

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

Appellant: [name]

Agency classification: Legal Instruments Examiner
GS-963-7

Organization: [branch]
[regional office]
National Marine Fisheries Service
National Oceanic and Atmospheric
Administration
U.S. Department of Commerce
[city & State]

OPM decision: Legal Instruments Examiner
GS-963-7

OPM decision number: C-0963-07-03

//Judith A. Davis for

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

2/8/2012

Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision.

There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the *Introduction to the Position Classification Standards*, appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[Redacted]

Introduction

On June 11, 2011, the [region] Oversight office of the U.S. Office of Personnel Management (OPM) accepted a position classification appeal from [name], who occupies a position currently classified as Legal Instruments Examiner, GS-963-7, in the [branch] of the [regional office], National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, in [city & State]. The appeal was subsequently transferred to the Washington Oversight office for adjudication. The appellant requests that her position be classified as Legal Instruments Examiner, GS-963-8/9. We accepted and decided this appeal under the provisions of section 5112 of title 5, United States Code (U.S.C.).

General Issues

The appellant compares her position to a Legal Instruments Examiner position advertised in October 2008 for the NOAA/NMFS Northeast Regional Office with a series and grade of ZS-963-3/4. The appellant believes this position is equivalent to grade GS 7/8. 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 method for classifying positions, we cannot compare the appellant's position to others that may or may not have been properly classified as a basis for deciding her appeal.

The General Schedule (GS) classification system provides for classifying positions to a single grade. The career ladder which the appellant appears to seek; i.e., classification to the GS-8 grade level with noncompetitive promotion to the GS-9 grade level, is a staffing program issue and is not subject to review under the position classification process.

Position information

The appellant's primary duties are to review permit applications and permit transfer requests for commercial fishing in assigned fisheries for completeness, accuracy, and compliance with the applicable fishery regulations; research the ownership history of the permit or the vessel in the permit database, resolve documentation inconsistencies, and request clarification from applicants as needed in determining whether the applications should be approved or denied; and process the applications by entering them into the permit database and distributing permit documentation as required.

The appellant states that in addition to processing the routine permits all other Legal Instrument Examiners in the Branch process, she is responsible for certain permits which are more specialized. These permits include International Trade Permits issued through the Highly Migratory Species Program, High Seas permits issued through the National Permits System Program, and Golden Crab permits.

The appellant states she spends approximately 75 percent of her time reviewing applications and documents to issue permits; 15 percent entering the required data into the Permit Information Management System (PIMS) database and reviewing the information already in PIMS for accuracy, completeness, and consistency; and approximately 10 percent of her time speaking to

constituents. The appellant communicates orally and in writing in order to prepare notices and provide information on examination criteria and permit procedures to applicants and the public.

We conducted a telephone audit with the appellant on September 9, 2011, a telephone interview with her immediate supervisor on September 22, 2011, and a telephone interview with her former supervisor on October 20, 2011. In reaching our decision, we have carefully considered the information obtained from these interviews and all material of record provided by the appellant and her agency, including her official position description [number]. This position description is accurate and adequate for classification purposes and we incorporate it by reference into this decision.

Series and title determination

The appellant does not contest the series or title of her position and, based on careful review of the record, we agree it is properly classified as Legal Instruments Examiner, GS-963.

Grade determination

Positions in the GS-963 series are evaluated by use of the Job Family Standard (JFS) for Assistance Work in the Legal and Kindred Group, GS-900. This standard 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 appellant believes the agency did not properly evaluate Factor 1. During the telephone audit she also stated that Factor 2 “should be higher because the work is never checked before it goes out.” The appellant does not dispute the agency’s assignment of levels for Factors 3 through 9 and, based on our review of the appeal record and information provided in the audit, we concur with the agency’s evaluation of those factors. Therefore, we confine our analysis to factors 1 and 2 below.

Factor 1, Knowledge Required by the Position

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

The agency assigned Level 1-4 under this factor. The appellant believes Level 1-5 should be credited.

At Level 1-4, the work requires 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; 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; plan, coordinate, and/or resolve problems in support activities; use a wide range of office software applications to prepare complex documents; and use online legal resources to obtain information over the Internet as needed.

At Level 1-5, the work requires knowledge of, and skill in applying, comprehensive legal regulations, techniques, and procedures that are not readily understood sufficient to: perform 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 with strategic planning.

As at Level 1-4, the appellant is responsible for applying an extensive body of rules and procedures sufficient to examine and evaluate information submitted on permit applications, resolve documentation inconsistencies, and establish eligibility for permits. The appellant's duties are interrelated because they all relate to reviewing applications for fishing permits. However, they are nonstandard because the work requires specialized knowledge of the regulations pertaining to eligibility requirements for different types of permits which can only be gained through extensive experience rather than through general legal support training. The appellant's work involves examining documents where the information and facts are straightforward and readily available. For example, sample permits submitted by the appellant consist of pages containing sections where applicants fill in applicable information regarding specific vessel information and requested permit transactions. The applications require little development. An application containing incorrect or missing information can be corrected by calling the applicant, searching in the Permit Information Management System (PIMS) database, or agency files. The information examined in the applications is compared against Federal regulations found in the Code of Federal Regulations (CFR). In most cases, the CFR provides all required regulations needed to perform the work, while further interpretation is done by a supervisor or the Office of General Counsel (OGC).

