

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

Appellant: [Name]

Agency classification: Attorney-Advisor (Environmental)
GS-905-13

Organization: [Organization]
[Organization]
[Organization]
U. S. Department of the Air Force
[Location]

OPM decision: Attorney-Advisor (General)
GS-905-13

OPM decision number: C-0905-13-08

//Judith A. Davis for

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

3/20/2013

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).

The appellant's position description (PD) includes an Environmental parenthetical title. As discussed in this decision, Environmental is not among the approved prescribed titles in the GS-905 series position classification standard (PCS) and must be changed to General. Therefore, the appellant's PD of record must also be revised to correct the title. The servicing human resources office must submit a compliance report containing the revised PD and corrected SF 50 showing the personnel action taken. The report must be submitted within 30 days from the effective date of the personnel action to the U.S. Office of Personnel Management (OPM) office that adjudicated this appeal.

Decision sent to:

[Name]

[Address]

[Address]

Classification Oversight and Standardization
AFPC/DPICI
550 C Street West, Suite 57
Randolph Air Force Base, Texas 78150-4759

Chief, Classification Appeals
Adjudication Section
Department of Defense
Defense Civilian Personnel Advisory Service
4800 Mark Center Drive, Suite 95G21
Alexandria, Virginia 22311-1882

Introduction

On May 18, 2012, Philadelphia Oversight office of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [Name]. The appellant's position is currently classified as an Attorney-Advisor (Environmental), GS-905-13, and is located in the [Organization], [Organization], [Organization], U. S. Department of the Air Force (USAF), [Location]. The appellant believes her position should be upgraded to the GS-14 grade level. We received the complete agency administrative report on August 27, 2012, and have accepted and decided this appeal under section 5112(b) of title 5, United States Code (U.S.C.).

To help us decide the appeal, we conducted on-site interviews with the appellant and her immediate supervisor on November 29, 2012. To clarify information provided during those interviews, we spoke telephonically to members of the [Organization] legal, and Air Force Legal Operations Agency, Environmental Law and Litigation Division, Field Support Center (AFLOA/JACE – FSC) staffs as well as the former AF Eastern Regional Counsel. 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 her agency.

General issues

The appellant agrees her official AF Standard Core Personnel Document, also known as PD # accurately reflects her assigned duties and responsibilities. Her supervisor has certified to the accuracy of the appellant's PD.

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 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. This decision is based on the work currently assigned to and performed by the appellant. After careful review, we find the appellant's PD meets the standards of PD accuracy for classification purposes as discussed in section III.E of the *Introduction* and we incorporate it by reference into our decision. However, the appellant's PD includes Level E references from the GS-905 for the General Attorney series she does not perform and the agency needs to remove them.

The appellant states she is performing GS-14 level work since she now provides environmental law advice and guidance to joint base personnel and must transfer between [Organizations] requirements on a daily basis. By law, we must classify positions solely by comparing her current duties and responsibilities to OPM PCSs and guidelines. As discussed later in this decision, we have considered the expansion of the appellant's serviced organizations to three services only to the extent it is germane to applying the grading criteria in the OPM PCS that must be used to evaluate her work, i.e., JB MDL issues not limited to a single military service.

Position information

The appellant provides legal advice, counsel, and opinions to operating program officials, technical staff, and command and support components of the [Organization] on environmental legal issues, such as compliance, assessment and remediation, restoration, pollution prevention, and the management of natural, historical and cultural resources. She researches and develops legal opinions on managing hazardous materials, minimizing hazardous materials in use throughout the JB, disposing of hazardous waste materials, air and water permitting, assessing the environmental impact of JB actions, remediating hazardous waste sites, protecting natural, historical, and cultural resources, and restoring installation sites and/or resources such as air and water. The appellant advises and counsels installation engineering and contracting personnel on construction and privatization projects, and ensures that privatization agreements and contract specifications comply with environmental laws and protect the JB from potential liability and penalty assessment. She meets with State and Federal regulatory agency personnel to resolve disputes over environmental jurisdiction, installation requirements, sovereign immunity issues, and enforcement issues.

She reviews environmental assessments, impact statements, and statements of work submitted by JB personnel, and analyzes regulations and other documents related to environmental decision making for legal sufficiency and compliance with all aspects of Federal, State, and local environmental laws. Based on her legal review, the appellant advises operating program officials of their responsibilities for complying with the requirements of a variety of laws including the National Environmental Policy Act (NEPA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Air Act (CAA), Clean Water Act (CWA), and Resource Conservation and Recovery Act (RCRA).

