

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

Appellant: [appellant]

Agency classification: Contract Specialist
GS-1102-13

Organization: [Branch]
[Division]
[Center Operations]
[Research Center]
National Aeronautics and Space
Administration

OPM decision: Contract Specialist
GS-1102-13

OPM decision number: C-1102-13-04

/s/ Robert D. Hendler

Robert D. Hendler
Classification and Pay Claims
Program Manager

August 25, 2009

Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate which 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:

PERSONAL

[appellant]

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Introduction

On April 17, 2008, the Chicago Oversight and Accountability Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant]. Her position, currently classified as Contract Specialist, GS-1102-13, is located in the Operations Branch [(RSOB)], Division, Center Operations Directorate, Center [Center], National Aeronautics and Space Administration (NASA) in [city and state]. She believes her position should be reclassified as Contract Specialist, GS-1102-14. OPM received the agency's final administrative report (AAR), including a new position description (PD) and evaluation statement on October 30, 2008. In a follow-up inquiry, the appellant indicated she had not received this copy of the AAR, so we sent her an electronic copy. We then received final comments and a restatement of duties and appeal rationale on February 13, 2009, from the appellant who also notified us she was on an extended detail until April 13, 2009. To help decide this appeal, we conducted a telephone audit with the appellant on April 17, 2009, and a telephone interview with her supervisor on April 27, 2009. We have accepted and decided this appeal under the authority of § 5112 of title 5, United States Code (U.S.C.).

Background

On December 20, 2006, the appellant requested a classification review of her position by the local human resources (HR) office to consider additional duties she had assumed since August 2004 when a colleague left for an extended development assignment. She also believed her PD was "no longer strictly accurate." The review was completed on July 21, 2007, and the appellant received a copy of the report on September 14, 2007. The report findings stated the position was properly classified as Contract Specialist, GS-1102-13. On October 4, 2007, the appellant filed an internal classification appeal with her agency's central HR office. The agency issued a final appeal decision on December 6, 2007, stating that the appellant's position [(#####)] was properly classified as Contract Specialist, GS-1102-13.

On March 24, 2008, we received the appellant's initial request to file an appeal with OPM. On April 17, 2008, we accepted her appeal after receiving clarification from the agency concerning the "sensitive" nature of her work assignments. On May 29, 2008, we issued a letter acknowledging receipt of the AAR and notice that we would begin our fact-finding. In the AAR, the agency referred to a new PD, [#####], as her then current PD. The AAR included an evaluation statement completed by the [Center] classifier on July 21, 2007. The new PD [(#####)] and evaluation statement were a result of the review requested by the appellant. However, on July 9, 2008, during the initial telephone audit, the appellant stated that neither she nor her supervisor had received a copy of the PD identified in the AAR as her official PD. Therefore, on September 4, 2008, after several conversations with the agency, we issued a letter asking the agency to resolve the PD issue. On September 30, 2008, the agency asked for an extension and it was granted.

On October 30, 2008, the agency submitted a revised PD and evaluation statement to include a statement of work to explain how her work required her to possess a security clearance to reflect the position's higher level risk and sensitivity designations and its associated identification as a drug test designated position. However, again the appellant had not been provided a copy of the

revised PD, and before she was given the opportunity to comment she was sent on a long-term detail to another office.

On December 2, 2008, the appellant notified us by email that she was still on a special detail and would not be able to provide comments on the appeal until she was back on duty after the New Year. The appeal was suspended pending return of the appellant to work. On February 13, 2009, she submitted her final comments and rationale concerning her appeal. On March 30, 2009, she advised us that she would not be available for the audit until April 13, 2009, when she was scheduled to return from her detail.

General issues

The supervisor certified to the accuracy of the appellant's official PD [(#####)] on October 24, 2008, but the appellant says the statement of duties is incomplete and believes more detailed information should be included.

Important to the appellant's rationale is the change in program procedures and the tasking of new functions should support the upgrading her position. In her appeal request, the appellant states she assumed duties performed by a former associate beginning in August 2004. However, the assignment of more or different work does not necessarily mean the additional work is more difficult and complex. In addition, each grade level represents a band of difficulty and responsibility. Performing more difficult work than previously performed may continue to fit within and support the current grade level of the position.

OPM considers a PD to be accurate for classification purposes when the major duties and responsibilities of the position are listed; and proper classification can be made when the description is supplemented by otherwise accurate, available, and current information on the organization's structure, mission, and procedures. We find the appellant's PD [(#####)] of record is adequate for classification purposes.

