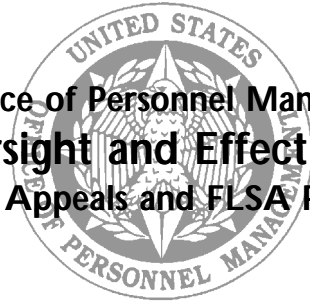


U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs



Atlanta Oversight Division
75 Spring Street, SW., Room 972
Atlanta, GA 30303

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

Appellant: [Appellant]

Agency classification: Consumer Safety Officer
GS-696-12

Organization: Food and Drug Administration
Department of Health and Human
Services

OPM decision: Consumer Safety Officer
GS-696-12

OPM decision number: C-0696-12-01

Kathy W. Day
Classification Appeals Officer

5/26/99
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]

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Introduction

On January 26, 1999, the Atlanta Oversight Division, U. S. Office of Personnel Management (OPM), accepted an appeal for the position of Consumer Safety Officer, GS-696-12, [organizational location], Food and Drug Administration, Department of Health and Human Services, [geographical location]. The appellant is requesting that his position be classified as Consumer Safety Officer, GS-696-13.

The appeal has been accepted and processed under section 5112(b) of title 5, United States Code. This is the final administrative decision on the classification of the position subject to discretionary review only under the limited conditions and time outlined in part 511, subpart F, of title 5, Code of Federal Regulations.

General issues

The appellant contends that, over the last few years, the duties and responsibilities of his position have been significantly expanded as a result of shifts in several areas of the agency's mission. He specifically cites, in addition to the traditional interest on the purity and safety of foods, the agency's focus on biologics, drugs, and devices; the new mechanisms used in dealing with regulated industries and state agencies; and the complexities involved in interactions with counterparts at the state, local, and Federal levels. He also contends that, in determining the grade of his position, proper consideration has not been given to his role in inspections and investigations which later result in legal actions against violators by state and Federal law enforcement organizations. He feels that his activities warrant the classification of his position as GS-13.

The appellant also contends that his position description is too simplistic and general in nature and does not completely describe the change in the agency's priorities or the new emphasis on customer relations nor does it fully describe the knowledge, judgment and responsibility needed to perform the day-to-day duties of the position.

OPM considers a position description adequate for classification purposes when it is considered so by one knowledgeable of the occupational field involved and of the application of pertinent classification standards, principles, and policies, and supplemented by otherwise accurate, available, and current information on the organization, functions, programs, and procedures concerned. We find the current position description adequate. For purposes of this appeal, our decision will be based on the official position description of record supplemented by the information provided by the appellant and his agency.

Position information

The appellant is assigned to position description [#]. The supervisor and agency have certified to the accuracy of the position description.

The appellant functions as the Consumer Safety Officer (Resident-in-Charge) for the [organizational location]. In this capacity, he is responsible for enforcing and obtaining compliance with Federal laws and regulations protecting the public from contaminated, dangerous, defective, or mislabeled foods, drugs, cosmetics, medical devices and equipment, toys, and hazardous substances. He independently inspects and prepares reports on the manufacturing facilities, practices, and quality control operations of businesses whose products are subject to regulation by the Food and Drug Administration; collects product samples for analyses to determine compliance with regulatory requirements; and conducts investigations of reported illnesses, injuries, or deaths resulting from contaminated, defective, or otherwise unsafe products and devices. The appellant also has responsibility for providing training to familiarize other agency employees with the various aspects of the procedures and techniques related to the agency's enforcement activities. He represents the agency and explains its activities in meetings, seminars, and workshops attended by industry representatives, the general public, and officials of state, local and other Federal agencies; and coordinates with representatives of state, local and Federal agencies and organizations with enforcement responsibilities in the areas of public health, foods, drugs, and hazardous substances. He assists U.S. Attorneys pursuing legal action against violators by helping with case preparation and by testifying as a fact witness in court. As the Resident-in-Charge, the appellant is also responsible for maintaining the Resident Post's facilities and equipment; planning work activities; resolving problems that occur on a day-to-day basis; and generally coordinating all activities occurring at his location.

The appellant works under the supervision of the Area Supervisor who has responsibility for setting overall objectives; developing monthly work plans for subordinates; providing guidance on case development in unusual circumstances; and conducting technical reviews of reports prepared by subordinates. The appellant is physically located in another state and is responsible for independently carrying out assignments including those involving difficult and sensitive situations. He may seek supervisory guidance on matters which are not covered by regulations or precedents, or instances where there is a recommendation that legal action be pursued.