Series, title and standard determination

The appellant does not question the title, series or use of the GS-905 PCS to evaluate her position and based on a review of the record, we concur except for the position's title.

The GS-905 PCS provides for the basic title of Attorney-Advisor for positions involved in rendering legal advice and services with respect to questions, regulations, and practices of the agency. The agency added a parenthetical title of Environmental to the basic title. The *Introduction* states that for occupational series where parenthetical titles have been prescribed by OPM, which includes the 905 series, only those designations may be used. The 905 PCS stipulates use of General as the parenthetical title for areas of law not covered by the established parenthetical titles in the PCS. Since the PCS does not include Environmental as an established parenthetical title, the appellant's position is properly allocated as Attorney-Advisor (General), GS-905.

Grade determination

The GS-905 PCS uses two main factors to evaluate the grade of positions: (1) *Nature of the case or legal problem*, and (2) *Level of responsibility*. The GS-905 PCS discusses the classification

elements considered under each factor. In her May 14, 2012, classification appeal request, the appellant did not agree with her agency's decision that her position failed to meet Type III under Factor 1 and Level E under Factor 2. Our evaluation with respect to the two factors follows.

Factor 1, Nature of the case or legal problem

Three types of difficulty are described in the PCS for this factor: Type I cases or legal problems are simple; Type II cases are difficult; and Type III cases are the most difficult. These levels represent the full span of difficulty or importance of attorney work throughout the Federal Government. If a case or problem does not satisfy the requirements indicated for the level of one of the types, it is identified with the next lower type because each type is described in terms of the minimum characteristics of the range of difficulty it represents.

Type II work is characterized by one or more of the following features:

- (1) Difficult legal or factual questions are involved because of the absence of clearly applicable precedents due to the newness of the program or the novelty of the issue; or it is highly arguable which precedents are applicable to the case at issue because of the complexity of the facts or the different possible constructions which may be placed on either the facts or the laws and precedents involved.
- (2) The impact of the case or legal problem affects, economically, socially, or politically, either directly or as a legal or administrative precedent, a significant segment of private or public interests (e.g., a large corporation, a large group, the residents of a large geographical region of the United States as in a large public works project, a large grant-in-aid program, a nationally organized professional group, the producers of a given farm commodity, the manufacturers of a given product, a class of Government contractors, (i.e., suppliers of a particular service or product, or an important program of a Government agency). Also included in this type are cases or legal problems which have an impact on relations between the United States and foreign governments (e.g., acts by servicemen or other representatives of the United States stationed abroad, questions such as whether or not to buy foreign or American products, or negotiating and drafting consular conventions) and which must be handled with great care.
- (3) Large sums of money are directly or indirectly involved (e.g., about one hundred thousand dollars), or there is considerable interest from a significant segment of the population (see feature 2 above), or the case is strongly contested in formal hearings or informal negotiations by the private individuals, or Government agencies involved.

Type III work is characterized by one or more of the following features:

- (1) Extremely complex and difficult legal questions or factual issues are involved in the drafting, interpretation, or application of legislation, regulations, contracts, orders, decisions, opinions, or other legal instruments and require for their solution a high order of original and creative legal endeavor in order to obtain a reasonable balance of conflicting interests (e.g., legal work involved with balancing the requirements of national security with individual liberties, determining the legality of State and local taxation of the use of Federal Government property by

private business firms, recommending or making policy concerning consent decrees in anti-trust litigation, or legal work in developing material for Executive Orders concerning the use of Federal troops in a domestic emergency); or complex factual or policy issues are involved requiring extensive research, analysis, and obtaining and evaluating of expert testimony or information in controversial areas of scientific, financial, corporate, medical, engineering, or other highly technical areas.