A PD is the official record of the major duties and responsibilities assigned to a position by a responsible agency official; i.e., a person with authority to assign work to a position. A position is the work made up of the duties and responsibilities performed by an employee. Classification appeal regulations permit OPM to investigate or audit a position and decide an appeal based on the duties assigned by management and performed by the employee. We classify a real operating position, and not simply the PD. Therefore, this decision is based on the actual work assigned to and performed by the appellant. OPM accepted and decided the appeal under 5 CFR §511.607(a)(1) on the basis of actual duties assigned by management and performed by the appellant.

The appellant also disagrees with the grade-level determination. She says the key factor in her rationale for asking for a higher grade is the requirement to maintain a secret-level clearance in order to perform her acquisition work. She says the agency downplays this issue because they refer to it specifically only on the PD cover sheet (NASA Form 692, block 2. Reason for Position Description). Program offices and authorized ordering officials initiate purchase requests (PRs) and forward the requests to the RSOB. PRs establish the need for specific goods,

materials, or services to be purchased. As the sole contract specialist in the branch possessing a security clearance, the appellant says that all classified (“need-to-know”) work is automatically routed to her alone to process. She believes these post award contract oversight duties of “critical sensitive,” need-to-know, acquisitions merit classification to a higher grade than her coworkers’ positions. However, we found her agency designated the position on the PD cover sheet (NASA Form 692, block 8. Sensitivity) as “noncritical sensitive.” However, in either case the sensitivity of a position is not an appealable issue under OPM’s classification appeal regulations. The appellant’s supervisor recognizes the appellant’s primary duties involve complex acquisition work which requires a mastery of contract methods and contract types, but she considers all of the branch GS-13 contract specialists as “super-journeyman,” each with a “niche” assignment or lead role; e.g., for utility-related contracts, for classified PRs, etc. She regards the appellant’s particular “niche” as being reflected in the classified procurement actions assigned to her position, not to the appellant as the incumbent, and says the agency is considering having a second specialist obtain the same security clearance.

By law, we must classify positions solely by comparing their current duties and responsibilities to OPM position classification standards and guidelines (5 U.S.C. 5106, 5107, and 5112). In adjudicating this appeal, our responsibility is to make an independent decision on the proper classification of her position. We have no jurisdiction over matters outside the immediate scope of this process. Since comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant’s position to others as a basis for deciding her appeal. Because our decision sets aside any previous agency decision, the classification practices used by the appellant’s agency in classifying her position are not germane to the classification appeal process.

Position information

The RSOB (hereafter referred to as branch) includes a staff of 11 contract specialists, four of whom serve, according to the appellant’s supervisor, at the afore-mentioned “super-journeyman” level, GS-13, including the appellant. The supervisor states that GS-12 is considered the normal full performance level for branch contract specialists.

The appellant performs the full range of contract administration responsibilities. These include negotiating contracts for a significant program or for major procurements involving highly complex and significant equipment systems, programs, services, or construction for which little or no contractual precedents exist; serving as needed as the recognized procurement expert for a major program segment, advising management and other contract specialists on matters pertaining to relevant contracting actions, procedures, and policy interpretation in such a major program area; and conducts contract price and cost analyses on contract proposals of durations exceeding one year requiring projecting anticipated changes in labor and material costs not permitting price comparisons due to restricted competition, and developing final price projections for negotiation purposes as a member of the negotiating team.

The appellant’s PD and other materials of record provide more information about the duties and responsibilities and how they are performed and we incorporate it by reference into this decision.

In reaching our decision, we carefully considered all of the information gained from the interviews as well as written information provided by the appellant and the agency.

Series, title, and standard determination

The agency determined the appellant's position is properly classified in the Contracting Series, GS-1102, with the title of Contract Specialist. The appellant does not disagree with the agency's series and title determination. After a thorough review of the record, we concur.

Grade determination

The Position Classification Standard (PCS) for the Contracting Series, GS-1102, is written in the Factor Evaluation System (FES) format which uses nine factors. Under FES, each factor-level description in a PCS describes the minimum characteristics needed to receive credit for the described level. Therefore, if a position fails to meet the criteria in a factor-level description in any significant aspect, it must be credited at a lower level. Conversely, the position may exceed those criteria in some aspects and still not be credited at a higher level. The GS-1102 PCS also includes benchmarks describing typical work situations in the occupation at various grade levels. These benchmarks include descriptions and illustrations of the nine factors and the associated factor levels. The PCS notes that they may be used to evaluate a position under the various factors if the duties described in the benchmark are *comparable* to those being evaluated.

