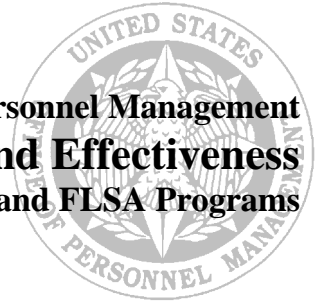


U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs



Chicago Oversight Division
230 South Dearborn Street, DPN 30-6
Chicago, IL 60604

Classification Appeal Decision
Under Section 5112 of Title 5, United States Code

Appellants:	[Appellants' names]
Agency classification:	Appeals Officer GS-930-13
Organization:	[Division name] U.S. Department of Agriculture [City, State]
OPM decision:	GS-930-13 title at agency discretion
OPM decision number:	C-0930-13-05

/s/

Frederick J. Boland
Classification Appeals Officer

February 6, 1998

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:

[name and address of appellant]

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[name and address of appellants' servicing
personnel office]

Introduction

The appellants contest their agency's decision classifying their position, number NA0561, as Appeals Officer, GS-930-13. The position is located in the [Division name], U.S. Department of Agriculture (USDA), in [City, State]. The appellants believe a higher grade is warranted given the variety and complexity of their work as well as the judgment that they must exercise in recommending final decisions of the Department.

The appellants also dispute the accuracy of the position description, arguing that the Director removed certain language from a previous version concerned with the requirement that decisions be of a quality to pass judicial review and with the impact decisions have on the public, among other changes in wording (e.g., changing "determine" to "recommend"). However, they acknowledge that these changes do not lessen or eliminate any of the duties and responsibilities described. For this reason, the position description is considered accurate in its representation of the duties performed and is acceptable for classification purposes. Other considerations relating to the level of supervisory review, authority delegated, and impact of the work are addressed in the Grade Determination section of this decision.

Position Information

The nine appellants report to a GS-14 Supervisory Appeals Officer and form the full complement of Appeals Officers in [Division name & component]. Through its three regional offices and approximately 85 Hearing Officers, [Division name] adjudicates appeals of adverse decisions rendered by the Farm Service Agency (FSA), Rural Development (RD), the Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA) concerning programs they administer. The appellants review first level appeal decisions concerning issues such as denial of participation in a USDA program, compliance with program requirements, payments to participants, and wetland determinations. Requests for such reviews (Director reviews) may originate with the original appellant or the agency head responsible for the program involved. About 820 requests for reviews of Hearing Officer decisions were received at [Division name] during the past fiscal year. During the same period, approximately 2,500 first level appeals were heard by its Hearing Officers throughout the country. [Division name] was established as an independent organization within the Office of the Secretary, consolidating separate appeals functions within USDA agencies, as a result of the USDA Reorganization Act of 1994. Its appeals procedures appear under 7 CFR part 11.

The appellants review disputed decisions using the agency record, the hearing record (including the taped proceedings), the request for review, and responses to that request by the other parties to the appeal in order to determine whether the decisions are supported by substantial evidence. Based on such review, the appellants prepare a final determination notice for signature by the Director, [Division name], that upholds, reverses, or modifies the Hearing Officer's decision, or remands the decision for further proceedings or a new hearing. The Director's determinations are essentially final administrative decisions, not subject to further appeal. They may, however, be reconsidered by the Director if a losing party raises a timely doubt concerning the decision's factual accuracy or consistency with legal and regulatory requirements. [Division name] decisions are reviewable and enforceable by U.S. District Court.

Analysis and Findings

Series And Title Determination

The appellants' duties fall within the type of work covered by the Hearings and Appeals, GS-930, series. This series includes positions that involve the adjudication of cases through formal or informal hearings that accord due process, arising under statute or under the regulations of a Federal agency, when the hearings are not subject to the Administrative Procedures Act. It also includes work like the appellants' that involves appellate reviews of prior decisions. The work typically requires the ability to review and evaluate investigative reports and case records, conduct hearings in an orderly and impartial manner, determine credibility of witnesses, sift and evaluate evidence, analyze complex issues, apply agency rules and regulations and court decisions, prepare clear and concise statements of fact, and exercise sound judgment in arriving at decisions.

