

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

San Francisco Oversight Division
120 Howard Street, Room 760
San Francisco, CA 94105

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

Appellant: [Appellant's name]

Agency classification: Land Law Examiner
GS-965-9

Organization: [Appellant's activity]
Bureau of Land Management
U.S. Department of the Interior
[City, state]

OPM decision: Land Law Examiner
GS-965-11

OPM decision number: C-0965-11-01

This decision was reopened, reconsidered, and superseded by OPM decision number C-0965-09-01, dated 11/23/99.

Carlos A. Torrico
Acting Classification Appeals Officer

11/17/98

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, appendix 4, section G (address provided in appendix 4, section H).

Since this decision changes the classification of the appealed position, it is to be effective no later than the beginning of the fourth pay period after the date of this decision (5 CFR 511.702). The servicing personnel office must submit a compliance report containing the corrected position description and a Standard Form 50 showing the personnel action taken. The report must be submitted within 30 days from the effective date of the personnel action.

Decision sent to:

[Appellant's name and address]

Personnel Officer

[Name and address of appellant's
servicing personnel office]

Assistant Director for Human Resources
Bureau of Land Management
U.S. Department of the Interior
Mail Stop 5628
1849 C Street, NW
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Introduction

On January 20, 1998, the San Francisco Oversight Division of the U.S. Office of Personnel Management (OPM) received a classification appeal from [the appellant]. Her position is currently classified as Land Law Examiner, GS-965-9. However, she believes the grade level should be GS-11. The appellant works in [her activity] Bureau of Land Management, U.S. Department of the Interior, [city, state]. We have accepted and decided her appeal under section 5112 of title 5, United States Code (U.S.C.).

General issues

The appellant compares her position to other jobs in the Bureau of Land Management (BLM) which are higher graded, and which she believes are similar to her position. 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 comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's position to other similar jobs or position descriptions as a basis for deciding her appeal.

The appellant believes that her current standard position description (number BM 4066) does not accurately reflect the duties she actually performs. She has been unable to resolve this issue with her agency. In such cases it is OPM policy to decide the appeal based on the actual duties that management assigns and the employee performs. Therefore, to help decide this appeal we conducted a phone audit with the appellant, followed by a telephonic interview with her supervisor. In reaching our classification decision, we have carefully reviewed all information furnished by the appellant and the agency.

Position information

The appellant is a Land Law Examiner for the BLM in [city, state]. She adjudicates all types of [state] land claims under the [laws and acts] other public land laws. She determines land status for leases, permits, rights-of-way, exchanges, color-of-title claims, or other applications for public lands. She also adjudicates claims for lands conveyed out of Federal jurisdiction and makes recommendations for title recovery for reconveyance to claimants.

The audit and other material of record furnish much more information about her duties and responsibilities and how they are performed.

Series, title, and standard determination

We find that the appellant's position is properly covered by the Land Law Examining Series, GS-965, titled Land Law Examiner, and graded using the GS-965 single agency classification standard (dated April 1962). Neither the agency nor the appellant disagrees.

Grade determination

The land law examiner standard uses two classification factors: Nature and complexity of work, and Level of responsibility. Our evaluation with respect to these factors follows.

Nature and complexity of work

The nature and complexity of the appellant's work exceeds the GS-9 level and fully meets the GS-11 level as described on pages 21 through 23 of the standard.

As required at the GS-11 level, our audit disclosed that the appellant spends the majority of her time processing, and giving guidance on complex and novel applications for rights or interests in public lands. The appellant's work on the [name of applicant] application is both complex and novel. This is due to such complexities as uplifted land, claims on city and state owned land, dual ceilings, and multiple third parties on the land. Further contributing to the [name of applicant] application's novelty and complexity was that it required the application of the [land act] and the [name of act] in addition to [name of land act].

The GS-11 level requires the examiner to make determinations in situations when (1) different possible constructions may be placed on the facts or precedents involved; (2) obscure, vague, or conflicting land laws or implementing regulations must be applied; or (3) potential conflicts in public land administration policies or procedures must be recognized and required action taken to resolve them. The appellant makes determinations in each of these situations. For example, processing the [name of applicant] application required her to obtain solicitor opinions about different possible constructions that may be placed on relinquishing land; she made determinations about conveyance of lands that were withdrawn and involved conflicting laws and regulations. In addition, she has recognized and taken action to resolve potential conflicts of interest in forest land between [type of applicant], Federal agencies, and the [name of state]. She has also had to recognize and take action to resolve potential conflicts of interest concerning the [name of applicant]'s [name of selection] selection. That involved reserving BLM's right to the [name of selection] and at the same time allowing the corporation to have its conveyance.

As at the GS-11 level, the appellant must apply a multiplicity of land laws and implementing regulations to process applications. These include the [names of laws and regulations]. The appellant's work has required application of the Geothermal Act, a variety of Executive Orders, Secretarial Orders, and Public Land Orders. In addition the appellant has applied special agreements between the [name of state] and [name of applicant], or BLM and other Federal agencies to resolve long standing issues on the land for the [name of applicant]' application for the [name of selection] selection, and applications from the [name of applicant], the [name of applicant], the [name of applicant], and the [name of applicant]. The appellant has also applied exchange agreements concerning the [name of applicant] application.