The agency evaluated the position at Levels 1-8, 2-4, 3-4, 4-5, 5-5, 6-3, 7-3, 8-1, and 9-1. The appellant disagrees with the agency's evaluation of Factors 2, 3, and 5. After a thorough review of the record, we agree with the agency's crediting of Factors 1, 4, 6, 7, 8, and 9. Therefore, we will focus our analysis on Factors 2, 3 and 5.

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. The supervisor exercises controls in the way assignments are made, instructions are given, priorities and deadlines are set, and objectives and boundaries are defined. Responsibility of the employee depends upon the extent to which the employee is expected to develop the sequence and timing of various aspects of the work, to modify or recommend modification of instructions, and to participate in establishing priorities and defining objectives. The level of review of completed work depends upon the nature and extent of the review. Technical guidance may be furnished by a project leader or other higher graded employee in the organization as well as by the supervisor.

The agency credited Level 2-4; the appellant seeks to have her work under this factor credited at Level 2-5.

At Level 2-4, the supervisor sets the overall objectives and resources available. The employee and supervisor, in consultation, develop the deadlines, projects, and work to be done. The employee plans and carries out the work, determining the approach to be taken or the methodology to be used, and initiates the necessary coordination with contractors and others.

The employee may negotiate alone, but keeps the supervisor informed of progress and potential problems. Completed work is reviewed from an overall standpoint in terms of feasibility, compatibility with other projects, and effectiveness in meeting requirements. In some positions, review is minimal, with the employee being delegated contracting officer authority within prescribed dollar amounts.

At Level 2-5, an employee receives only administrative direction from the supervisor, with full technical authority being delegated to the incumbent, and which is typically accompanied by responsibility for a significant program or function. The employee receives assignments in terms of broadly defined programs or functions. The employee independently plans and carries out the work, including continual coordination of the various elements involved, and independently negotiates. Results are considered technically authoritative and are normally accepted without significant change. Review of work focuses on such considerations as compatibility with overall management objectives and attainment of goals established in the acquisition plan. Recommendations for new procurement approaches or policies are usually reviewed for compatibility with broad program and agency objectives, impact on agency procurement activities, economies achieved, and/or improvement in effectiveness of performance of procurement programs at subordinate echelons throughout the agency.

The appellant says she is a warranted contracting officer with unlimited signatory authority, subject to division policies and procedures. The appellant holds a Level 3 contracting warrant, which extends to procurement actions up to \$1 million. However, we found that many if not most of the classified PRs she handles are not open to general competition, given their technically sensitive nature. Under existing policy guidelines, she must develop a Justification for Other Than Full and Open Competition (JOFOC) for any such procurements exceeding \$550,000 in value. Typically, the appellant's technical staff customers propose which vendor should be considered in awarding these contracts. Furthermore, each procurement action is reviewed not only by her supervisor who holds a Level 2 warrant with a higher dollar value, but also by the Chief, Procurement Division, who also serves as the [Center's] Procurement Officer and who has a clearance and a Level 1 warrant with no dollar value limit. The Chief, Procurement Division signs off on a non-redacted JOFOC. In addition, the [Center's] Competition Advocate, a "double-hatted" function of the [Center's] Deputy Director, must sign off on all JOFOC actions. The appellant says her cases are rarely questioned during these higher level reviews of individual JOFOCs and that these reviews are only intended to ensure that the restricted nature of the competition for such contracts will meet any later scrutiny for adherence to existing legal and regulatory requirements.

The appellant states a significant portion of her workload addresses need-to-know material. She does not believe her agency has properly addressed the supervisory controls over her position because the branch chief does not have a security clearance and therefore, is not "technically qualified" to address material aspects of much of her workload. Contractual issues that would ordinarily be discussed with a supervisor are commonly addressed by her, although she admits that on occasion she confers directly with the division chief. However, she redacts most of her work summaries so she can discuss them with her immediate supervisor. She believes that her supervisor's lack of a clearance prevents the supervisor from being able to communicate goals and objectives to her.