The GS-930 series has no prescribed position titles. Agencies may designate the official title of positions in such cases. The *Appeals Officer* title used by the agency is consistent with instructions on constructing official titles appearing in the *Introduction to the Position Classification Standards*, Section III, H, 2.

Grade Determination

The GS-930 series has no grade level criteria of its own. Consequently, grade level determinations are made by comparison with a standard for a closely related kind of work. The OPM *Paralegal Specialist, GS-950, Series* standard, dated August 1986, belongs to the same occupational family as the appellants' position and, though not a perfect match to their work, shares similar characteristics in terms of the required analytical, research, writing, and judgment skills. In contrast to the General Attorney, GS-905, series standard applied by the agency, the Paralegal standard addresses administrative work, rather than professional work. Unlike Attorney work, Hearings and Appeals work lacks professional requirements. It does not require a degree, professional legal education, or admission to the bar. The differences in duties, responsibilities, qualification requirements, and screening process between the two occupations make the Attorney standard a difficult comparison. Without suitable adjustments for these significant differences, erroneous grading of the work is possible. Consequently, applying the Attorney standard to the appellants' work offers no benefits that cannot be derived from a more suitable standard, like the Paralegal standard, yet poses a greater risk of misgrading.

The Paralegal Specialist, GS-950, standard is in Factor Evaluation System (FES) format. This system requires that credit levels assigned under each factor relate to only one set of duties and responsibilities. Under FES, work must be fully equivalent to the factor-level described in the standard to warrant credit at that level's point value. If work is not fully equivalent to the overall intent of a particular level described in the standard, a lower level and point value must be assigned, unless the deficiency is balanced by an equally important aspect of the work that meets a higher level.

Work demanding less than a substantial (at least 25 percent) amount of time is not considered in classifying a position. Similarly, acting, backup, and other temporary responsibilities that are not regular and continuing are not considered.

Factor 1: Knowledge Required by the Position

This factor assesses the nature and extent of information or facts that employees must understand to do acceptable work (e.g., steps, procedures, practices, rules, policies, theories, principles, and concepts) and the nature and extent of the skills needed to apply those knowledges.

Among their claims, the appellants state:

In our capacity as Appeals Officers, through the [Division name] Director, we are responsible for a plethora of adjudication duties that require us to exercise “independent” judgment and “unusual discretion” for cases that present unique facts. As the “principals”, that is, employees in charge of the Director reviews, we are the eyes, ears, and analysts for all Director review requests. Appeals Officers must ensure that appeal decisions and appeal records are of a quality to pass the scrutiny of an administrative and/or judicial review (see the position descriptions of the Director and Appeals Officers). Listed below are highlights of the potential complexity of the above-cited cases completed in FY 1997:

- Evaluated information in controversial areas of scientific, financial, engineering, or other highly technical areas. Overall, the reviews conducted on the 135 cases cited above required an analysis of very intricate, complex instruments, reports, and plans such as real estate appraisals, cash flow statements, budgets and balance sheets, ratio and trend analysis, credit reports, delinquency workout plans, market studies, Promissory notes, mortgages, deeds of trust, security agreements, annual production history farm reports, farm inspection reports, soil surveys, and insurance actuarial tables.
- Ensured that the Hearing Officers conducted an evidentiary hearing (7 U.S.C. 6997) in which one or both sides were pro se or represented by an advocate or an attorney.
- Ensured that the record was adequate. (7 U.S.C. 6998).
- Evaluated the Hearing Officers determinations that are based upon a preponderance of evidence standard. Upon the Director's review, upheld, reversed, modified, remanded, or vacated the Hearing Officers determinations based upon a substantial evidence standard.
- Determined appealability and jurisdiction of an adverse decision by an Agency.
- In formulating the 135 decisions, the tasks required identifying, examining, weighing, and balancing a variety of conflicting evidence.

