

**U.S. Office of Personnel Management
Classification Appeal Decision
Under section 5112 of title 5, United States Code**

Appellant: [Appellant]

Agency classification: Contact Representative
GL-962-7

Organization: [Administration]
[Office]
[Complex]
[Facility]
U.S. Department of Army
[Command]
[Address]
[City, State]

OPM decision: Contact Representative
GL-962-7

OPM decision number: C-0962-07-03

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

8/29/2012

Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), this decision constitutes a classification 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 5 CFR 511.605, 511.613, and 511.614, as cited in the *Introduction to the Position Classification Standards (Introduction)*, appendix 4, section G (address provided in appendix 4, section H).

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Introduction

On April 20, 2011, Chicago Oversight of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant]. The appellant's position is currently classified as a Contact Representative, GL-962-7, located in Inmate Personnel Administration (IPA), [location], at the [facility] in [city, state]. The appellant believes his position warrants a higher grade level. We received the initial complete agency administrative report (AAR) on June 17, 2011, and the final comments to the AAR on April 2, 2012. We have accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.).

To help decide this appeal, we conducted telephone interviews with the appellant on April 24 and July 2, 2012, and his supervisor on July 2, 2012. In reaching our classification decision, we have carefully considered all of the information obtained from the interviews, as well as all other information of record provided by the appellant and his agency.

General issues

In the appeal rationale, the appellant's representative says the appellant's duties "are significantly more complex and expansive than that of other contact representatives and coordinators at other Federal penal facilities throughout the United States." 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). Since comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's current duties to other positions, which may or may not be classified properly, as a basis for deciding his appeal.

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 which make up the work performed by the employee. Classification appeal regulations permit OPM to investigate or audit a position and decide an appeal based on 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. Therefore, this decision is based on the work currently assigned to and performed by the appellant.

The appellant mentions his position requires significantly more work than when he began with his agency. However, volume of work cannot be considered in determining the grade of a position (*The Classifier's Handbook*, Chapter 5).

The appellant also mentions that when he was initially hired, the position only required a bachelor's degree, but he has now just finished his first year towards a master's degree. However, education, degrees, certification, and qualifications are not appealable issues under OPM's appeal regulations. While possession of a bachelor's degree typically qualifies Federal applicants for placement in positions at the GS-5 grade level, the GS-962 series has no positive education requirements. Thus, the appellant's belief that a bachelor's degree was required when he was hired is misplaced. Qualifications are considered in classifying a position to the extent they are required to perform current duties and responsibilities. Therefore, we have considered

the appellant's personal qualifications only insofar as they are required to perform his current duties and responsibilities. To the extent needed for this purpose, we carefully considered them along with all other information furnished by the appellant and his agency, including his official PD.

Position information

The position is located at [location], the home to the [complex], consisting of the [facility] and the [facility 2], and the civilian [facility 3], , [City]. The [facility] is the [descriptive phrase] correctional facility in the Department of Defense (DOD). The [facility] staff includes both civilian and service members of the [list].

The [facilities] mission is to incarcerate male U.S. military prisoners sentenced to [amount] of confinement. Inmates sentenced for more than [amount] years are at the [facility], while those with sentences less than five years are incarcerated at the [facility2]. The record shows that at any one time, up to 60 to 70 percent of the inmate population may be serving sentences as sex offenders. The entire custodial staff provides individual treatment to inmates to prepare them for a self-reliant, trustworthy, and respectable future. Correctional and treatment programs consist of individual and group counseling for self-growth and crime-specific education classes, and vocational training. Vocational training certificates are offered in barbering, carpentry, embroidery, engraving, graphic arts, laundry/dry cleaning, printing, sheet metal, and welding.

The appellant is one of two employees who serve at the [complex] as program coordinators for the Victim-Witness Assistance Program (VWAP) and the Sex Offender Registration Program (SORP), as required by the Sex Offender Registration and Notification Act (SORNA). The appellant serves at the [facility] and the second contact representative handles the programs at the [facility2]. They are also responsible for issuing local implementing regulations for both programs.