Series determination

The agency placed the position in the Consumer Safety Series, GS-696. The appellant does not contest the placement of his position in this series.

The Consumer Safety Series, GS-696, includes professional positions concerned with enforcing the laws and regulations protecting consumers from foods, drugs, cosmetics, fabrics, toys, and household products and equipment that are impure, unwholesome, ineffective, improperly or deceptively labeled or packaged, or in some other way dangerous or defective. These positions require knowledge of various scientific fields such as chemistry, biology, pharmacology, and food

technology. Consumer Safety Officers identify substances and sources of adulteration and contamination, and evaluate manufacturing practices, production processes, quality control systems, laboratory analyses, and clinical investigative programs.

The appellant's position is properly placed in the Consumer Safety Series, GS-696.

Title determination

The appellant does not contest the title of his position, and we agree that the title *Consumer Safety Officer*, authorized by the GS-696 series standard, is appropriate for the position.

Standard determination

Consumer Safety Series, GS-696, June 1972.

Grade determination

Grades for Consumer Safety Officer positions are determined on the basis of two broad criteria: *Nature of assignment* and *Level of responsibility*. The position is evaluated as follows:

Nature of assignment

This factor deals with (1) the complexity of the assignments; (2) the purpose and urgency of inspections and investigations; and (3) the attitude of the establishment management and their history of violations. These elements are important in determining the level of knowledge, skill, and ability required to complete assignments.

(1) The complexity of assignments is a significant factor at each grade level. Warehouses, distributors, and retail outlets are ordinarily among the simplest to inspect. Production establishments are more difficult, requiring more in-depth knowledge of commodities and additional knowledge of manufacturing processing techniques. The complexity of assignments depends on:

- the inherent complexity of products - their ingredients and chemical and physical characteristics, their stability and susceptibility to contamination, and the importance of purity and uniformity;
- the volume and diversity of products - the variety of ingredients and the variety and sophistication of equipment and processes; and

- the sophistication and complexity of quality assurance systems - laboratory analyses of raw materials and products, laboratory and clinical testing, scheduling of operations, cleaning and maintaining equipment and facilities, cross-checking steps in process, and handling and storing of ingredients, products, labels, containers, etc.
- (2) The purpose and urgency of assignments range from routinely scheduled inspections to special investigations; from limited inspection for specific information about a phase of an operation to complete inspections of total operations; and from poor manufacturing practices or technical violations that present no immediate hazards to serious health hazards that must be identified and removed immediately.
- (3) The attitude of establishment management and their history of violations are bases for judging the likelihood of encountering violations, whether they might be serious or intentional violations, and the probable difficulty of obtaining accurate and adequate information.

The GS-696 standard identifies two types of Consumer Safety Officer assignments typical of the GS-12 level. The first type of assignment requires the use of in-depth knowledge of an industry or class of commodities, including an excellent knowledge of raw materials, products, manufacturing practices, and related problems of the industry. The employee is required to keep abreast of the latest technological changes and conditions of firms in their districts and related firms and activities in other districts. Assignments frequently involve new problems that are lacking in well-defined guidelines and precedents. The employee plans, coordinates and conducts inspections and investigations with numerous complications, where timeliness, skill, and tact are critical. The Consumer Safety Officer plans and serves as team leader of teams conducting intensive investigations of major manufacturers. He/she coordinates the work of the team which may include other Consumer Safety Officers, inspectors, and scientific personnel (typically chemists and microbiologists) and ensures that the final report and recommendations represent a unified view. The employee also coordinates the district's participation in nationwide investigations of major crises affecting the health and safety of the general population and involving major industries.

The second type of assignment involves situations where, in addition to the full range of assignments described at the GS-11 level, the GS-12 employee is the sole or senior Consumer Safety Officer located at a resident post. He/she conducts the full range of inspections and investigations within the geographical area covered by the post and is also required to:

- Maintain liaison, plan, and coordinate activities with state and local public health officials, representatives of other Federal agencies, marshals, U.S. Attorneys, and court officials.

- Evaluate the urgency and seriousness of reports of consumer injuries and deaths and complaints of violative products. Respond to inquiries from industry and consumers requiring scientific and technical advice. Use judgment and a good knowledge of agency policies and priorities to set priorities for handling many unscheduled matters that come directly to the office.
- As an agency representative, inform the general public about agency programs, violative products, legal actions, etc.

At GS-13, the Consumer Safety Officer performing compliance work applies an extensive knowledge of the pertinent laws and regulations, precedent cases, procedures for taking legal actions, and the nature and extent of evidence required to support legal actions. In addition, he/she utilizes a thorough understanding of agency policies and priorities, and the provisions and intent of new programs and regulations that are not well-defined, to make judgmental decisions regarding legal actions and give advisory opinions. By comparison, GS-12 employees perform compliance work in a developmental capacity and give advisory opinions on well-established programs and regulations.