The 135 cases referenced in the appellants' statement represent those cases the appellants' representative personally reviewed roughly during fiscal year 1997. To keep the following analysis manageable, this decision focuses primarily on his personal case work as indicative, in most respects, of the group's case work. (Where it may not be representative of the group, it is so noted.) The 135 subject cases are part of about 830 cases, mostly originating from within FSA, that [Division name] Appeals Officers collectively reviewed during fiscal year 1997. The subject cases consist of approximately 110 cases from the Farm Service Agency, 22 from Rural Development, 2 from Natural Resources Conservation Service, and 1 from Risk Management. Most of them relate to crop disaster insurance or non-insured assistance (23 cases), farm loan acceleration or foreclosure (21 cases), farm

loan program servicing (15 cases), program eligibility or payment limitation (12 cases), or single family housing loan accelerations or foreclosures (13 cases).

Most of the subject cases demand the knowledge that comes with extended hearings and appeals experience, which equates to Level 1-7 of the GS-950 classification standard, where work requires in-depth knowledge of the application of various laws, administrative decisions and interpretations, rules, regulations, and policies pertaining to the administration of particular legal programs in substantive areas of law, or to particular types of legal cases and actions, and requires highly developed, specialized legal skills and proficiency. At Level 1-7, knowledges and skills are used to perform such duties as analyzing and evaluating the relevance of technical evidence or questions and researching relevant legislative history, precedent cases, decisions, and opinions. The appellants exercise the advanced technical proficiency implicit at this level to assess whether the legal rights of individuals were preserved during hearings, whether controlling regulations were properly identified, whether case evidence supports the Hearing Officer's finding of facts, and whether decisions are consistent with laws and regulations.

Some {Division name} reviews, however, significantly exceed Level 1-7's knowledge requirements. These are the highly complex cases that even employees with extended hearings and appeals experience have difficulty resolving. Such cases may involve Agency Administrator requests for reviews, which typically are based on the broader program implications of a decision rather than the facts of an individual case. (About 190 of the year's 830 cases stemmed from agency review requests.) Some may involve sweeping decisions and attract national attention (e.g., in the *Farmer Borrower Report*), such as those denying subordination of the Government's interest to delinquent FSA borrowers who otherwise might obtain private sector loans. Others may resolve unprecedented issues, affect critical program issues, or address unusually complex problems having broad impact on policy, operations, and large numbers of people. Such significant decisions are typically shared with staff nationwide, e.g., by mention in *[Division name] Notes*, the Division's in-house publication, which publicized in the past year a number of significant decisions, e.g., concerning credible evidence of crops, the permissibility of subordinating agency liens, the appropriateness of releasing rental proceeds to pay consultant fees, qualifying political subdivisions under the Agricultural Marketing Transition Act, tenants' rights to be included when extending Conservation Reserve Program contracts, and the effect of individual shareholder indebtedness on corporation eligibility for loans.

Because the GS-950 standard does not define a Level 1-8, another standard must be used to evaluate the portion of the appellants' work that exceeds Level 1-7. The OPM *Social Insurance, GS-105, Series* standard, dated December 1993, covers administrative work involving analytical knowledge and skills related to those the appellants exercise. Like the appellants, GS-105 employees determine benefit eligibility, analyze incomplete and conflicting data, and employ lay knowledge of professional fields to weigh the testimony of experts. The GS-105 standard notes that Level 1-8 work requires mastery of the principles, concepts, laws, and systems involved in program administration and of developments in the field sufficient to interpret and apply new laws and to resolve broad policy issues. It indicates that Level 1-8 employees are typically considered technical authorities in a program area by peers, operations managers, and policy makers and are called upon to perform a key role in resolving issues that significantly affect program administration; that they use their knowledge to

formulate and analyze options for agency decision memoranda and new guidelines resulting from legislation, major decisions by courts, changes in other related programs, or management decisions; or to develop rulings involving broad program areas.

The role the appellants occupy in their organization, i.e., final technical reviewers at the appellate level, calls for a high degree of knowledge of both USDA regulatory requirements pertaining to agricultural benefit programs and the adjudicative process in order to ensure that no errors of law or fact were committed in individual appeal decisions and that due process was observed in the case proceedings. Although this degree of knowledge may arguably be characterized as the mastery expected at Level 1-8, it is not often applied to assignments of the same breadth and impact envisioned at that level. The appellants' recommendations relate to the disposition of individual cases. Where unusual circumstances or other issues that have not been previously decided at the appellate level are encountered, a recommendation in any specific case may set the precedent for other appellate decisions with similar sets of circumstances. To the extent that these decisions may contradict erroneous agency guidelines in relation to the controlling regulatory or legal provisions, the agency may change its practices accordingly.