(2) The case or problem is such that it can have the effect of substantially broadening or restricting the activities of an agency (e.g., the enforcement of antitrust and trade regulations, tax laws, food and drug laws, or the laws governing securities transactions); or it has an important impact on a major industry whose economic position affects the health and stability of the general economy (e.g., a merger or reorganization involving a basic industry, or on the rates, practices, or competitive position of a major industry, for example, the position of the railroads in relation to the motor carriers based on the “reasonableness” of their respective rates, or the position of domestic airlines operating overseas in relation to restrictions on foreign airlines operation in this country). It has an important impact on major private or public interests (e.g., a substantial broadening or restriction of benefits to veterans under the law, amounting to many millions of dollars annually, or a major extension or revision in a State and/or other grant program or a nationwide retirement system, the development of administrative regulations of such scope as the Armed Services Procurement Regulation, or a substantial question of civil rights involving the due process clause). Also included in this type are problems of unusual delicacy, such as fraud cases, because of the serious consequence of error and the great burden of proof assumed by the Government.

(3) Cases or problems of this type frequently involve, directly or indirectly, very large sums of money (e.g., about a million dollars) and/or they are frequently vigorously contested by extremely capable legal talent (e.g., a major antitrust case). Interest in these cases is generally nationwide.

The appellant states her position should be credited as Type III because the duties she has been performing since November 2000 have become increasingly complex and have had an important impact on all federal installations located in the [state]. She further states her position became even more complex after [Organization] was created in 2009 and her duties are similar to those of a regional environmental and real property attorney.

In support of crediting her position with Type III work, the appellant states she works on environmental issues characterized by complicated factual scenarios, issues that involve application of complex statutory law, environmental cleanup programs and land preservation and joint use programs that involve the application of highly regulated legal requirements, and issues of a sensitive environmental nature. She states she was (1) the only Federal environmental attorney to meet with [state] DEP, water permitting, and soil conservation committee members to re-write a State law to assess clean water fees to Federal facilities during construction projects; and (2) was also able to gain approval from [state] officials to assess fees only for projects covering one acre or more of land which she states positively impacted all State Federal facilities and will save all Federal facilities in [state] millions of dollars over time. The appellant states she (1) developed, along with the [Organization] community planner, a local program under the

Readiness and Environmental Protection Initiative (REPI), prepared complex submittals to [Organization] and agency-level personnel, and received millions of dollars in funding; and (2) this initiative preserves open space and farmland, protects the environment, shields the mission of [Organization] from encroachment and non-conforming land uses around the JB, and that approximately 3,485 acres of land surrounding the JB have been preserved since the program's 2008 inception.

The appellant also states she secured a waiver from [state] DEP so all Federal facilities in the State do not have to participate in the Licensed Site Remediation Professional (LSRP) program under the Site Remediation and Reform Act (SRRRA), which establishes an obligation for responsible parties to remediate contaminated sites in a timely manner by establishing a category of remediation professionals to oversee the remediation process in place of [state] DEP personnel. She states [state] Administrative Code 7:26C, Administrative Requirements For The Remediation Of Contaminated Sites, includes various submittal fees the waiver will save [Organization] and other [state] Federal facilities from paying. According to the appellant, these fees could total millions of dollars, the waiver has a State-wide impact, affects all Federal facilities, and also has nation-wide impact. The appellant further states she will work with JB engineers and [state] DEP to develop a process so the sites are inspected and cleanup concurrence is received by [state] DEP through a No Further Action (NFA) letter which is needed in order to receive AF cleanup funding. The appellant also states she has provided legal guidance to Federal Aviation Administration (FAA) civilian attorneys located in Atlantic City, NJ regarding projects requiring Pinelands Commission review, and questions regarding the CWA, well drilling, and sovereign immunity issues.

In applying the GS-905 PCS, a position must substantially exceed Type II work before Type III may be considered. This work must occupy 25 percent or more of the employee's work time to control the crediting of this factor or the grade level of the position as a whole.

The appellant's work meets Type II work where there is considerable interest from a significant segment of the population (e.g., a large corporation, the residents of a large geographical region of the United States as in a large public works project, etc). The JB is located in a densely populated state with many sites on the National Priorities List (NPL), commonly referred to as the Superfund List, but more specifically within the Pinelands, a sensitive ecological area. Because of these reasons, [Location] county residents show great interest and the media cover the bases' projects and programs encompassing these issues. The JB REPI program is typical of this level. The program serves to protect the environment and natural resources by restricting future land development through the purchase of privately owned land. The appellant recently re-negotiated a Cooperative Agreement (CA) with [Location] county officials – an agreement between the Secretary of the Air Force (SAF) and county officials to address the use or development of real property in the vicinity of the JB. After re-working and re-drafting the CA, she submitted it through the chain-of-command for approval. The CA includes a list of possible parcels the JB and county officials wish to acquire rights to through a Deed of Easement (DoE), which the appellant negotiates with the county and land owner. A DoE purchases, with Federal and State funds, land rights so the parcel may only be used for farming or other highly restricted land use in the future. These purchases ensure the JB's mission of increasing the number of

aircraft using the base is protected and may grow without negatively impacting the installation or the surrounding communities.