At the district office level, the GS-13 Consumer Safety Officer is the primary source of expertise within the geographic area covered on the interpretation of the laws, regulations, and programs. He/she advises managers, inspectors, and laboratory analysts on a wide range of regulatory questions; reviews reports of inspections, investigations, and laboratory analyses for violations; determines the sufficiency of the evidence (requesting further investigation where necessary); and recommends further legal action. The Consumer Safety Officer independently acts upon the full range of violations occurring in the district, including those that involve emergency situations, uncooperative industry officials, ambiguous or dubious evidence, and lack of precedents and guidelines. By comparison, GS-12 employees primarily deal with routine compliance issues and problems for which precedents and guidelines have been established.

In recommending legal actions, GS-13 employees consider the seriousness of violations, the hazards involved, the violator's history, precedent court decisions, and consumer interest, in addition to the legal and regulatory requirements.

Illustrative of assignments typical of the GS-13 level are:

- preparing support for legal contests, the outcome of which will have a significant impact on major firms regulated by the agency;
- advising industry and agency management on the interpretation, intent, or impact of new programs, legislation, court decisions, and scientific findings; and

- developing legal cases that are complicated by (1) varied, inconsistent, or insufficient evidence and information; (2) extreme public interest; (3) financially powerful industries; or (4) new or previously unknown hazards.

The GS-12 level is met. The work performed by the appellant is typical of assignments identified in the second category of GS-12 work. As the Resident-in-Charge, he is the senior Consumer Safety Officer and is responsible for independently conducting inspections and investigations of and preparing reports on large and small businesses and facilities involved in the manufacture, processing, distribution, storage, or selling of a broad category of foods, drugs, cosmetics, medical devices, etc., which are regulated by his agency in the geographical area covered by his post. His responsibility is to ensure that products conform with agency enforced regulatory requirements for purity, effectiveness, labeling and packaging, and safety. He is also responsible for coordinating all of the inspectional and investigational activities conducted out of his post. The appellant's activities frequently entail inspections and investigations of products having unusual manufacturing processes, a wide variety or number of food standards, additives or ingredients, quality control processes, relatively complex labeling requirements, or hostile and uncooperative management. In some situations, he collects product samples which will be subjected to laboratory analysis or testing to ensure that requirements are met and to prevent harm to consumers. He conducts investigations in instances of illness, injury, or death involving foods, drugs, devices and other products regulated by his agency. He is also responsible for inspecting facilities containing regulated products following disasters such as fires, floods, storms, etc., to ensure that the products are safe and can be released for use by consumers.

The appellant is responsible for training other Consumer Safety Officers and agency staff on inspection and investigation techniques; training members of state regulatory and public health agencies and regulated industries on the agency's programs and policies; and responding to inquiries from the public and industry representatives regarding legal, scientific, or technical information as it relates to the agency's regulatory activities. As part of his duties as Resident-in-Charge, the appellant is responsible for maintaining liaison, planning, and coordinating with state level enforcement and public health agency officials, representatives of other Federal regulatory, enforcement, and public health agencies, U.S. Attorneys and court officials, and criminal investigators from his own and other agencies. He represents his agency as a team member, participates in criminal investigations conducted by other Federal agencies, and testifies as a fact witness in court when needed.

The GS-13 level is not met. The appellant does perform a variety of compliance work that requires an extensive knowledge of laws, rules, and legal procedures. However, he does not fully meet the criteria at the GS-13 level. While the appellant is well-respected and considered an authority by many managers, inspectors, law enforcement officials, and others who frequently contact him for advice, the level and type of advice he is routinely called upon to provide is more comparable to the advisory opinions described at the GS-12 level. He has procedural guidelines and established legal precedents for much of what he encounters. He applies judgment rather than develop new methods or policies. He does not independently interpret new legislation nor does

he provide management advisories on program impact. Advice on new programs and regulations that are yet to be well-defined is available from the district level. In addition, the legal cases in which he participates are not typically complicated by the factors found at the GS-13 level (e.g., extreme public interest, powerful industries, previously unknown hazards).

This factor is credited at the GS-12 level.

Level of responsibility

This factor deals with (1) the degree of supervision received; (2) the adequacy and specificity of instructions and guidelines; and (3) the nature and significance of personal contacts, recommendations, and decisions.