Consequently, only a portion of the 135 subject cases might involve significant interpretations of regulatory requirements. Examples of such cases would include, as noted above, agency reconsideration requests that are prompted because of the nationwide policy implications of a decision rather than simply the facts of the case; cases addressing program critical issues, defining new criteria, or establishing significant precedent; etc. Of the 135 cases in the work sample examined, a number involved application of expert knowledge to highly complex and broadly significant matters. Among them are the following, which serve as an illustrative, rather than exhaustive, listing of such cases from the sample.

[Division name] Log No. 96001514W was prompted by the Farm Service Agency's request to review a significant decision concerning continued participation in the Conservation Reserve Program (CRP). The [Division name] review determined a former tenant and party to the contract no longer held an interest in the CRP land and that extension of the CRP contract with the land owner was permissible even though regulations governing CRP typically require the consent of all parties involved for contract modification or extension. Interpretation of regulations in this case had important implications for nationwide administration of CRP, as evidenced by the Agency Administrator's request for a review of the Hearing Officer's decision. Other subsequent cases similar to this were contested in court or attracted nationwide agriculture attention (e.g., *Farm Journal*) because of the strongly opposed views concerning regulatory requirements.

[Division name] Log No. 9700567E involved 130 drainage districts in one county and 25 drainage districts in another. It affected nationwide practices concerning when projects are considered to commence, what constitutes active pursuit, and the applicability of blanket exemptions. The Agency Administrator requested a review of the Hearing Officer's decision, submitting a brief to bolster the agency's opposing rationale. The case was also exceptional because it examined whether county board supervisors might have status in a case usually

initiated by individual farmers. About 15 immediately subsequent cases followed this case's lead.

[Division name] Log No. 96001514W examined the legitimacy of a one year extension of a ten year CRP contract and the issue of a tenant's interest in the benefits derived from the contract when tenancy terminates during the life of the contract. This was a significant decision requiring expert interpretation of legal and regulatory requirements, was shared with staff nationwide through [Division name] Notes, and was the subject of Freedom of Information Act requests by attorneys considering related conservation appeals.

[Division name] Log No. 97000036E was a significant decision concerning annual acreage and commodity programs. It departed from long standing interpretations of program criteria by considering new means of proof, such as affidavits in lieu of field inspections, to determine the existence of crops used as the basis for setting the level of program benefits.

[Division name] Log No. 96001385E considered the eligibility of a non-profit organization for a community facility loan based upon its contract with the state to serve as a public school academy. The highly unusual circumstances of the case required expert judgment in examining the concept of "public entity" and determining the political boundaries of rural development assistance.

[Division name] Log No. 96001548W considered the esoteric and widely significant matter of whether or not agency failure to provide appeal rights notice constitutes an adverse decision falling under [Division name's] jurisdiction.

As required at Level 1-8, the above cases illustrate unusual complexity sufficient to confound fully experienced hearings and appeals staff. They evidence a need for expert knowledge and judgment and establish criteria for evaluating future cases or impact agency-wide practices as required at Level 1-8. Though they are unlike most of the cases the appellant resolves, they and others like them are a regular and continuing demand requiring a substantial (at least 25 percent) amount of the appellant's time. Because they also require, among other things, materially higher qualifications to adjudicate, these cases, rather than the lesser cases demanding most of the appellant's time, determine the credit level awarded. They are taken as indicative of the casework assigned to the other appellants; however, the agency is obligated to ensure sufficient cases of similar magnitude are assigned to all employees on the position description.

We evaluate this factor at Level 1-8 and credit 1550 points.

