

U.S. Office of Personnel Management
Division for Human Capital Leadership & Merit System Accountability
Classification Appeals Program

Atlanta Field Services Group
75 Spring Street, SW., Suite 1018
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Classification Appeal Decision
Under section 5112 of title 5, United States Code

Appellant: [appellant]

Agency classification: Equal Opportunity Specialist
GS-360-11

Organization: [organization]
[organization]
[organization]
Food and Nutrition Service
U.S. Department of Agriculture
[location]

OPM decision: Equal Opportunity Specialist
GS-360-11

OPM decision number: C-0360-11-01

/s/ Robert D. Hendler
Robert D. Hendler
Program Manager
Classification Appeals Program

August 23, 2005
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:

[appellant]
[address]
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Introduction

On March 24, 2005, the Atlanta Field Services Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant]. Her position is currently classified as an Equal Opportunity Specialist, GS-360-11. She works for [organizations], [name] Regional Office, Food and Nutrition Service (FNS), U.S. Department of Agriculture, in [location]. The appellant requests that her position be upgraded to GS-12. We received the complete appeal administrative report from the agency on May 10, 2005. The appeal has been accepted and processed under section 5112(b) of title 5, United States Code (U.S.C.).

General issues

The appellant makes various statements about her agency's review and evaluation of her position. In adjudicating this appeal, our only concern is to make our own independent decision on the proper classification of her position. Because our decision sets aside any previously issued agency decision, the actions previously taken by the agency in their review of the appellant's position are not germane to the classification appeal process.

The appellant provided a GS-360-12 position description from another region as a document supporting her requested classification. 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 the comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's position to others, which may or may not be classified correctly, as a basis for deciding her appeal.

Like OPM, the appellant's agency must classify positions based on comparison to OPM standards and guidelines. The agency also has primary responsibility for ensuring that its positions are classified consistently with OPM appeal decisions. If the appellant considers her position so similar to others that they all warrant the same classification, she may pursue the matter by writing to her agency headquarters human resources office. In doing so, she should specify the precise organizational location, classification, duties, and responsibilities of the positions in question. If the positions are found to be basically the same as hers, the agency must correct their classification to be consistent with this appeal decision. Otherwise, the agency should explain to her the differences between her position and the others.

In reaching our classification decision, we conducted an on-site audit with the appellant and interviews with her current supervisor, her previous acting supervisor, and the Regional Administrator. We have carefully reviewed all information furnished by the appellant and the agency, including the official position description (PD) of record which contains the major duties assigned to and performed by the appellant and we incorporate it by reference into this decision.

Position information

The appellant is assigned to PD number [#]. She and her supervisor certified the accuracy of the PD.

The appellant works to ensure that regional office actions comply with Equal Employment Opportunity (EEO) requirements and various aspects of the Civil Rights/EEO Program. This entails providing program advice to regional office and State and local agency personnel and assisting in the development, coordination, and implementation of the regional office's Civil Rights/Equal Employment Opportunity (EEO) Program as it pertains to food assistance program delivery to the public. Food assistance programs include the Food Stamp, Special Nutrition, Supplemental Food, and Nutrition Education Programs, and other related programs. The appellant spends 40 percent of her time investigating complaints alleging civil rights violations. She spends approximately 20 percent of her time planning and performing State compliance reviews and another 20 percent of her time monitoring and analyzing regional affirmative employment data and preparing reports. The appellant also spends 10 percent of her time providing training and 10 percent of her time providing technical assistance to regional office and State and local personnel involved in food assistance programs.

The appellant investigates and processes complaints concerning civil rights violations, both from program participants, or potential participants, and from FNS regional office employees. Complaints vary, but most complaints involve food stamp program participants alleging discrimination in benefit determinations and require the appellant to separate civil rights issues from program issues. She conducts inquiries into the facts of the complaint, including interviews with case workers and State or local agency staff, prepares reports of investigative findings, recommends corrective actions, and prepares draft decision letters for supervisory review.