Upon conviction and sentencing of an inmate, the [complex] commander is notified by the military justice prosecutor of the inmate's assignment to the [facility], using a DD Form 2704 "Victim/Witness Certification and Election Concerning Inmate Status." The 2704 is immediately sent along with other court documents at the time of confinement following an announcement of sentence and accompanies all adjudged prisoners upon check-in to a prison, certifies whether there are victims or witnesses in the case, and is to be used in the victim or witness notification process. It is required for all Summary, Special, and General Court Martial proceedings. If the form contains insufficient information, the appellant must contact the prosecutor immediately to request a completed 2704 be forwarded by mail or fax as soon as possible to facilitate informing the victim(s) or witness(es) of the status of the prisoner. All requests for notification from victims or witnesses must remain confidential.

The appellant is also responsible for inputting new inmate's data into the local database. The local process begins with the appellant reviewing the 2704 to determine extent of preparations necessary for inmate housing, and how the inmate, victims and/or witnesses, as well as family members, will have to be handled under the program. The 2704 is received in a packet from a higher headquarters office via weekly e-mail alerting them of any new inmates, and depending

upon where they are court-martialed, when they will be arriving. The supervisor estimated that, on average, [facility] receives three or four inmates per month and releases about the same number. The [facility] can house up to 512 inmates, but when the population reaches a threshold of 460, they are required to make plans which must be coordinated with the U.S. Federal Bureau of Prisons (BOP) to transfer possible excess inmates to another federal prison. When an inmate is transferred to another federal prison, the [facility] maintains administrative control, but all other matters are handed off to BOP.

VWAP is intended to lessen the physical, psychological, and possible financial hardships suffered by a victim and/or witness of a crime and to ensure victims and witnesses are informed of their rights and services required by Federal law and of all significant events involved in the criminal justice process. The program is also designed to foster the full cooperation of a victim and/or witness while ensuring they are advised of and accorded their rights to be treated with fairness, dignity, and a respect for privacy; protected from the sex offender; notified of court proceedings and board hearings; and informed about the conviction, sentencing, imprisonment, and release of the offender from custody.

The appellant spends about 80 percent of his time serving as VWAP coordinator. He provides the various services described above to victims and witnesses and determines notification requirements based on the information garnered from the 2704. He inputs victim/witness information into the [complex] database according to DOD regulations. He may also help victims and witnesses interpret a DD Form 2703, Post-Trial Information brochure, which provides information to victims and witnesses about their rights during post-trial process. The appellant is responsible for notifying victims or witnesses concerning the status of the case in which they are involved; e.g., the date, time, and place of any required pretrial investigation or court appearance. He advises witnesses that their interests are protected by criminal sanctions. He contacts victims/witnesses to advise them of all notification procedures, entitlements, and rights. In some cases, they may not want contact. He receives, directs, or responds to a variety of victim/witness written, telephonic, or faxed inquiries. The appellant notifies the Staff Judge Advocate (SJA) when a victim or witness expresses genuine concern for his or her safety. All contacts, written or verbal, with the victim/witness, including unsuccessful attempts, must be documented in a victim witness notification file. He must also maintain a file on the notification status for each victim and witness. Near the end of time served, prior to the expiration of an inmate's sentence, the appellant notifies the chain of command of each upcoming release and ensures timely notification is made to the applicable victims, as well as witnesses where there has been intimidation, threats, or harassment.

An inmate's right to, eligibility for, as well as the date of, a parole hearing is mandated by DOD policy. However, this determination indicates only that a hearing may be held, not that release is imminent. Parole and/or clemency are not automatically awarded. If the hearing is held, he advises the victim or witness prior to the prisoner appearing before the appropriate military service Clemency and Parole Board which conducts clemency, parole, and mandatory supervised release hearings for eligible service prisoners. If so desired, the appellant will provide the victim or witness with an opportunity to submit an impact statement for consideration by the board. The impact statement may be written or taped on either audio or video tape. SORNA provides a comprehensive set of minimum standards for sex offender registration and notification within the

United States. The Attorney General has issued guidelines to interpret and implement SORNA. These guidelines were issued to provide guidance and assistance to covered jurisdictions—the 50 States, the District of Columbia, the principal U.S. territories, and Indian tribal governments—in implementing the SORNA standards in their registration and notification programs. The guidelines require sex offenders in the covered classes to register and keep the registration current in the jurisdictions in which they are to reside, work, or go to school. The appellant provides assistance to covered inmates by researching and providing extensive registration information, as needed.

