

U.S. Office of Personnel Management  
Office of Merit Systems Oversight and Effectiveness  
Classification Appeals and FLSA Programs

Philadelphia Oversight Division  
600 Arch Street, Room 3400  
Philadelphia, PA 19106-1596

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

**Appellant:** [appellant's name]

**Agency classification:** Attorney-Adviser (General)  
GS-905-13

**Organization:** Office of Legal Counsel  
[organization]  
U.S. Department of the Air Force  
[location]

**OPM decision:** Attorney-Adviser (General)  
GS-905-13

**OPM decision number:** C-0905-13-07

/s/ Robert D. Hendler

---

Robert D. Hendler  
Classification Appeals Officer

March 29, 2002

---

Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), 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* (PCS's), appendix 4, section G (address provided in appendix 4, section H).

## **Decision sent to:**

[appellant's name]  
[appellant's address]

[name]  
Director, Civilian Personnel  
[organization]  
[address]  
[location]

Ms. Mary Johnson  
Chief, Civilian Policy  
HQ USAF/DPFC  
U.S. Department of the Air Force  
1040 Air Force Pentagon  
Washington, DC 20330-1040

Ms. Judy Mayrose  
HQ USAF/DPFC  
U.S. Department of the Air Force  
1040 Air Force Pentagon  
Washington, DC 20330-1040

Mr. Charles A. Huerta  
Director, Civilian Personnel Operations  
HQ AFPC/DPC  
U.S. Department of the Air Force  
550 C Street West, Suite 57  
Randolph Air Force Base, TX 78150-4759

Ms. Janice W. Cooper  
Chief, Classification Appeals  
Adjudication Section  
Department of Defense  
Civilian Personnel Management Service  
1400 Key Boulevard, Suite B-200  
Arlington, VA 22209-5144

## **Introduction**

On November 2, 2001, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a position classification appeal from [appellant's name]. The case was received by the Philadelphia Oversight Division for adjudication on December 15, 2001. His position is currently classified as Attorney-Adviser (General), GS-905-13. The appellant works in the Office of Legal Counsel, [organization] ([acronym]), Department of the Air Force, [location]. We have accepted and decided this appeal under section 5112(b) of title 5, United States Code (U.S.C.). OPM received the agency appeal administrative report on November 19, 2001, and comments on the report from the appellant on January 18, 2002.

The appellant appealed the classification of his position to the Defense Civilian Personnel Management Service (CPMS) on April 6, 2001. On June 28, 2001, the CPMS issued its decision that the position's current classification was correct. He then appealed to OPM, again requesting that the position be upgraded to Attorney-Adviser (General), GS-905-14.

## **General issues**

In his October 25, 2001, appeal letter, the appellant stated that his position should be at the GS-14 grade level because it is a Type III, Level D or a Type II, Level E position. In supporting the latter rationale, he said that Level E should be credited to all four elements of Factor 2, Level of responsibility. He disagreed with the CPMS' evaluation of his position as Type II, Degree D. The appellant stressed the world-wide applicability of his work to the Air Force Nonappropriated Fund (NAF) employee benefits plans and human resources (HR) functions. In a November 19 letter to the Dallas Oversight Division, the appellant asked whether OPM would either refer to or rely on the CPMS decision. He stated that the CPMS decision was in error because it is based upon a significantly erroneous interpretation and application of the General Attorney Series, GS-905 PCS and because it is based on an erroneous factual description of his position.

In its December 4 letter, the Dallas Oversight Division informed the appellant that the CPMS decision would be only one piece of information reviewed during the analysis of his position, and advised that he could comment on that decision. In his letter of January 18, 2002, the appellant modified his appeal rationale. He stated that his position should be credited as Type III for Factor 1 because his position met Feature 1, Part 1. The appellant stated that elements 1 (Nature of functions) and 3 (Personal work contacts) supported Level E, but did not take issue with CPMS' evaluation of elements 2 (Supervision and guidance received) and 4 (Nature and scope of recommendations and decisions) at Level D.