The appellant plans for, coordinates, and conducts Civil Rights Program compliance reviews in the eight states within the region. She primarily performs reviews of the Food Stamp Program. The appellant uses applicable regulations, program guidance, and checklists to determine if the State agency has established and maintains an effective program public notification system; obtains, maintains and reports racial/ethnic data; requires/obtains written assurance of nondiscrimination compliance from local agencies; takes appropriate action in probable noncompliance situations to obtain voluntary compliance; and is not discriminating on the basis of handicap in FNS programs. She conducts similar reviews of primary and secondary program recipients, including county offices and school systems, and makes recommendations for corrective actions.

The appellant provides technical assistance in response to inquiries from Federal and State employees concerning title VI of the Civil Rights Act of 1964. She reviews and analyzes the region's affirmative employment progress reports and statistical data in order to develop the region's FNS Annual Affirmative Employment Program Accomplishment Report and other reports. She develops and presents program training to State and local personnel. For example, she developed a slide show on Alternate Dispute Resolution (ADR) and presented this to regional office employees. The appellant also developed and presented training to State and local agencies on civil rights compliance in the Summer Food Service Program in order to prepare them to properly administer the program.

Series, title, and standard determination

The agency classified the appellant's position in the Equal Opportunity Compliance Series, GS-360, titled it as Equal Opportunity Specialist, and applied the GS-360 classification standard for grade level analysis. The appellant does not disagree with the agency's series and title determination. We concur.

Grade determination

The GS-360 standard uses the Factor Evaluation System (FES) format, under which factor levels and accompanying point values are assigned for each of nine factors. The total is converted to a grade level by use of the grade conversion table provided in the standard. Under the FES, each factor level description in a standard describes the minimum characteristics needed to receive credit for the described level. Therefore, if a position fails to meet the criteria in a factor level description in any significant aspect, it must be credited at a lower level.

The appellant believes that her position should be credited at Levels 3-4 and a 5-4. She agrees with her agency's crediting of Levels 1-7, 2-4, 4-4, 6-3, 7-3, 8-1 and 9-1. After careful review of the appeal record, we concur with the uncontested agency factor level determinations. Our analysis of the factors contested by the appellant follows.

Factor 3 Guidelines,

This factor covers the nature of guidelines used and the judgment needed to apply them. The agency credited Level 3-3.

At Level 3-3, the specialist performs assignments covered by available guidelines such as laws, executive orders, regulations, precedent decisions, directives, written instructions, and manuals. However, many significant factual situations, issues, and equal opportunity problems are encountered during the assignment, which are not covered by guidelines, for which guidelines are general or vague, or for which guidelines are in conflict. The specialist exercises judgment in interpreting, adapting, or extrapolating from existing guidelines in order to arrive at a finding or conclusion, or to decide to take a particular course of action.

Level 3-3 is met. As at this level, the appellant is responsible for assignments that are covered by Federal laws and regulations governing EEO, civil rights regulations, precedents, and agency guides, such as the Civil Rights Compliance and Enforcement for the Food Stamp Program, the Department of Justice (DOJ) Title VI Legal Manual, and the DOJ Investigation Procedure Manual. Checklists and standard operating procedures cover most actions required of the appellant. However, like Level 3-3, the appellant encounters varying situations and issues in conducting both complaint investigations and compliance reviews that require judgment in applying the guidelines or precedents to individual cases and attempting to work out solutions with involved parties. In performing reviews and investigations, she must use judgment in separating the civil rights issues from program issues, e.g., why persons are disqualified for program assistance. She uses comparable Level 3-3 judgment in planning for and reviewing State program plans and operations, including primary and secondary recipients, to determine if

requirements are met, e.g., adequate methods are used by States in performing civil rights reviews or ensuring capture of racial/ethnic data. The appellant makes on-the-spot corrective action recommendations in non-precedent setting situations, briefs management in review close-out sessions, and prepares subsequent written reports supporting determinations and recommendations.

