appellant has functioned as the FOIA Program coordinator for the past two years since the former coordinator, a Senior Paralegal Specialist who is still designated as the FOIA Coordinator, was reassigned to provide litigation and legal support duties to assist the deputy legal counsels in the development and handling of litigation matters. We find these duties have been assigned to the appellant by competent management authority, constitute her current work assignment, and must be considered in the classification of her position.

The appellant now spends 80 per cent of her time managing and processing FOIA and PA requests of which many present complex issues. In responding to requests, she works with agency headquarters and field personnel, commercial requestors, contractors, and others to assure exemptions are properly applied and personal information is protected. She analyzes all FOIA requests, determining what information will satisfy each request and then searches case precedent and agency and FOIA regulations to respond to the pertinent issues. She determines whether the responsive records can be released or should be denied in total or in part and prepares the final response. The appellant has signature authority for all FOIA requests involving DITCO [location]. When a denial of information is appealed, she works with the DITCO Chief Legal Counsel by assembling the appeal case and drafting the response letters. She collects statistical information for the FOIA annual report. She reviews and prepares comments to the Chief Legal Counsel on the effect of legislative proposals to amend the FOIA, PA, and other related statutes that affect confidentiality of information. She is considered the expert in FOIA matters as they relate to contract records for DITCO, particularly those involving contracts for complex communications equipment and services.

The appellant also performs litigation and legal support duties to assist attorneys in the development and handling of the full range of matters relating to litigation. She discusses each case with the attorney to familiarize herself with the legal issues involved. She performs necessary research applicable to the issues of the case and analyzes the research in order to prepare digests of selected decisions or opinions. She organizes documents, files, and exhibits. She verifies citations and legal references, and ensures that all documents are up to date and complete.

In addition, she performs administrative duties which include maintaining contract review logs; providing statistical data regarding legal reviews to the supervisor as necessary, maintaining the law library and office files, and serving as the office timekeeper.

Series, title, and standard determination

The agency has placed the appellant's position in the Paralegal Specialist Series, GS-950, and titled it, Paralegal Specialist. The appellant does not disagree, and based on a careful review of the record, we concur.

The GS-950 position classification standard (PCS) will be used to evaluate the appellant's position because it specifically addresses work related to the release of agency records and provides criteria to which the appellant's duties can be directly compared. The authorized title for positions in this series is Paralegal Specialist.

Grade determination

The GS-950 PCS is written in the Factor Evaluation System (FES) format, under which factor levels and accompanying point values are to be assigned for each of the following nine factors, with the total then being converted to a grade level by use of the grade conversion table provided in the standard. The factor point values mark the lower end of the ranges for the indicated factor levels. For a position 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, the point value for the next lower factor level must be assigned, unless the deficiency is balanced by an equally important aspect that meets a higher level.

The GS-950 PCS includes benchmark PDs describing typical work situations in the occupation at various grade levels. These benchmarks include descriptions of the nine factors and the associated factor levels. They may be used to evaluate a position under the various factors if the duties described in the benchmark are similar to those being evaluated.

The agency evaluated the position at Levels 1-6, 2-3, 3-3, 4-3, 5-3, 6-3, 7-B, 8-1, and 9-1. The appellant disagrees with the agency's evaluation of Factors 1, 2, and 4 and agrees with the remaining factor-levels. After our careful review of the record, we concur, and will focus our analysis on Factors 1, 2, and 4.

Factor 1, Knowledge Required by the Position

This factor measures the nature and extent of information an employee must understand in order to do the work and the skills needed to apply that knowledge.

At Level 1-7, the highest level described by the PCS, the work requires an in-depth knowledge of the application of various laws, court and/or administrative decisions and interpretations, rules, regulations, policies, and procedures which pertain to the administration of particular legal programs in substantive areas of law; highly developed, specialized legal skills and proficiency sufficient to analyze and evaluate the relevance of particular technical evidence or questions which arise in the conduct of specialized legal programs; perform extensive and thorough legal research into precedent cases, decisions, and opinions that may be applicable to particular legal matters; investigate and become thoroughly familiar with subject-matter details involved in a case or legal matter; determine the specific data needed and best approach to obtain these data or to determine the relevance or sufficiency of available legal, technical, or other related data; coordinate actions with other Federal agencies or State and local jurisdictions that have closely related responsibilities; or perform similar functions requiring specialized program knowledge acquired through extended experience.

Level 1-7 is met. The appellant is the *de facto* FOIA coordinator assigned directly to Office of Legal Counsel at DITCO [location] and serves as the paralegal specialist with responsibility for the analysis and evaluation of claims and other matters arising from various legislative acts (e.g., Federal Tort Claims Act, Civilian Employees' Claims Act, Freedom of Information Act, and Privacy Act). The appellant selects, assembles, summarizes, and compiles substantive information by use of statutes, regulations, department orders, digests, commentaries, legal instruments, and other legal reference material. She assists in case preparation for litigation and analyzes facts and legal questions. In this capacity, she examines and evaluates requests for information under FOIA and PA; researches relevant legislation, regulations, and precedents; and determines what information can be released. She substantiates a rationale for the position taken in event of appeal, reviews changes in regulations on the FOIA and PA, and updates and advises other legal personnel and field staff of changes. She confers with and assists in formulation of agency regulations regarding the release of information. She talks to other Federal and State agencies regarding FOIA and PA regulations and related cases and requests, and coordinates related law suits with staff attorneys of other departments. Correspondingly, the appellant must have an in-depth knowledge of the application of the FOIA and PA to contract records to be able to make independent judgments on the releasability of material and to advise others on such matters.