The record shows the appellant provides critical guidance to management officials on [state] DEP requirements for Title V Air permit modifications based on JB projects to reduce its energy consumption and increase its renewable electric use as required, through the de-centralization of the heat plant, upgrades to the chiller plant, and solar power installation. She used her extensive environmental law experience to review and re-draft the JB's proposed plan to cleanup/restore the contaminated ground and surface water at the Boeing Michigan Aeronautical Research Center (BOMARC) site prior to its release for public comment. It is a cold war nuclear missile site where a fire destroyed a nuclear missile. The appellant ensured the plan conformed to the rules and guidance specific to projects performed under CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), per the Voluntary Cleanup Agreement between the [state] DEP and the Department of Defense including the USAF. These work examples meet Type II work where the legal issues being addressed have an economic and social impact on Burlington and Ocean county residents and more broadly based environmental groups concerned about Pinelands preservation.

The appellant's rationale refers to the beginning of Feature 1, and an element of Feature 3 for Type III work in the GS-905 PCS. With regard to Feature 1, the appellant cites "Extremely complex and difficult legal questions of factual issues are involved in the drafting, interpretation, or application [of] legislation, regulations...and require for their solution a high order of [f] original and creative legal endeavor...." However, Feature 1, whose examples must be read and applied in their entirety, continues

in order to obtain a reasonable balance of conflicting interests (e.g., legal work involved with balancing the requirements of national security with individual liberties, determining the legality of State and local taxation of the use of Federal Government property by private business firms, recommending or making policy concerning consent decrees in anti-trust litigation, or legal work involved in developing material for Executive orders concerning the use of Federal troops in a domestic emergency);

In support of crediting this Feature, the appellant points to her REPI efforts, described previously in this decision, in support of crediting this feature. REPI carries out the purpose and provisions of 10 USC 2684(a), which authorizes military installations partnering with State, local and private entities to address the use or development of real property in the vicinity of, or ecologically related to, a military installation or military airspace for such purposes as limiting any development or use of the property that would be incompatible with the mission of the installation." The program provides for leveraging available governmental real estate acquisition funds to achieve these goals. In contrast to the creation of REPI which tracks the interpretation and application of legislation discussed at Level III, the appellant's use of this program as a tool at the installation level within the parameters established by the CA signed by the SAF and county officials fails to meet that level. The CA outlines such things as each party's authorities, obligations, the acquisition process, setting up real estate appraisal procedures, and the division of costs and DoEs follow this established set of rules. Balancing the requirements of the JB's mission with determining which parcels to preserve as open space is not equivalent to balancing the constitutional principles of individual liberty with the imperatives of national security, or

recommending or making the Government's legal policy on consent decrees in anti-trust litigation with their broad impact on corporate practices, business law, and the National economy discussed in Feature 1 at Level III. That AF has not yet promulgated an instruction on this program does not change the type of legal issues with which the appellant deals from that of local and regional in nature to the complex and difficult legal issues found at Level III. The appellant also refers to the programs she works on receiving millions of dollars in funding and saving the JB millions of dollars in fee payments and stating they are examples of Type III Feature 3 work. However they do not meet the definition of a case involving, directly or indirectly, very large sums of money (e.g., about a million dollars) which, when adjusted, is currently \$7,952,130 dollars. Rather, this Feature refers to monies related to individual cases and not monies in the aggregate. With regard to the appellant's duties, this aspect of Feature 3 relates to the sums of money the JB negotiates to settle the penalties assessed by a regulatory agency such as [state] DEP or Environmental Protection Agency (EPA). The appellant states the largest penalty paid was \$259,000 three years ago, which is well below the threshold for Type III work. Therefore, the monies at issue in the appellant's cases do not exceed those found at Level II.