By law, we must classify positions solely by comparing their current duties and responsibilities to OPM PCS's and guidelines (5 U.S.C. 5106, 5107, and 5112). Other methods or factors of evaluation are not authorized for use in determining the classification of a position, e.g., evaluating the organizational placement of legal positions rather than the difficulty and complexity of the legal issues dealt with on a regular and recurring basis, and the agency's cost savings in using the appellant rather than hiring outside attorneys. Our decision sets aside all previous agency decisions regarding the classification of the position in question. Information contained in those decisions and comments by people knowledgeable of the appellant's work are relevant only insofar as they clarify the duties and responsibilities assigned to and performed by

the appellant. The appellant's abilities and experience may only be considered to the extent they are used to perform the work assigned by management and performed by him.

Implicit in the appellant's rationale is a concern that his position is classified inconsistently with other attorney positions, including GS-14 grade level attorney positions at USAF operating installations. Like OPM, the appellant's agency must classify positions based on comparison to OPM PCS's and guidelines. Section 511.612 of 5 CFR, requires that agencies review their own classification decisions for identical, similar, or related positions to insure consistency with OPM certificates. Thus, the agency has the primary responsibility for insuring that its positions are classified consistently with OPM appeal decisions. If the appellant believes that his position is classified inconsistently with those of other attorneys, he may pursue this matter by writing to his agency headquarters HR office. In so doing, he should specify the precise organizational location, series, title, grade, duties, and responsibilities of the positions in question. The agency should explain to him the differences between his position and the others, or grade those positions in accordance with this appeal decision.

In both letters, the appellant stresses the scope of his work, e.g., likening his legal services to the USAF NAF 401(k) plan to the legal services provided to the Federal Thrift Savings Plan. His rationale primarily compares passages in his position description (PD) of record (# [number]) to the grade level criteria of the GS-905 PCS. 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 that make up the work performed by an employee. Position classification appeal regulations permit OPM to investigate or audit a position, and decide an appeal on the basis of the actual duties and responsibilities assigned by management and performed by the employee. An OPM appeal decision grades a real operating position, and not simply the work described in the PD. Therefore, this decision is based on the actual work assigned to and performed by the appellant.

### **Position information**

On November 9, 2001, the appellant and his supervisor, [name], Chief, Office of Legal Counsel, certified the accuracy of the PD of record as requested by his servicing HR office in response to our request for the appeal administrative report. The appellant works in [acronym], which is a field agency of Air Force [name], a directorate of the Headquarters U.S. Air Force (USAF), Deputy Chief of Staff, Installations and Logistics (ILV). [acronym] provides combat and community supporting services ranging from libraries and lodging to mortuary services.

The appellant primarily provides legal advice on NAF HR and related issues. The PD of record states that he devotes 40 percent of his time advising on employee benefit plans, including the USAF NAF Retirement, 401(k), Group Life Insurance, and Flexible Benefits Plans; and the Department of Defense (DoD) NAF Group Health Insurance Plan. He spends 10 percent of his time on labor-management relations matters and 10 percent of his time on NAF personnel policy and related issues. The appellant devotes 25 percent of his time in employment-related litigation, including defending workers' compensation claims, unfair labor practice charges filed with the Federal Labor Relations Authority, and equal employment opportunity (EEO) complaints. On assigned cases, he recommends whether to prosecute or defend cases in Federal court, prepares memoranda of facts and law, and serves as co-counsel with a Department of

Justice (DOJ) attorney if the case is litigated. He spends 10 percent of his time advising on statutory law, case law, administrative law, Comptroller General decisions and regulation, and 5 percent of his time recommending, drafting, and evaluating proposed legislation affecting his assigned program areas.

In reaching our decision, we carefully reviewed the information provided by the appellant and his agency, including his PD of record. The PD contains the major duties and responsibilities performed by him and we incorporate it by reference into this decision. In addition, we conducted telephone audits with the appellant on February 27 and 28, 2002, and a telephone interview with his supervisor on March 7. To clarify information provided during those audits, we conducted telephone interviews with [name], Chief, HR Division, [acronym] on March 12, [name], Chief, Benefits and Insurance Division, [acronym] and [name], Chief, NAF Policy, [organization], on March 14, and [name], NAF HR Program Manager, [organization], ILV, USAF on March 20. We carefully considered all information submitted by the appellant in his appeal, the agency appeal administrative report, and work samples provided by the appellant at our request.