At Level 3-4, the specialist performs work covered by guidelines such as laws, executive orders, policy statements, and governmentwide or agency directives. In some cases the guidelines may include broadly stated or incomplete procedural manuals. These guidelines are often inadequate in dealing with unusual cases, such as investigating or settling precedent-setting discrimination cases. The employee uses initiative and resourcefulness in extending or redefining guidelines, or deviating from traditional principles and practices. For example, he or she solves unique equal opportunity problems, or develops or materially redesigns compliance methods or approaches.

Level 3-4 is not met. The appellant has available guidelines to apply in almost all areas in which she works and they are more specific than those identified at Level 3-4. Although she may occasionally develop office procedures, such as the Title VI complaint processing procedures list for her region, the appellant does not re-define guidelines or deviate from practices and principles. She is not responsible for making precedent-setting decisions. This authority is vested at the agency headquarters level.

Level 3-3 is credited for 275 points.

Factor 5 Scope and effect,

This factor covers the relationship between the nature of the work, i.e. the purpose, breadth, and the depth of the assignment, and the effect of work products, services, or programs both within and outside the organization. The effect measures such things as whether the work output facilitates the work of others, provides timely services of a personal nature, or impacts on the adequacy of research conclusions. The agency credited Level 5-3.

At Level 5-3, the work is to investigate and to analyze conventional charges of discrimination, individual equal opportunity problems and to recommend or negotiate resolution of the problems. The work results in resolution of individual discrimination cases and affects specific practices of individual schools, school systems or business firms.

Level 5-3 is met. As at this level, the appellant handles conventional charges of discrimination, typically concerning program delivery personnel and benefits under the Federal Food Stamp Program, and specific problems identified during program compliance reviews. The appellant's work also includes investigation of complaints from any of the approximately 140 FNS employees in the region and assistance to them on the civil rights aspects of their work. Examples of State compliance review findings range from technical errors such as the absence of a nondiscrimination statement on program informational material and the absence of documentation that civil rights training was provided within designated timelines to such substantive shortfalls as the thoroughness of investigation and proper legal citation in a report involving a sexual harassment complaint against a county employee. As at Level 5-3, her review

work, training, and technical assistance affects individual complainants and specific program operations in individual States and in organizations affected by the State program by pointing out practices creating barriers or other problems in program compliance and providing corrective actions that should be taken.

At Level 5-4, the work involves the solution of particularly difficult and historically unyielding equal opportunity problems through systematic enforcement efforts. Work results in resolution of a wide variety of problems ranging from individual or class action discrimination complaints to elimination of systemic barriers to equal opportunity such as a policies or widespread practices in a particular public or private institution. The work affects the equal opportunity of many persons.

Level 5-4 is not met. The appeal record shows that the appellant's work does not regularly and recurrently result in solutions to particularly difficult or historically unyielding equal opportunity problems. Agency guidelines and precedent generally cover the problems which the appellant identifies. Issues that are determined to be unusually difficult normally are referred to the agency headquarters office. The appellant investigates individual complaints of discrimination or specific program oversights or problems. While the compliance reviews may result in identification of systemic barriers in State program operations, the problems the appellant encounters generally are more limited than those identified at Level 5-4, e.g., required EEO statements may accidentally be left off announcements or there may be improper wording on signs in offices.

Level 5-3 is credited for 150 points.

Summary

| <i>Factor</i> | <i>Level</i> | <i>Points</i> |
|---------------------------------------|--------------|---------------|
| 1. Knowledge required by the position | 1-7 | 1250 |
| 2. Supervisory controls | 2-4 | 450 |
| 3. Guidelines | 3-3 | 275 |
| 4. Complexity | 4-4 | 225 |
| 5. Scope and effect | 5-3 | 150 |
| 6. Personal contacts | 6-3 | 60 |
| 7. Purpose of contacts | 7-3 | 120 |
| 8. Physical demands | 8-1 | 5 |
| 9. Work environment | 9-1 | <u>5</u> |
| <i>Total</i> | | 2540 |

The total of 2540 points falls within the GS-11 range (2355-2750) on the grade conversion table provided in the standard.

Decision

This position is properly classified as Equal Opportunity Specialist, GS-360-11.