The appellant spends about 20 percent of his time serving as the SORP coordinator under SORNA. Upon an inmate's arrival, the appellant reviews the 2704 to determine if the inmate is covered by SORNA guidelines and must register as a sex offender upon release. If so, the appellant must advise or counsel the inmate of the registration requirements in the areas of residence, employment, location, or school attendance. The appellant will search for information concerning any of the 50 States or other U.S. jurisdictions, to determine what those requirements are. For inmates who are required by law to register as a sex offender, the appellant must provide complete information as to what is required and what the inmate must do. However, final responsibility for such registration remains with the inmate. The appellant coordinates inmate requests for visitation rights with the Director, Inmate Treatment Program Directorate, who makes the final official decisions concerning visitation. However, rehabilitation counseling is handled by correction officers, social workers, both military and civilian, and other staff members who work within the Treatment Directorate.

As SORP coordinator under SORNA, the appellant is also responsible for inputting a new inmate's sex offender data, if applicable, into the local database. The appellant is required to notify an inmate of the program requirements if the inmate has to register as a sex offender. He must also provide notification of these requirements to the chief of inmate release. Prior to the inmate's release, the appellant is required to send letters to the highest legal officer of the State, as well as to the local official who has official jurisdiction, providing information as required, including the inmate's prospective place of residence, employment information, etc. If the inmate is released under condition of parole, he is given a set of rules to report to a parole officer assigned by the local authority. He is also warned that if he does not report and register with the local jurisdiction within the required time period, he will be arrested and lose parole, and be returned to the [facility] to complete his sentence. However, once he leaves the [facility] facility, the inmate is no longer the responsibility of the appellant.

The appellant reports to a Supervisory Human Resources Specialist who supervises a staff of 11 employees. The supervisor divides his time between overseeing staff activities at the [facility] and the [facility2], which is about a half-mile away. The supervisor holds weekly meetings with the appellant to discuss the arrival of new inmates, the pending release of inmates, present and potential problems, as well as reporting about dealings with State and local jurisdictions concerning the registration of sex offenders, as required. Judge Advocate personnel are available on the command staff for advice and assistance regarding difficult and complex decisions.

The appellant and his supervisor have both certified to the accuracy of the official position description (PD#####). We find that it contains the major duties and responsibilities assigned to and performed by the appellant and incorporate it by reference into this decision.

Series, title, and standard determination

The agency has assigned the appellant's position to the "GL" pay plan which relates to employees covered by the General Schedule (GS) classification and pay system who (1) are law enforcement officers, and (2) receive special base rates at grades 3-10 under section 403 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). This designation is the responsibility of the agency and is not subject to review under the classification appeal process. The agency has placed the appellant's position in the Contact Representative Series, GS-962, which is covered by the Job Family Position Classification Standard for Assistance Work in the Legal and Kindred Group, GS-0900 (GS-900 JFS). The appellant does not disagree and, based on careful review of the record, we concur.

The basic title for positions in this series is *Contact Representative*. In the appeal rationale, the representative requests that a parenthetical title be added to reflect the complex legal work required by administering the SORP in comparing federal and State statutes and regulations to the offender's violations of the Uniform Code of Military Justice (UCMJ) in order to properly advise the offender of his reporting and registration requirements upon relocation to a particular jurisdiction at release. However, the GS-962 series titling instructions do not provide for official parenthetical titles, so this issue is not subject to review under the position classification appeal process. See 5 CFR 511.607(a)(4).

The representative also says the appellant has a dual role as a "program manager" of VWAP and SORP. However, the use of this title does not control the classification of the appellant's position. Rather, it is based on the work assigned to and performed by the appellant. In this case, the record shows that the program aspects of the work are handled by higher echelons within DOD. Our grade level analysis in this decision fully considers the appellant's program related duties.

Grade determination

The GS-900 JFS is written in the Factor Evaluation System (FES) format which uses nine factors. Each factor is evaluated separately and is assigned a point value consistent with factor level definitions described in the JFS. The total number of points for all nine factors is converted to a grade by use of the JFS's grade conversion table. 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. Conversely, the position may exceed those criteria in some aspects and still not be credited at the higher level.