The appellant's position generally matches an illustration provided in the standard at Level 1-4 which describes an assignment requiring knowledge of, and skill in applying, an extensive body of rules and procedures concerning international standards and national maritime policies sufficient to examine documents for application of procedures and to renew all forms of merchant marine documents, licenses, and certificates of competency; help customers renew licenses; and resolve documentation inconsistencies. Another illustration provided in the standard describes knowledge of, and skill in applying, an extensive body of rules and procedures concerning the examination of standard and nonstandard applications for private radio station licenses sufficient to compare information provided with available records, maps, charts, and previous filings, and answer questions and provide information by phone, mail, and in person regarding certain published regulatory and policy specifications, status of applications, filing and processing procedures, and other functions of the licensing activity. Although the

subject matter of the applications in these illustrations is different, the actions required are very similar to those performed by the appellant, such as applying regulatory specifications, comparing information to available records and previous filings, resolving inconsistencies, etc.

The appellant's work falls short of Level 1-5. The record fails to show the appellant's work requires knowledge of, and skill in applying, comprehensive legal regulations, techniques, and procedures that are not readily understood. The regulations which the appellant applies, which are primarily from 50 CFR Parts 622, 635, 640, and 300, are clearly written so that they are understood by both applicants and examiners. The regulations are quite definite and unambiguous with regard to permit requirements. Any difficulty in interpreting the regulations is referred to the OGC.

The appellant points to portions of Level 1-5 descriptions in support of her appeal when she states: "There are numerous times daily that an application must be researched by checking files or historical information to determine an ownership issue with either a permit or vessel. Often this does turn into an extensive search of records." Critical to the position classification process is understanding and applying the full intent of a particular factor or grade level. Matching the duties of a position to words, phrases, or an illustration in the standards out of context can lead to improper interpretation and inaccurate factor- or grade-level determinations.

Based on our audit and review of work samples in the case file, we find the appellant's work does not entail performing extensive searches of records, reference, or historical material and comparisons with complex, voluminous, or broadly written criteria. While the appellant periodically performs non-routine searches through agency files and various databases and makes comparisons with specific information in order to process applications, she is not required to perform extensive searches and comparisons with complex, voluminous, or broadly written criteria, as described in Level 1-5. The appellant's search of information, such as referring to the CFR for regulatory guidance, verifying applicant information by phone, letter, or file history, and/or searching through various databases to make permit determinations, does not require her to possess knowledge of, and skill in applying, comprehensive searches through more complex and voluminous information such as government contracts, settlements, powers of attorney, and court orders, as described at Level 1-5. The less extensive searching skills used by the appellant do not require this level of research and compare favorably with the skill and knowledge required to perform work typical of Level 1-4. Our conclusions are reinforced by information provided by the appellant's former supervisor, who stated that the appellant, on average, processes approximately 200 applications each week. In addition, the appellant's cover sheet of her work samples states that "[t]he Permits Office sends out an average of 600-800 permits monthly." This volume of permits being processed does not allow, as a practical matter, for the extent of research required at Level 1-5.

Level 1-4 is credited (550 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. Controls are exercised by the

supervisor in the way assignments are made, instructions are given to the employee, 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 modifications of instructions, and to participate in establishing priorities and defining objectives. The degree of review of completed work depends upon the nature and extent of the review; e.g., close and detailed review of each phase of the assignment, detailed review of the finished assignment, spot-check of finished work for accuracy, or review only for adherence to policy.

At Level 2-3, which is the highest level described in the standard, the supervisor makes assignments by defining objectives and setting deadlines, and assists the employee with unusual problems which do not have clear precedents. The employee plans and carries out the successive steps, and handles problems and deviations in the work assignment in accordance with instructions, policies, previous training, or accepted practices in the program or office in which employed. Completed work is reviewed in terms of results achieved, technical soundness of completed work or recommendations, and the effect of the work in facilitating the objectives of the employing office or program.

The appellant's position meets but does not exceed Level 2-3. Comparable to this level, the supervisor assigns priorities and technical methods to be used. When guidance is needed on new or controversial issues, the appellant refers to the supervisor. The appellant independently plans and carries out her daily work in conformance with internal priorities and deadlines and in adherence to Federal regulations and local instructions and policies. The appellant's experience and technical knowledge of the full range of the examination process requirements, coupled with the supervisor delegating independent judgment to resolving issues with little or no day-to-day supervision, meet the requirements and are typical of Level 2-3.

Level 2-3 (275 points) is credited.

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/Purpose of Contacts	2-B	75
8. Physical Demands	8-1	5
9. Work Environment	9-1	<u>5</u>
<i>Total</i>		1,485

The total of 1,485 points falls within the GS-7 point range (1355-1600 points) on the grade conversion table provided in the standard.

Decision

The appellant's position is properly classified as Legal Instruments Examiner, GS-963-7.