The supervisor views responsibility for classified PRs as the appellant's continuing assignment. The day-to-day interaction she has with the appellant regarding her assigned workload constitutes meeting the communication expectation concerning progress and potential problems as described at Level 2-4. The appellant keeps her supervisor generally aware of the status of her assigned PRs through informal day-to-day discussion of the unclassified aspects of the PRs. This includes any proposed use of new or innovative approaches to deal with unusual situations. These discussions are primarily to keep the supervisor generally abreast of current PRs, rather than to seek guidance on how to proceed on individual cases. All branch contract specialists also submit biweekly "10/5" reports which provide overviews on the status of any active PRs. In addition, the supervisor enters this workload data into an automated PR tracking system which generates monthly statistic reports.

Based on the foregoing, we find the appellant does not exercise the full scope of discretion envisioned at Level 2-5. The appellant has not been delegated full technical authority and, in fact, must receive higher level approval for many of her PRs, especially for those requiring approval of JOFOC justifications of procurement actions exceeding the stated monetary threshold. The supervisor's lack of a clearance to review the appellant's technical work is not determinative in the evaluation of this factor. Level 2-5, requires significantly greater independence and responsibility than the appellant is actually delegated. Neither the lack of close supervision nor the fact that technical recommendations are normally accepted, serves to support a level above 2-4. While she exercises a very high degree of independence and responsibility, it is limited by established division policies and procedures, so we must assign Level 2-4.

Level 2-4 is credited for 450 points.

Factor 3, Guidelines

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

The agency credited Level 3-4; the appellant seeks to have her work under this factor credited instead at Level 3-5. The appellant says while the agency evaluation statement describes which sources of guidance are available to the appellant, and discusses her use of these and the extent to which she must apply judgment and interpretation in doing so, it does not sufficiently take into account the additional demands placed upon her stemming from the lack of policy guidance on handling classified procurement actions.

At Level 3-4, policies and precedent are available, but stated in general terms, or are of limited use. Intensive searches of a wide range of regulations and policy circulars applicable to the numerous and diversified procurement issues encountered are frequently required. Guidelines are often inadequate in dealing with problems requiring judgment, ingenuity, and originality in interpreting, modifying, and extending guides, techniques, and precedents; in balancing the application of the guidelines in relation to novel program or technical needs, business considerations, and the socioeconomic climate; in evaluating subordinate procurement programs; or in researching trends and patterns to develop new approaches, criteria, or proposed policies. The employee uses experience, judgment, and initiative in applying principles underlying

guidelines, in deviating from traditional techniques, or in researching trends and patterns to develop new approaches, criteria, or proposed policies.

At Level 3-5, guidelines consist of legislation, broad and general policy statements, and procurement regulations which require extensive interpretation. The employee is an authority on developing and interpreting procurement guidelines, policies, regulations, and/or legislation. Employees working in operational positions are responsible for procurements for which little or no contractual precedents exist to guide them in developing and modifying the procurement strategies. For example, a procurement which involves a significant departure from existing systems or programs necessitates original and creative effort to obtain a reasonable balance of interests or the redefinition of policy in the design and execution of the procurement. Employees working in staff positions generally draft agency procurement regulations or policies.

The appellant uses a variety of guidance sources in conducting her duties. These primarily include relevant legal, regulatory, and policy / procedural guides, including the Federal Acquisition Regulation (FAR), NASA FAR supplements, and [Center] local procurement-related directives and procedures. However, these are often of limited applicability to many of the classified PR situations with which she must deal. She is called upon frequently to exercise seasoned judgment in devising solutions to problems or issues concerning which the existing guidance is often not directly applicable and requires in depth analysis and interpretation in application to individual procurement actions. Her supervisor pointed out that this is further complicated by the lack of specific NASA guidance in the handling of classified procurement actions. This necessitates that the appellant be familiar also with various security program issues that are technically outside of the procurement program arena and that she establish liaison with [Center] security program staff as necessary in carrying out her duties. She is also called upon to review new procurement and contractual-related policy and procedural issuances as these are developed at or received by the [Center] to determine what their impact on the classified PR program might be and whether and how they are to be implemented. If she determines that a given issuance cannot be implemented without jeopardy to the classified PR program, she makes the decision accordingly without having to secure formal approval at higher levels.

The record does show, and her supervisor agrees, that in effect, she acts as an authority on developing and interpreting procurement guidelines, policies, and regulations. Her work meets the intent of Level 3-5 in terms of coping with demands for creativity and originality to ensure that classified procurements meet mission requirements while also taking into account very serious concerns involving the handling of classified material, which make up most of the PRs with which she works. Similar to the work illustration for Level 3-5 in the benchmark (BMK) #13-1 in the GS-1102 PCS, guidelines available to the appellant consist of Federal and agency contract laws, regulations, and policies which provide only general contracting methods and requirements, and do not have the specific applicability to the particular procurement and the wide variety of situations encountered. For example, extensive judgment and originality are required in planning the procurement strategy for large-scale acquisition programs or systems, in structuring the contract to provide economic incentives and flexibility for future contract changes, and in resolving administrative problems which arise during the life of the contract. The employee frequently develops new approaches and writes new conditions or clauses necessary to resolve specific situations as described at Level 3-5.