The appellant states her experiences meeting with [state] DEP and others to re-write State legislation to assess clean water fees to Federal facilities during construction projects and obtaining a waiver from participating in the LSRP program are examples of Level III work. However, the drafting of legislation as discussed within the 905 PCS refers to the drafting of Federal legislation, an ongoing responsibility of most Federal agencies for their assigned programs. In contrast, the appellant's work deals with providing input to State-level legislative initiatives not under the control of her employing Federal agency, but of one of the 50 United States. As such, this work cannot be construed as meeting the full intent of Level III. We will address this work further within the Nature of functions under Factor 2. The appellant also states the legal guidance she has provided to FAA civil attorneys is an example of Level III work. However, this type of work falls within the Nature and scope of recommendations and decisions under Factor 2 and will be discussed in that section.

Factor 2, Level of responsibility

This factor includes the functions performed, supervision and guidance received, personal work contacts, and the nature and scope of recommendations and decisions. Three of the five Levels under this factor are defined in the standard (Levels A, C, and E). The other two Levels (B and D) are not defined in the standard but may be assigned as appropriate. The levels under Factor 2 are described in terms of typical characteristics. Accordingly, the intervening Level (B) is appropriate when, for example, a position compares with Level (A) in some respects and Level (C) in others. The intervening level is also appropriate when a position falls clearly between two of the levels described with respects to the majority of elements.

The agency has credited the position at Levels D, D, D, and C. The appellant believes her position should be credited at Levels E, E, E, and D.

(1) Nature of functions

The appellant's position meets and, in some respects, exceeds Level C. Similar to the Level C examples listed in the PCS, she conducts legal research in connection with questions referred by any of the JB's environmental administrative officials. These questions concern the interpretation and application of various environmental laws and statutes (e.g., NEPA, CERCLA, CWA, and RCRA) and internal USAF, U.S. Army, and U.S. Navy regulations. The appellant also reviews newly enacted legislation to keep informed of changes in environmental laws and statutes. Both primarily pertain to potential claims against the JB in terms of liability for damages and adequacy of environmental clean-up. The appellant deals with other Federal agencies concerning JB environmental matters, e.g., EPA, and the JB's position in responding to notices of violations (NOV) issued by various governmental agencies, e.g., [Locations] DEP. Typical of Level C is her reviewing and re-drafting of environmental assessments to ensure they are prepared in accordance with NEPA requirements prior to the start of any construction projects at the JB in order to mitigate potentially harmful effects to the environment.

As at Level C, the appellant personally conducts research and sometimes investigates facts posed by a legal problem, researching the relevant laws, regulations and precedents. For instance, she conducted research on soil conservation fees and found the existing State soil conservation laws did not cover the State's Federal facilities. She concluded that the County and State lacked the statutory authority to assess clean water fees for JB construction projects. As discussed in the PCS, much of her work involves the preparation of memoranda to installation staff outlining the facts, legal issues, and precedents, and justifying her recommendations or conclusions. Typical of Level C, she serves as the assigned legal specialist and advisor on her assigned program, environmental law, for the JA.

The appellant's assignments do not compare favorably with the following examples discussed under Level E. She is not involved in any aspects of litigation, in reviewing proposed agency decisions at the highest levels, acting as a principal attorney in preparing and presenting cases, or acting as legal counsel to the head of a major operating program of the department. The common theme of Level E is the broad scope of legal action taken at or near agency level. The JB performs typical field activity functions. Thus, the JB commander is not the head of a major operating program of the AF within the meaning of the PCS. The appellant typically functions as the sole attorney rather than the principal attorney. Her assignments are not so complex and competitive that she requires the assistance of other attorneys or specialists.

However, Level C fails to recognize the full nature of the appellant's functions that exceed those typical of an intermediate attorney but fall short of a senior attorney. The record shows that because of the appellant's extensive environmental law experience, AFLOA/JACE staff has limited its involvement in negotiations on major environmental projects of high local and regional political and social visibility. For example, while AFLOA/JACE typically is heavily involved in participating in administrative hearings, unlike Level C, the appellant was the only legal representative for the Air National Guard (ANG) component of [Organization] in a recent clean air case. The [state] DEP fined the ANG for violating the CAA. The case involved issues of sovereign immunity and Reid vapor pressure (RVP) of jet fuel which measures how quickly fuels evaporate. The higher a fuel's RVP, the more quickly it evaporates and the more it affects the ozone layer. Unlike Level C, she was involved in developing factual information necessary to craft legal approaches to negotiate the dismissal of the case and the fine in this high visibility

case. The appellant states ANG attorneys asked her to handle this case for them based on her expertise and familiarity with [state] law, the attorney general's office, and her litigation experience. Although she did not function as a member of the negotiating team typical of Level C, the appellant did not exercise full responsibility for the development and presentation of the case since she had to discuss her legal arguments with AFLOA/JACE staff prior to the administrative hearing to ensure they met AF's position(s) on clean air.