We also find the appellant's work assignment is a close match to benchmark 11-02. Similar to that benchmark, the DITCO office is at an echelon equivalent to a regional office reporting to a DoD agency headquarters (DISA) and the appellant performs duties very similar to those described in the benchmark as described previously in this decision. As in the benchmark, her work requires a particular knowledge of legal reference sources in agency manuals, reference systems, directives, issuances, precedent decisions, court decisions, and commercial legal publications sufficient to perform extensive and thorough legal research into the legislative history, precedent cases, decisions, and opinions that may be applicable; to evaluate the relevance of and summarize substantive information; to assist in case preparation; and to insure that information is lawfully released or withheld. The work also requires knowledge concerning document control and security measures at the institutional level in order to insure against the release of any investigative information which would endanger pending prosecution, the orderly and safe operation of the institution, or endanger the lives or physical well-being of institutional staff. The appellant must have a thorough understanding of what proprietary, classified, or otherwise restricted materials should be withheld in responding to the many FOIA and PA requests received by DITCO in order to safeguard both individual privacy rights and military

security. Her purview also includes reviewing contracts dealing with sensitive and complex communications and IT hardware and services. Consequently, this Factor is evaluated at Level 1-7 (1250 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, and the review of completed work.

At Level 2-4, the highest level covered by the PCS, the supervisor delineates areas of responsibility, outlines possible approaches, and is generally available for assistance on problems that arise. In matters relating to tort claims and release of information, the specialist must meet deadlines established by statute. Otherwise, the specialist is expected to plan and conduct work activities independently, resolve problems, and interpret policy on own initiative. Completed work is prepared for administrative signature and is considered to be accurate with respect to legal citations, substantiating statistics, and facts. Work is reviewed for effectiveness in meeting program requirements and, on occasion, for feasibility of approach. The employee's advice on technical aspects of release of records is considered authoritative.

The appellant's position meets but does not exceed Level 2-4. The appellant is considered an expert by contractors, DITCO customers, and the Chief Legal Counsel on information release under FOIA. She independently plans and carries out her assignments; determines deadlines, methods, and procedures to be used. She has signature authority for all FOIA requests involving DITCO [location]. Completed work is evaluated for effectiveness in meeting program requirements. Consequently, this factor is evaluated at Level 2-4 (450 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 work includes various duties involving different and unrelated processes and methods such as case or issue analysis; legal research; interviewing claimants or potential witnesses; summarizing and explaining case files, depositions, or interrogatories; and preparing exhibits. The specialist must analyze the information, identify missing information that requires additional research or investigation, identify the appropriate reference source, and develop plans necessary to complete the assignment. The complexity of the appellant's routine FOIA work is comparable to Level 4-3 which requires identifying the legal or factual issues in the case, locating precedents, and developing a legally supportable conclusion for releasing or denying the requested information.

At Level 4-4, work involves varied duties encompassing diverse and complex technical issues or problems. Factual situations vary significantly from assignment to assignment and are difficult to ascertain because there is a large body of interrelated facts to be analyzed, information from different sources is sometimes in conflict, only indirect evidence is available on some issues, and the interpretation of such evidence is disputed. The employee must reconcile conflicting policies and facts, identify and elicit additional information, and make a number of decisions at various stages such as identifying issues; defining the problem in terms compatible with the laws,

policies, or regulations; interpreting considerable data; and weighting facts in order to formulate a legally and factually supportable conclusion. The work is further complicated by multiple assignments or the need to combine case development with other functions, such as digesting current legal proceedings on a daily basis. The employee must set priorities and plan work carefully to meet deadlines for each stage of the assignment.

The appellant's work minimally meets Level 4-4. Although much of her case work does not exceed level 4-3, her program coordinator responsibilities entail the work planning and setting of priorities found at Level 4-4, in that FOIA and PA work is time sensitive. As at Level 4-4 in the benchmark, she develops and substantiates a programmatic rationale for the position taken on complex document release issues in event of appeal, reviews changes in regulations on the FOIA and PA, and updates and advises other legal personnel and field staff of changes. Her assignments require her to combine case work with other functions as she confers with and assists in formulation of agency regulations regarding the release of information. She talks to other Federal and State agencies regarding FOIA and PA regulations and related cases and requests, and coordinates related law suits with staff attorneys of other departments. Consequently, this factor is evaluated at Level 4-4 (225 points).

Summary

The appellant's position is assigned the following factor levels:

<i>Factor</i>	<i>Level</i>	<i>Points</i>
1. Knowledge required by the position	1-7	1250
2. Supervisory controls	2-4	450
3. Guidelines	3-3	275
4. Complexity	4-4	225
5. Scope and effect	5-3	150
6. Personal contacts	6-3	60
7. Purpose of contacts	7-2	50
8. Physical demands	8-1	5
9. Work environment	9-1	5
<i>Total</i>		2470

The total of 2470 points falls within the GS-11 range (2355-2750) on the grade conversion table provided in the GS-950 PCS.

Decision

The position is properly classified as Paralegal Specialist, GS-950-11.