### **Series, title, and standard determination**

The agency has placed the appellant's position in the General Attorney Series, GS-905, and titled it Attorney-Adviser (General). The appellant has not disagreed, and we concur with these determinations. The GS-905 PCS provides grade level criteria that must be used to evaluate positions in that series.

### **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 his January 18, 2002, comments on his agency's appeal rationale, the appellant did not disagree with his agency's decision that his position failed to meet Feature 1, Part 2, Feature 2 or Feature 3 for Type III under Factor 1. He also did not disagree with his agency's crediting Factor 2, Elements 2 and 4 at Level D. Based on our review of the appeal record, we agree. Therefore, we will not address those portions of the PCS in detail in our analysis of the position.

#### *Factor 1, Nature of the case or legal problem*

Three levels 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 labor 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, corporations, 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 involved 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 says that his position should be credited as Type III because it meets the first part of Feature 1. He points to his serving as Air Force's primary legal advisor on all NAF benefits plans, each of which has world-wide applicability. The appellant says that he is responsible for drafting all legal documents for each plan, assuring that they comply with every technicality of the expanding and complex laws and regulations that govern employee benefits, e.g., Employees' Retirement and Income Security Act of 1974, Internal Revenue Code, Uruguay Round of the General Agreement on Tariffs and Trades, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997 (the last four commonly known as the "GUST" Amendments) and the Economic Growth and Tax Relief Reconciliation Act of 2001. He points to his preparation of the Air Force's first 401(k) Plan Document that was successfully qualified by the Internal Revenue Service (IRS). He believes that his work is complicated by the fact that it is not always clear whether employee benefits law and regulation apply either to Federal government in general or NAF instrumentalities in particular which means that his work entails a high order of original and creative legal endeavor.

The appellant described his litigation work as characterized by complicated factual scenarios covering lengthy time periods, cases that involve application of complex statutory law, workers' compensation cases and EEO cases that involve highly technical treatment issues, and cases that require the preparation of complex pleadings and motions. He says that his work on proposed legislation in all NAF HR and related areas is not only inherently complex, but that he is the only Air Force attorney routinely practicing in the technical and complex area of benefits law on a day-to-day basis. The appellant stresses the world-wide nature of his NAF work, and the dearth of statutory law, case law, regulations and other guidance applicable to NAF matters. He says that he must develop Air Force-level legal positions involving highly complex and technical legal issues where existing precedent and guidelines are frequently either limited or non-existent. He contrasts this with Appropriated Fund (AF) HR and benefits work, where management has no duty or authority to bargain on pay and pay-related benefits.

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. While much AF

law does not apply directly to NAF HR and related programs, DoD and USAF policy is to mirror AF policy and regulations to the extent administratively feasible. For example, work samples provided by the appellant show that OPM regulations have been adopted in determining whether an employee is separated for gross misconduct and, therefore, is not eligible for continuation of health benefits coverage. While the Longshore and Harbor Workers' Compensation Act covering workers' compensation does not apply to AF employees, it has covered NAF employees since 1953 and has a substantial body of case law. Statutory and case law apply to issues brought before the EEO Commission, Federal Labor Relations Authority, and Merit Systems Protection Board. Law, regulation, and IRS code and rulings apply to NAF benefits plans and their practices.

As the [acronym] acknowledged expert in his assigned program areas, the appellant's work meets Type II where 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. Typical of such work, the appellant drafted his advice that the law establishing a DoD-wide NAF health benefits plan did not insulate AF activities from bargaining over agency/employee split of health benefits costs within a defined cost sharing range. Other examples of such work include advising plan managers on what language and information must be present to be accepted as a qualified domestic relations order; responding to such questions as whether amendments to AF leave policies in title 5 CFR, apply to NAF; and advising on how to cure individual employee noncompliance with the electronic funds transfer requirements in the Debt Collection Improvement Act.