The GS-905 PCS shows attorneys draft legislation at Level E. As stated above under Factor 1, Nature of the case or legal problem, the drafting of legislation is a duty which falls within this element of Factor 2. The record shows the appellant has met with members of the [state] DEP and various other State officials regarding re-writing a State law to assess clean water fees to Federal agencies for construction projects, and securing an LSRP program participation waiver since Federal facilities do not fall squarely under the SRRA which impacts all Federal facilities throughout [state]. She has drafted State environmental legislation, drafted program waiver language, formulated arguments based on extensive law searches, and discussed environmental issues with State legislators. However, the appellant is required to discuss her arguments with and forward any draft legislation or program waivers to AFLOA/JACE staff, which includes the AF Eastern Regional Counsel, and/or AFLOA/JACE-FSC, to ensure the information supports AF interests, and there is uniformity in AF actions before taking any further steps. Unlike at Level E, the appellant does not evaluate proposed legislation and waivers in terms of its foreseeable effect on agency programs, policies, procedures, regulations, methods of operation, and extent of operation, and on existing legislation. This function is performed by AFLOA/JACE staff. As the environmental law expert at [Organization], the appellant recommends which legal arguments to use or provides insights into local environmental issues, but it is AFLOA/JACE who states AF's position(s) on the subject. The appellant's work only directly affects the environmental issues of [Organization]. While she shares her approaches to legal issues with attorneys at other Federal facilities, including other agencies, those attorneys work with their own higher-level agency environmental law staff on issues which impact their facility. Because the position falls between Levels C and E, Level D is assigned.

(2) Supervision and guidance received

The appellant's position meets and, in some respects exceeds Level C. At that level, attorneys are expected to independently plan, organize, and conduct studies of run of the mill legal problems, cases or legislative proposals encountered in their respective programs. The supervisor is apprised of any unusual circumstances, background information, and policy considerations, but otherwise work independently in investigating facts, searching legal precedents, defining the legal and factual issues, drafting necessary legal documents, and developing conclusions and recommendations. Completed work is normally assumed to be technically accurate. All written work is reviewed for soundness of approach and argument, application of legal principles, and consistency with governing policy and regulations. In contrast, the appellant's assignments flow directly to her as the office expert in environmental law, and she completes her review of the documents thus received without any supervisory involvement. Her supervisor reviews contracts for technical adequacy as an expert in contracting law. He expects her to deal directly with JB managers, [Organization], and AFLOA/JACE staffs

on environmental program issues. The appellant keeps her supervisor informed of the status of significant issues and discusses the more sensitive ones with him before taking action.

Level E, however, is not met. At that level, the attorney is expected to carry out any assignments within the area of responsibility without preliminary instruction, although the supervisor may discuss the significance of the problem and give background information, with the attorney proceeding independently from that point onward. However, the high degree of professional independence depicted at this level also assumes the performance of the more difficult and complex assignments otherwise associated with Level E, such as investigating cases and recommending prosecution, reviewing proposed agency decisions, and preparing and presenting cases at hearing or trial. Since the appellant does not perform work of this scope and complexity as discussed under Factor 1, her position cannot be fully credited at Level E in terms of the relative lack of supervisory controls since she is not operating with an equivalent level of responsibility. Because the appellant's position falls between Levels C and E, Level D is assigned.

(3) Personal work contacts

The appellant's work contacts meet and, in some respects, exceed Level C. In providing legal assistance on environmental issues, she has regular contact with JB civil engineer, environmental, and contracting staffs. She advises installation officials on legal questions and interpretations of law, and may suggest wording for inclusion in environmental documents. The appellant has contacts with environmental officials at NJ State and local agencies. Similar to Level C, the appellant also participates as part of a team of JB environmental staff in negotiations between the installation and various environmental regulatory agencies on regulatory issues. She meets with [Location], State Agricultural Development Committee (SADC), and [Location] staffs on open space and farmland preservation issues as part of the REPI program.