The agency assigned Factor Levels 1-4, 2-3, 3-3, 4-3, 5-3, 6-2, 7-B, 8-1, and 9-3. The appellant agrees, except he believes Factor 1 warrants Level 1-5. After a thorough review, we concur with the assignment of Factor Levels 2-3, 3-3, 4-3, 5-3, 6-2, 7-B, 8-1, and 9-3. Our evaluation of Factor 1 follows.

Factor 1, Knowledge required by the position

This factor measures the nature and extent of information or facts that an employee must understand to do acceptable work (for example, steps, procedures, practices, rules, policies, theories, principles, concepts) and the nature and extent of the skills necessary to apply that knowledge.

At Level 1-4, positions require knowledge of, and skill in applying, an extensive body of rules and procedures gained through extended training or experience sufficient to perform interrelated and nonstandard legal support work and plan, coordinate, and/or resolve problems in support activities. This knowledge is used to examine documents where the information and facts are straightforward and readily verifiable; need little development; require limited searches of reference, file, or historical material; and entail comparisons with explicit criteria. Positions at this level also require sufficient knowledge and skill to use a wide range of office software applications in preparation of complex documents containing tables or graphs and to use online legal resources to obtain information accessible over the Internet, as needed.

Level 1-5, the highest level described in the JFS, encompasses the knowledge and skills identified at lower levels and also requires knowledge of, and skill in applying, comprehensive legal regulations, techniques, and procedures that are not readily understood. At this level, knowledge and skills must be sufficient to perform assistance work requiring extensive searches of records, reference, or historical material and comparisons with complex, voluminous, or broadly written criteria; use specialized, complicated techniques to complete assignments, such as comparing options or identifying conflicts; develop, examine, adjust, reconsider, or authorize settlements; and assist higher grade employees to plan strategies.

The representative states the appellant's work "goes beyond simply providing information to victim/witnesses or to sex offenders." He states that in fact, the appellant administers both the VWAP and the SORP. He says, in this dual role, the appellant:

is required to perform extensive searches of records and regulations including trial records, Federal and state statutes, DOD regulations and policies, etc. This goes beyond what could be considered the examination of documents in which the information and facts are 'straightforward and readily verifiable' and 'require limited searches of reference, file, or historical material' as set forth in a Level 1-4 classification standard.

He says these requirements "qualify him in many ways as a Level 1-5 employee." The representative also says the appellant conducts extensive searches of inmates' correctional records in order to determine the offense under the UCMJ of which the inmate has been convicted. He states the appellant also has to conduct an extensive search of State criminal and sexual offender statutes in order to make the comparison with an inmate's sexual offense

conviction. The representative says the appellant's research and analysis involves complex and voluminous materials such as a State criminal statute. He says the appellant also uses specialized knowledge when analyzing legal elements of crimes in some definitions. The representative states these duties, combined with the extensive work required in managing VWAP, warrant an upgrade.

Level 1-5 is not met. The knowledge required by the position somewhat exceeds Level 1-4, given the documentary complications and information development requirements described by the representative. However, the position does not meet the full intent of Level 1-5 which requires extensive searches of records, reference, or historical material and comparisons with complex, voluminous, or broadly written criteria. Contrary to the representative's assertions, the appellant's cross-walk of definitions of military sexual offenses to pertinent State statutes, county and/or local requirements concerns a narrow area of the law and deals with matching narrow statutory criteria to UCMJ charges or specifications. That the pre-2008 version of the UCMJ differs from the post-2008 version regarding the location and specificity of language concerning sexual offenses is not equivalent to dealing with the volume of materials and scope of historical review described at Level 1-5.