Typical of Type II work, in the appellant's most complex cases it is highly arguable which precedents are applicable 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. The appellant's research into the issue of USAF NAF Retirement Plan overfunding, and his crafting of a special distribution plan reflect these demands. The appellant's ongoing responsibility for reviewing and analyzing frequent changes in benefits legislation, IRS rulings, and court decisions for potential effect on USAF NAF programs, and advising on how to deal with those effects reflects dealing with complicated Type II legal and factual issues. The appellant's most demanding EEO and workers' compensation cases involve Type II factual complexity. For example, the [name] EEO case grew out of an initial complaint followed by claims of reprisal. The case involved 50 witnesses and another 50 people were tangentially involved. Complex workers' compensation claims include cases with workers' compensation and EEO issues (e.g., sexual harassment resulting in pain and suffering and psychological disability to work), and cases with complex fact patterns, (e.g., disability due to multiple chemical sensitivity syndrome). Typical of Type II, these cases are strongly contested in formal hearings. While the AF NAF workforce is distributed world-wide, the workforce of approximately 26,000 people does not exceed the population impacted by Type II work, e.g., a large corporation. Individual cases handled by the appellant do not routinely exceed the large sums of money defined in the GS-905 PCS when adjusted for inflation.

The appellant's rationale quotes part of the first portion of Feature 1 for Type III work in the GS-905 PCS. However, the appellant's regular and recurring work does not compare favorably with the PCS examples for that Feature. Employee benefits programs operate within broadly defined DoD NAF policy that one component cannot provide greater benefits than other components



without approval. The appellant's legal advice to functional specialists on the legal implications of their program proposals is governed by a well-documented body of employee benefits laws, rules and regulations. For example, AF case law has established and confirmed that Federal health plans are not subject to State taxation. The appellant works within that established legal framework when he deals with states that attempt to tax NAF health plans. His work does not involve applying the Type III high order of original and creative legal endeavor to obtain a reasonable balance of conflicting requirements in establishing that legal position, such as in determining the legality of State and local taxation of the use of Federal government property by private business firms. Balancing benefits costs with the need to attract and retain a competent workforce 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. The appellant comments on proposed and/or drafts proposed legislation, e.g., portability of retirement benefits for employees moving between AF and NAF positions. While this may be tantamount to the final USAF position, it is not the DoD position or the Government's decision. This work also occupies too small a portion of the appellant's time to impact the crediting of this factor. Therefore, this factor is credited with Type II.

### *Factor 2, Level of responsibility*

This factor includes the nature of 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 respect to the majority of elements.

#### (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, he conducts legal research in connection with cases pending administrative hearings, e.g., EEO complaints and workers' compensation cases. He assists the U.S. Attorney in trials before courts of original jurisdiction and prepares arguments in appellate courts that are submitted through the U.S. Attorney. As at Level C, he researches questions from administrative officials of the employing agency, e.g., HR and Benefits and Insurance Divisions. These questions concern the interpretation and application of various HR, employee benefits and related laws and statutes, DoD regulations, and internal USAF regulations. He provides advice on questions regarding proposed policy, regulatory and legal changes, e.g., changes in employee benefits plans.

As at Level C, the appellant personally conducts research and sometimes investigation of facts posed by a legal problem, researching the relevant laws, regulations and precedents. For instance, he conducted research on the implications of a distribution of surplus funds from the AF NAF Retirement System, and determined how to update the USAF NAF 401(k) plan to meet GUST and other new requirements. As discussed in the PCS, much of his work involves

preparing memoranda to [acronym] program staff outlining the facts, legal issues, and precedents, and justifying his recommendations or conclusions. Typical of Level C, he serves as the assigned legal specialist and adviser on his assigned programs, i.e., HR, employee benefits and related programs for the Chief, Office of Legal Counsel. The appellant performs litigation functions typical of Level C which includes preparing and/or presenting the agency's case in administrative hearings. Work at Level C includes preparing charges, show cause orders, complaints, briefs, motions and other documents preparatory or incident to the trial of the case. The appellant's examining and cross-examining of witnesses, arguing motions before hearings officers, and summarizing the case are fully covered at Level C.