The appellant's position does not meet the types of personal contacts described at Level E. Unlike that level, she does not routinely confer or negotiate with top administrative personnel in the agency, i.e., USAF, or equivalent State or local government personnel on important legal and policy questions. Rather, as discussed below, she routinely works with State and county government personnel on matters of mutual interest and on operational program issues concerning the application of established law and policy. She is not involved in advising and assisting congressional committees and their staffs in drafting Federal legislation, and the duties of her position do not require that she regularly try cases before courts or administrative bodies. Although the appellant has tried cases before administrative bodies, e.g., ANG clean air case, she did not exercise full responsibility for the development and presentation of the cases and so cannot be credited with meeting Level E.

However, Level C does not adequately recognize the more difficult contacts presented in the appellant's work. The appellant's previous employment as a [state] Deputy Attorney General has enabled her to deal directly with the highest levels of the [state] DEP and other State agencies. Rather than referring proposed settlements or compromise offers to her supervisor with recommendations on how to deal with NOV's typical of Level C, she was able to have one

NOV rescinded. The appellant did this by working directly with the Defense Logistics Agency (DLA), the owner of the fuel product in aboveground tanks on the JB, to have the tanks inspected and [state] DEP agreeing to extend the timeframe for the tank inspections. As stated earlier, [state] is densely populated and [Organization] is located in the ecologically sensitive Pinelands. Because [state] has more NPL sites than any other State and a special State commission overseeing land use in the [Location], soil, water, and air quality, construction and other ecological issues receive intense public and press scrutiny. The appellant has spent many hours working with [Location] County officials to determine which parcels to purchase through DoEs in order to restrict encroachment on the JB which may impact the installations mission and the quality of life of the residents in the surrounding communities. As the legal representative on major JB NPL issues that include potential threats to air safety and quality, the appellant is dealing with sensitive and highly visible public issues that exceed those typical of Level C. While attorneys at Federal facilities throughout the northeast region may follow how the appellant deals with environmental issues at the, JB those attorneys are required to work through higher-level environmental law personnel within their agency to determine how to handle such issues at their own facility. Since the appellant's position falls between Levels C and E, Level D is assigned.

(4) Nature and scope of recommendations and decisions

The nature and scope of the appellant's recommendations and decisions meet Level C, but fail to meet Level E. Similar to Level C, any recommendations the appellant makes outside the agency, or to administrative officials at higher levels, are reviewed and endorsed with the appropriate [Organization] and/or AFLOA/JACE staffs. Typical of Level C, she replies to requests for legal advice and interpretations on a variety of environmental issues arising out of the day-to-day program operations of the JB.

Although the recommendations characteristic of Level E are similar to those described at Level C, unlike Level E the legal advice provided by the appellant is not given directly to heads of agency programs, bureau chiefs, cabinet officers, congressional representatives, etc. The appellant primarily deals with operating installation staff. Her dealing with the [Organization] Commander also does not equate to the organization levels described under Level E. The record shows she has provided legal guidance to FAA civilian attorneys, and [Organization] and AFLOA/JACE staffs on various environmental issues. The legal guidance the appellant provides is subject to review for soundness of approach, argument, applicability of legal principles, and adherence to the agency's position, rather than being considered as tantamount to final decisions as at Level E. Therefore, Level C is assigned.

We note the appellant states she signs Administrative Consent Orders which is a negotiated agreement to resolve a Notice of Violation (NOV), e.g., violating CAA, issued by a regulatory agency such as [state] Department of Environmental Protection against the JB and includes a corrective action and possibly a fine. The record shows no delegation of authority has been found authorizing the appellant to sign Administrative Consent Orders. Since such signatory authority is not addressed in and, thus, is not significant for purposes of applying the GS-905 PCSs grading criteria, we have not discussed this issue further in this decision.

Summary

Type II is credited for *Nature of the case or legal problem* and Level D is credited for *Level of responsibility* since three elements are evaluated at Level D, and one at Level C. By application of the Grade-Level Conversion Chart in the GS-905 PCS, a Type II, Level D position converts to grade GS-13.

Decision

The appellant's position is properly classified as Attorney-Advisor (General), GS-905-13.