The representative says the appellant is routinely asked to perform work above and beyond his stated duties. For example, in April 2005 he was asked to create an "Impact of Crimes on Counseling Program" by the agency for inmates at the [facility]. This program which the appellant "created" was recently updated in October 2010, and expanded to include inmates at the [facility2]. He says he had no model program to base it on and had to prepare a curriculum online based upon a wide range of materials, including but not limited to National Victim Witness Assistance Academy materials, New Directions from the Field: Victim's Rights and Services for the 21st Century Bulletins, and materials from the Institute of Victim's Studies. He says the curriculum was and is used to counsel inmates in order to meet the American Correctional Association Accreditation Standards. He says this curriculum required extensive analysis and application of comprehensive legal regulations, techniques, and procedures which go beyond what he is credited for in the evaluation of his current PD. However, while developing such program curriculum may be indicative of Level 1-5 work, completing and then updating only one such curriculum during the last seven years reflects that it is not performed frequently enough to constitute regular and recurring assignments that can impact the classification of the appellant's position. Only duties that occupy at least 25 percent of an employee's time on a regular and recurring basis can affect the grade of a position (*Introduction*, section III.J).

The appellant provided a work example to support his claim that the local Judge Advocate (JA) frequently sends him letters for review as evidence of his program manager status. A JA is a designated officer of the Judge Advocate General's Corps (JAGC) of the U.S. Army, Navy, Air Force, or Marine Corps who serves as the legal advisor on the staff of a military command. In this example, however, the JA is not asking for review as suggested by the appellant, he is simply doing what a member of the legal profession does with correspondence; he is asking the appellant as a subject-matter expert to verify the facts in the document.

The appellant says he is responsible for writing the local implementing regulations for these programs providing federal crime victims and witnesses the rights and services required by federal law. However, his supervisor says that DOD and service regulations concerning both VWAP and SORNA are quite clear cut, with little room for improvisation, so the appellant is basically able to take them word for word from the DOD regulations, U. S. Army and other service regulations, and the UCMJ. There is also a staff JA available if he needs clarification.

The JFS provides an illustration at Level 1-4 that closely matches the appellant's position. The illustrative position requires knowledge of, and skill in applying, an extensive body of rules and procedures concerning benefits processing sufficient to: clarify benefit processes and procedures to customers; conduct personal or telephone interviews; search records or guidelines; provide full explanations in response to specific inquiries relating to the agency; resolve problems and issues; evaluate the extent of customers' knowledge of their responsibilities; explain the requirements placed on them by laws and regulations; and review records and contact other offices to learn the status of pending actions, the reasons for delays or changes, and what action or additional information is required to resolve the case.

Comparable to Level 1-4, the appellant's position requires knowledge of an extensive body of rules and procedures needed to perform interrelated and nonstandard legal work to serve victims and witnesses of sexual offenses while the offenders are incarcerated at the [facility]. For the appellant's position, standard procedures are in place, and specific criteria are outlined to plan, coordinate, and/or resolve problems in support activities for the different programs. The knowledge required to conduct searches of files, records, and other documents somewhat exceeds Level 1-4 but, as discussed previously, does not fully meet Level 1-5. Although the appellant's position does not require using a wide range of office software applications, the use of word processing software and the capability to enter data into the agency database facilitate the appellant's work. Also like Level 1-4 work described in the JFS, the position requires knowledge necessary to use online legal resources to obtain information accessible over the Internet, as needed.

Even though the appellant's position involves working with inmates rather than the general public, providing appropriate information for registration as a sex offender requires the same level of knowledge and skill as presented in Level 1-4. He determines who is required to register as a sex offender under SORNA guidelines, and provides full information concerning where, when, and to whom he must register. This is comparable to Level 1-4 which covers work where the "benefits," once established, are clear cut as to their application to the customer. This is the case with the offender's registration requirements and the victims'/witnesses' specific rights. Unlike Level 1-5, coordinating VWAP does not require or permit the appellant to suggest or make recommendations as VWAP rights are clearly established.

Level 1-4 is assigned (550 points).

Summary

<i>Factor</i>	<i>Level</i>	<i>Points</i>
1. Knowledge required by the position	1-4	550
2. Supervisory controls	2-3	275
3. Guidelines	3-3	275
4. Complexity	4-3	150
5. Scope and effect	5-3	150
6. & 7. Personal contacts and Purpose of contacts	2B	75
8. Physical demands	8-1	5
9. Work environment	9-3	50
<i>Total</i>		1530

When compared to the grade conversion table in the GS-900 JFS, the point total converts to the GS-7 grade level (point range of 1355-1600).

Decision

The appellant's position is properly classified as Contact Specialist, GL-962-7.