We found no evidence that his assignments meet any of the examples discussed under Level E. While he may recommend a USAF position on whether to litigate, the PCS reserves credit for this function to the agency responsible for conducting litigation in Federal courts, and for deciding whether to appeal decisions that were unfavorable to the Government. Unlike Level E, the appellant is not tasked on a regular and recurring basis, and for a significant amount of time i.e., 25 percent or more, to draft legislation, prepare complete reports on changes to basic legislation, or function as principal attorney in recommending policies and drafting procedures to implement new or amended legislation. Unlike presenting cases at Level C as sole attorney, cases at Level E are so complex that the employee acts as principal attorney in preparing and presenting cases and frequently matching skills against some of the most distinguished and highly paid legal talent in the country. While the appellant was principal attorney in the [name] EEO case, this is not typical of the appellant's work, and the case did not entail all of the other complicating aspects of Level E. The appellant does not act as legal counsel to the head of a major operating program of the department. This function is performed by the appellant's supervisor.

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 employee benefits and HR law experience, his advice is given great weight. Unlike Level C, he is involved in developing factual information necessary to craft legal approaches and to deal with high visibility issues, e.g., excess retirement funds distribution and the negotiability of health insurance cost sharing. Level C attorneys conduct legal research regarding the effects of proposed changes in policies or regulations. In contrast, the appellant has conducted research of laws, legal opinions, and precedent cases on NAF/AF retirement portability issues and formulated proposed approaches to legislative proposals to deal with groups of people who were not covered by previous legislation. The appellant's ongoing responsibility for benefits plan compliance with changing laws, regulations and IRS rulings, and guidance to program managers on the impact of those changes exceeds the nature of work found at Level C. Because the position falls between Levels C and E, Level D is assigned.

### (3) Personal work contacts

The appellant's work contacts meet Level C. In providing legal assistance on employee benefits, HR and related issues, he has regular contact with [acronym] program staff. He advises these officials on legal questions and interpretations of law, and suggests wording for inclusion in program documents. As at Level C, the appellant is required to present cases in administrative hearings and assists the DOJ Attorney in court. Similar to Level C, the appellant meets with State agencies over conflicts between Federal and State regulations, e.g., State attempts to tax Federal health plans.

The appellant's position does not meet the types of personal contacts described at Level E. Unlike that level, he does not routinely confer or negotiate with top administrative personnel in the agency (i.e., U.S. Department of the Air Force), or State or local governments on important legal and policy questions. These are functions vested in the Chief, Office of Legal Counsel position. He is not involved in advising and assisting congressional committees and their staffs in drafting legislation. Level E cites administrative hearings and appearing before court without specifying the contacts or distinguishing between them from Level C hearings and court contacts. The PCS structure describes increasing levels of difficulty. Level E must be viewed as referring to the most difficult level of contacts found at hearings for cases of Level E scope and complexity. Therefore, this relates to the type of work and resulting contacts that senior (Level E) principal attorneys have. To be comparable to Level E, the hearings must involve issues of considerable consequence or importance to the agency or Government and frequently involve matching professional skills against some of the most distinguished and highly paid legal talent in the country. Such contacts are not a regular and recurring part of the appellant's work.

However, Level C fails to recognize the full nature of the appellant's representational functions. Unlike Level C, his more expansive role as co-counsel in Department of Justice cases reflects presentation and argument skills beyond those expected of intermediate attorneys. Rather than participating in negotiations with State officials found at Level C, the appellant is the sole negotiator on State and Federal regulatory conflicts on complex Type II legal issues. Instead of participating in pre-hearing conferences on workers' compensation and EEO cases, the appellant is the Government's sole representative on these complex cases. Because the position falls between Levels C and E, Level D is assigned.

#### *Summary*

Level D is credited for *Level of responsibility* since all four elements are evaluated at Level D. 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-Adviser (General), GS-905-13.