Level 3-5 is credited at 650 points.

Factor 5, Scope and Effect

Scope and effect covers the relationship between the nature of the work and the effect of work products or services both within and outside the organization. The nature of the work describes such end objectives as the number of contracts awarded and administered decisions and recommendations made, and policy and regulatory documents written. Effect measures such things as whether the work output facilitates the work of others, provides timely services, affects agency programs or missions, or affects other agencies, private industry, or the general public. The concept of effect alone does not provide sufficient information to properly understand and evaluate the impact of the position. The scope of the work completes the picture, allowing consistent evaluations.

The agency credited Level 5-5. The appellant seeks to have her work under this factor credited instead at Level 5-6 based on her view that her work is “scrutinized at the highest levels” and “impacts the national defense.” She says the agency Director is formally briefed on the classified work annually. She believes “This work impacts both the short-term and long-term security of our Nation.”

At Level 5-5, the purpose of the work is to resolve critical problems, or develop new approaches for use by other contract specialists or for use in planning, negotiating, awarding, administering, and/or settling the termination of major procurements. Recommendations or commitments are accepted as authoritative, and frequently carry contracting officer authority for transactions involving sizeable expenditures of staff, funds, and material. The work involves such functions as planning, negotiating, or administering procurements for long-term systems or programs, with delegated final authority to obligate funds; developing innovative contractual arrangements to resolve critical or unusual procurement problems; establishing or advocating positions for the region, agency, or department on major procurement issues; developing procurement regulations for use by other contracting specialists; or performing other comparable work. The work affects the work of other experts within or outside the agency, e.g., the development of guides or procedures for use by subordinate contracting activities; the operation and evaluation of subordinate contracting programs; or the accomplishment of major procurements.

At Level 5-6, the purpose of the work is to plan, develop, and execute critical agency procurement programs which are essential to the mission of the agency or department. Procurements or policies have the potential for affecting the economic health of a major industry or class of industries whose economic position affects the health and stability of the general economy, or for affecting major research or social programs which affect the quality of life on a long-term basis. The capabilities of the new system or program, or the magnitude and potential impact of the program or policy and its importance to the Nation in terms of defense, health, resources, or economy are such that the program receives scrutiny by top management in the agency, and often generates nationwide public interest.

Typical of Level 5-5, the purpose of the appellant’s work is to negotiate, award, and administer contracts, often of long-term duration, primarily involving the acquisition of goods and services

of a classified nature, and frequently involving the development of novel or original approaches in resolving critical procurement issues and problems. This has a major impact on the accomplishment of agency mission goals through the essential support she provides to agency technical staff. Her decisions are treated as authoritative, and, as indicated she maintains a Level 3 warrant for signatory authority on procurement actions involving obligation of significant dollar value procurement actions.

Contrary to the appellant's description of the scrutiny of her work, her supervisor said any such scrutiny in any meaningful sense of the appellant's work *per se* would not typically occur above the branch or division level. The appellant's work products may indeed be involved in briefings and discussions at higher agency echelons, but these would normally be seen in the context of briefings and reports conducted and prepared by her technical staff customers, who may also on occasion ask her for input that they can use for such purposes. While meeting Level 5-5 criteria, the appellant's work does not rise to Level 5-6 with regard to their impact on the agency mission, economy, or quality of life as defined in the PCS.

Level 5-5 is credited 325 points.

Summary

<i>Factor</i>	<i>Level</i>	<i>Points</i>
1. Knowledge required by the position	1-8	1550
2. Supervisory controls	2-4	450
3. Guidelines	3-5	650
4. Complexity	4-5	325
5. Scope and effect	5-5	325
6. Personal contacts and	6-3	60
7. Purpose of contacts	7-3	120
8. Physical demands	8-1	5
9. Work environment	9-1	5
<i>Total</i>		3490

A total of 3490 points falls within the GS-13 grade level point range of (3155–3600) points in the GS-1102 PCS grade-conversion table.

Decision

The position is properly classified as Contract Specialist, GS-1102-13.