Factor 2: Supervisory Controls

This factor covers the nature and extent of direct and indirect controls exercised by the supervisor, the employee's responsibility, and the review of completed work. Controls are exercised by the supervisor in the way assignments are made, instructions are given to the employee, priorities and deadlines are set, and objectives and boundaries are defined. Responsibility of the employee depends upon the extent to which the employee is expected to develop the sequence and timing of various aspects of the work, to modify or recommend modification of instructions, and to participate

in establishing priorities and defining objectives. The degree of review of completed work depends upon the nature and extent of the review, e.g., close and detailed review of each phase of the assignment, detailed review of the finished assignment, spot-check of finished work for accuracy, or review only for adherence to policy.

At Level 2-4 (the highest level described in the GS-950 standard), the supervisor sets the objectives, resources, and scope of assignments. Within this framework, the employee independently plans and carries out the work, coordinating activities with professional and legal staff of the agency and with staff of other Federal activities. Employees at this level must use considerable ingenuity to anticipate program or case requirements, develop legal arguments and supporting evidence, resolve conflicting statements, or search for precedents. The supervisor is kept informed of actions involving potentially controversial or far-reaching issues. Completed work is reviewed only in terms of productivity and effectiveness in meeting requirements.

The appellants work independently in reviewing cases (e.g., listening to the taped hearing and reviewing the written record) and in drafting determinations. They are expected to independently analyze a wide variety of issues and complex problems and make well researched recommendations to the [Division name] Director. Their evaluations and conclusions, coupled with legal advisories that may be requested, form the basis for the Director's final decision. Because some of the work is of a highly critical or precedential nature, it is subject to close review by the Director. This is customary for such work and does not diminish the position's overall responsibility. None of the appellants' responsibilities, however, significantly exceed Level 2-4.

Level 2-5 is the highest level of independence and responsibility recognized under FES. Since it is an unusual level, it is not defined in either the GS-950 or GS-105 standards. In general, though, it involves the level of authority that typically accompanies responsibility for a significant program or function. Though the appellants have significant technical authority, others are ultimately responsible for administration of the appeals program. The [Division name] Director and their supervisor exercise substantial program control over the appellants' work in such general ways as analyzing USDA policies and determining their effect on the program, formulating and issuing policy statements governing the program, and establishing procedures to ensure efficient operations among staff.

We evaluate this factor at Level 2-4 and credit 450 points.

Factor 3: Guidelines

This factor covers the nature of guidelines and the judgment needed to apply them.

At Level 3-4 (the highest level described in the GS-950 standard), guidelines are limited to basic legislation, implementing regulations, and agency policies which must be carefully analyzed for general application. Legislative histories or precedent decisions may be ambiguous or apparently in conflict. The employee must use initiative and resourcefulness in interpreting and applying guidelines and precedents in non-routine situations without referring questions to others. In a number of situations, the employee must rely on past experience to evaluate the applicability of guidelines on

issues where conflicting decisions have not been resolved or where factual situations vary so widely that it is highly questionable as to which precedents can be adapted to specific matters.

The appellants' use of guidelines meets but does not significantly exceed Level 3-4. There are numerous guidelines available for use in determining many of the cases they review, including applicable program legislation, agency regulations and policy statements, precedent administrative and judicial review decisions, Office of General Counsel opinions, and oral and written directives from the Director, [Division name]. Many of these guidelines are of a very broad nature, requiring a high degree of skill and judgment in adapting them for application to cases reviewed, which Level 3-4 fully recognizes.

To significantly exceed Level 3-4, the appellants must be frequently involved in the establishment of precedents and the development of or interpretation of guidelines. It is an uncommonly high level and, consequently, not described in the GS-105 standard either. In general, though, employees at Level 3-5 not only apply expert knowledge, but are typically recognized as agency authorities in the development or interpretation of guidance in a national program functional area. They are frequently consulted by managers and employees throughout the agency on extremely complex or highly controversial issues involving conflicting laws or involving novel matters lacking guidelines. Though [Division name] must address equivalent matters on occasion, none of the appellants are assigned a sufficient number of such cases to be frequently immersed in such matters.

We evaluate this factor at Level 3-4 and credit 450 points.