GS-12 Consumer Safety Officers plan and conduct inspectional and investigative assignments after receiving instructions regarding objectives and priorities. Since many GS-12 inspectional assignments deal with new or unusual commodities and manufacturing practices, inspectional programs and guidelines in the assigned area are frequently outdated, too broad, or in some other way inadequate. The lack of adequate guidelines requires GS-12 employees to develop new inspectional approaches and methodologies appropriate to the assignment at hand. GS-12 employees independently resolve most inspectional and investigative problems they encounter. They refer to their supervisors, however, extremely critical or controversial policy matters or cases that require expeditious handling. They consult with laboratory analysts on problems regarding new or unusual formulations, laboratory analytical methods, or microbiological contamination.

Letters, reports, and recommendations that GS-12 employees prepare are generally assumed to be technically accurate. Supervisory review of completed work is in terms of adequacy of supporting data, soundness of judgment, and conformance with policy. Supervisors generally accept the recommendations of GS-12 employees regarding new inspectional approaches and methodologies, the extent and seriousness of violations, and the acceptability of voluntary corrective actions.

The Consumer Safety Officer at this level is frequently responsible for initiating and maintaining effective relations with state and local public health officials, representatives of other Federal agencies, industry officials, and consumer interest groups to explain and interpret established agency policies and priorities and to evaluate new manufacturing or inspection plans.

GS-13 Consumer Safety Officers in the district office carry out their compliance assignments with a substantial degree of independence. They receive guidance regarding agency-wide policies, priorities, and positions on new or controversial issues. They consult project managers, scientists, and attorneys at the headquarters level on extremely complex or controversial legal or technical problems. By comparison, GS-12 Consumer Safety Officers receive guidance on non-routine compliance problems or issues. For many of the issues and questions that are directed to GS-13 employees, precedents and guidelines are inadequate. They rely upon their scientific backgrounds and understanding of broad legislation, policy statements, and program definitions to formulate recommendations and decisions. They recognize and convey to the agency headquarters serious

problems and issues where policy decisions are needed. Decisions and recommendations of GS-13 employees typically receive administrative review within the district office. At the agency headquarters, decisions and recommendations of the district employees may be more closely reviewed for policy implications, impact on agency-wide activities, and priority for expenditure of resources.

GS-13 Consumer Safety Officers have frequent contacts with U.S. Attorneys and court officials regarding legal actions. They hold hearings with industry officials. They also have contacts with recognized scientific and industry experts regarding precedent-setting legal actions or issues affecting major industry practices.

The GS-12 level is met. The appellant independently plans and carries out his assignments based on objectives established with his supervisor. The appellant is responsible for resolving the difficult, complex, or sensitive problems encountered during the normal course of his work. Issues that are not covered by regulations or precedents may be discussed with his supervisor for resolution or confirmation of plan of action. In those instances involving controversial or critical policy issues, the supervisor is made aware of the matter at hand. The appellant is responsible for inspecting and investigating the largest businesses in his area, as well as smaller firms with new or unusual features or products. Guidelines are available for normal situations but in some instances they may be outdated. In these situations, the appellant is expected to adapt available established methods and procedures to determine if a firm is in compliance with or in violation of regulatory requirements. The reports of findings and recommendations prepared by the appellant are considered technically sound. Supervisory review of completed work is primarily in terms of compatibility with agency policy and other work and effectiveness in achieving expected results. The appellant is responsible for establishing and maintaining effective working relationships with state and local agencies concerned with law enforcement and consumer health and safety; officials of other Federal agencies; industry officials; and public groups having an interest in the agency's mission.

The GS-13 level is not met. The appellant is responsible for independently carrying out his assignments. However, he does not operate with the degree of independence on matters found at the GS-13 level. At this level, guidance is typically provided only on agency-wide policies and priorities, or positions on new or controversial issues. The GS-13 Consumer Safety Officer relies on an in-depth knowledge of scientific areas, legislation, and agency policy to develop recommendations and arrive at decisions on courses of action to pursue. These are subjected only to administrative review at the district office level. While the Consumer Safety Officer at the GS-13 level is involved with leading scientific and industry experts regarding precedent setting legal actions or significant industry practices, the appellant is typically concerned with guidance pertaining to issues having a bearing on whether or not a business is in conformance with or in violation of regulations, and the potential actions or steps that need to be taken. He does not routinely have the level of involvement with leading industry and scientific experts or the kind of contacts with Federal legal staff described at the GS-13 level. The overall scope of the appellant's responsibility is more limited than that found at GS-13.

The GS-12 level is credited for this factor.

Decision

Both factors are credited at the GS-12 level, and the position is properly classified as Consumer Safety Officer, GS-696-12.