Factor 4: Complexity

This factor covers the nature, number, variety, and intricacy of tasks, steps, processes, or methods in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

At Level 4-4, employees perform varied duties encompassing diverse and complex technical issues or problems. Factual situations vary significantly from assignment to assignment, information from different sources is in conflict, only indirect evidence is available on some issues, and the interpretation of such evidence is disputed. The employee must reconcile conflicting policies and facts, identify and elicit additional information, define the problem in terms compatible with laws, policies, and regulations, and weigh facts in order to formulate a legally and factually supportable position.

The complexity of most of the appellants' work is consistent with Level 4-4. The appellants review appeals encompassing diverse and complex technical issues related to such matters as eligibility for benefits under a variety of statutes (e.g., disaster assistance, housing and farm loans, financial assistance for conservation, and crop support payments). Because of this diversity of conditions for which benefits are requested, factual situations vary significantly and information provided by parties to the appeal often differ (e.g., rainfall amounts, crop production figures, value of loan security property). The appellants consider all submitted evidence in determining whether the Hearing Officer in each reviewed case made a legally and factually supportable decision.

At Level 4-5 (the highest level described in the standard), the employee serves as a technical authority performing work associated with the resolution of unusually complicated legal issues. For example, the employee may research esoteric statutory, regulatory, court, or administrative precedents, interpret equivocal or discrepant information from varied sources, evaluate ambiguous or confused technical data, and prepare comprehensive reports that serve as the basis for critical legislative, regulatory, judicial, administrative, or other legal arguments, interpretations, or opinions. The work is complicated by such features as disputed factual technicalities, events that must be reconstructed from circumstantial evidence, nuances upon which legal outcomes are determined, or problems that have been particularly resistant to solutions in the past. Cases are likely to extend over a period of years, involve major areas of uncertainty in methodology or interpretation, or involve new legal and technical developments or questions on which decisions rendered in different jurisdictions are at variance.

The wide range and intricacy of issues involved in cases the appellants decide, the conflicts they resolve, the rules and requirements they untangle, and the unusual circumstances they encounter are fully recognized at Level 4-4. However, a portion of their cases involve significantly greater complexity. Of the 135 cases reviewed as a work sample, those singled out under the Factor 1 discussion evidence unusually complex or esoteric issues whose resolution resulted in definitive criteria for settling future cases. These cases are equivalent to Level 4-5 complexity, but are a minor portion of the workload. However, since they demand a substantial amount of time to resolve, they are credited at Level 4-5 for the same reasons as given under Factor 1.

We evaluate this factor at Level 4-5 and credit 325 points.

Factor 5: Scope and Effect

This factor covers the relationship between the nature of the work (i.e., the purpose, breadth, and depth of the assignment) and the effect of work products or services both within and outside the organization. Only the effect of properly performed work is considered.

Scope

At Level 5-4 (the highest level described in the GS-950 standard), the purpose of the work is to (1) advise experienced co-workers on highly specialized problems; (2) monitor the consistency of case decisions throughout the agency and recommend the reopening of cases or the issuance of official agency interpretations; or (3) research unsettled issues and develop proposed agency positions.

The purpose of the appellants' work is analogous to Level 5-4, in that they apply their expertise to resolve cases presenting highly specialized or unusual issues and recommend the reopening of cases. The scope of their reviews do not significantly exceed this level, as would work requiring coordination of major segments of the agency.

The GS-105 standard indicates the scope of work at Level 5-5 is much wider than the appellants', being concerned with such matters as the analysis and resolution of broad program problems and issues of critical importance to the agency; planning the development and modernization of large operational support systems; development of agency-wide strategies to improving service or

productivity; establishment of innovative operational methods involving other agencies or programs; or the development of significant legislative, regulatory, or broad guidance recommendations affecting program operations; where these efforts involve coordination of major segments of the agency's operational, policy, and systems components and, in some instances, those of other agencies.

We evaluate Scope at Level 5-4.

Effect

As at Level 5-4 of the GS-950 standard, the appellants' work provides the foundation for precedents that have a broad impact since some of their reviews affect aspects of agency-wide benefit and assistance programs rather than just the individual parties to a case.

Level 5-5 work, described in the GS-105 standard, affects how key agency officials implement programs, the agency's capacity to resolve critical problems, and the timeliness and accuracy with which major legislative initiatives or judicial decisions are implemented. Some of the appellants' properly performed work may directly and significantly affect how agency administrators implement new initiatives, but the 135 case sample shows such work, or its equivalent, is rare.

We evaluate Effect at Level 5-4.

To receive credit for a factor level, both the scope and effect of the work must meet the level. The appellants' work meets Level 5-4 in both respects. Consequently, we evaluate this factor at Level 5-4 and credit 225 points.

Factor 6: Personal Contacts

Factor 6 includes face-to-face contacts and telephone and radio dialogue with persons not in the supervisory chain. Levels of this factor are based on what is required to make the initial contact, the difficulty of communicating with those contacted, and the setting in which the contact takes place (e.g., the degree to which the employee and those contacted recognize their relative roles and authorities). Contacts credited under Factor 6 must be the same contacts considered under Factor 7.

Level 6-3 personal contacts are generally with claimants, appellants, their attorneys, potential witnesses, and industry representatives in moderately unstructured situations where each contact is different and the employee must define the purpose of the meeting and clarify the roles of the various participants. Contacts may be initiated by the employee, the person requesting information or assistance, or another party and frequently involve unstructured face-to-face meetings.

The appellants' contacts are primarily with employees within their immediate work unit. Their review function is very difficult and important work, but does not typically require them to contact persons other than their immediate associates. The statutory ban on *ex parte* communications relegates most external contacts to the hearing room. The appellants otherwise share many of the same responsibilities as [Division name's] Hearing Officers, who engage in Level 6-3 and 7-3 contacts and

whose work they review. Their responsibility for appeals is at least equal to their Hearing Officer counterparts. Consequently, they should not be penalized on Factors 6 or 7 because constraints imposed to ensure the integrity of the review process make these factors largely inapplicable. In recognition of these unique circumstances, they are awarded the same credit as those whose work they review.

We evaluate this factor at Level 6-3 and credit 60 points.

Factor 7: Purpose of Contacts

This factor addresses the purpose of personal contacts, which may range from factual exchange of information to situations involving significant or controversial issues and differing viewpoints or objectives.

At Level 7-3, the purpose of contacts is to motivate persons who may be fearful or uncooperative to testify at hearings or in court appearances or to provide critical information, such as that needed to develop aspects of a case or to locate missing witnesses or defendants; to gain voluntary compliance or agreement with persons or groups who have divergent allegiances, interests, or objectives; to convince persons of the correctness of factual, technical, procedural, or other interpretations despite the existence of other differing interpretations and legal positions; or to otherwise influence skeptical or uncooperative persons by the use of tact, persuasiveness, and diplomacy in controversial legal situations.

We evaluate this factor at Level 7-3, for the same reasons as given under Factor 6, and credit 120 points.

Factor 8: Physical Demands

This factor covers the requirements and physical demands placed upon the employee by the work assignment. This includes physical characteristics and abilities and physical exertion involved in the work.

As at Level 8-1, the appellants' work is sedentary. It involves some physical activity such as walking, standing, bending, carrying of light items such as papers and books, but unlike Level 8-2, it presents no special physical demands.

We evaluate this factor at Level 8-1 and credit 5 points.

Factor 9: Work Environment

This factor considers the risks and discomforts in the employee's physical surroundings or the nature of the work assigned and the safety regulations required.

As at Level 9-1, the appellants' work is performed in an office setting. Safety precautions normal to an office working environment are required. Their work requires no special precautions that would warrant more than minimal credit (e.g., as when visiting industrial work sites where there is exposure

to high noise levels, heat, and fumes and a need to use safety helmets, goggles, coveralls, or similar protective gear.

We evaluate this factor at Level 9-1 and credit 5 points.

FACTOR LEVEL POINT SUMMARY

Factor	Level	Points
1	1-8	1550
2	2-4	450
3	3-4	450
4	4-5	325
5	5-4	225
6	6-3	60
7	7-3	120
8	8-1	5
9	9-1	5
	Total:	3190

The table above summarizes our evaluation of the appellants' work. As shown on page 4 of the standard, a total of 3190 points falls within the GS-13 grade range (3155 - 3600).

Decision

The proper classification of the appellants' position is GS-930-13, with the title according to agency discretion.