Actions and decisions at the GS-11 level affect, economically and/or socially, directly or indirectly, a significant segment of private or public interest. The appellant processes applications that economically directly affect a significant segment of the public interest. For instance, the appellant conveyed a parcel of land to [name of applicant] which allowed them to cut half a million dollars worth of timber. The money was used to build a hotel and tramway to help transition the economy from logging to tourism. This was of significant public interest in [name of city], and was a conveyance that was expedited for economic need. Another example of significant public interest was the conveyance of land to [name of applicant] to complete a buy out that would return all of the forest land to the Federal service. This conveyance had a direct affect on both the [minority designation] population and the [name of state]. [Name of applicant] was paid \$45 million dollars for the land.

The appellant also handles applications typical at the GS-11 level where public interest in and demand for Federally-owned lands and/or resources is highly competitive. One such selection made by Eyak involved the large city of Cordova. The State of Alaska had made selections and already conveyed some of the land to private individuals and cities. However, the conveyance also involved interest from native corporations, numerous historical and permitted users, and trespass Federal users of the land.

Land Law Examiners GS-11 are required to process a wide variety of different types of cases which are considered complex, novel, or unusual. The appellant's work meets the level of at least three of the examples (1, 3, and 4) given by the standard to illustrate the situations encountered and judgments made at the GS-11 level. As in example (1), the Iron Creek selection required recovering title from the State of Alaska who had already reconveyed land. It was necessary for the appellant to meet with land management for Bering Straits and members of the Alaska Department of Natural Resources to arrive at a definite agreement and secure concurrence on how to complete the process and at the same time protect the mining interests. As in example (3), the Bering Straits' Serpentine Hot Springs selection required considerable research of case files, public land orders, executive orders, the Geothermal Act, and solicitors' opinions to consider the effect of the conveyance of land around the hot springs. Many of the applications processed by the appellant, like example (4), include lands valuable for economic and/or social purposes, which are being sought by different groups or governmental entities. To illustrate, when Public Land Order 2020 withdrew land for all the National Guard armory sites, it included land that had been applied for by the villages and/or regional corporations. Also illustrative of example (4) are applications for land formerly used for Bureau of Indian Affairs (BIA) schools; land selected by villages where the Air Force had set up early warning systems which the Air Force wanted to maintain; and land on which the Coast Guard had sites and for which they may not have had withdrawals, but set up the sites anyway. Like the illustration given under example (4) she has also processed applications covering land over which there has been conflict between native corporations and cities or villages concerning the use to which selected land would be used; i.e., a city or village wants to expand an airport onto land selected by a native corporation.

Level of responsibility

The appellant's level of responsibility favorably compares to the GS-11 level as described on pages 23-24 of the GS-965 standard. At that level land law examiners exceed GS-9 requirements in that, as authoritative specialists, they frequently give advice to other land law examiners on precedent decisions in carrying out their assignments. The appellant is recognized as an expert in certain areas, particularly in performing work on complex and unique cases like the [name of case] buy out, and frequently provides advice to other examiners on similar and highly complex cases.

As at the GS-11 level, the appellant proceeds independently in developing facts and evidence. Once assigned a case, she determines what courses of action to take (i.e., collecting data plats, reviewing case files) and pursues all related actions to complete the assignment. Once she has sufficient information she determines whether a selection meets the standards in the regulation, then prepares a decision to approve or reject the selection. She typically works on several assignments concurrently over a long period of time.

Similar to the GS-11 level, the appellant proceeds independently in defining legal and factual issues; in searching precedent decisions and other reference materials; and in applying laws, regulations, policies and procedures. For example, she wrote an issue paper giving reasons why land was available for conveyance when BLM had earlier denied an application in that same area. The paper described how the law had changed and how the case differed from an earlier one. Her analysis included recognizing certain legal issues that could have broad or serious public relations impact, and referring them through her superiors to legal staff for advice.

At the GS-11 level, completed work is normally assumed to be accurate, adequate and acceptable in accordance with applicable laws, regulations, policies and procedures. Likewise, the appellants work is expected to be accurate, adequate and acceptable. The appellant signs her own letters, notices, and decisions. The level of review depends on what action is being taken. By regulation, all conveyances, patents, interim conveyance (final title documents) have to be signed by the branch chief. As at the GS-11 level, the supervisor reviews those cases where an important precedent is being established or where the action or decision is expected to provoke considerable criticism or unfavorable public reaction.

At the GS-11 level personal contacts are significant because the examiner serves as the focal point for giving authoritative advice. For example, due to her expertise the appellant explains the intent of [name of law], interprets Interior Board of Land Appeals or Court decisions, and discusses options such as negotiations or agreements. Like the GS-11 level, her contacts are with attorneys contracted by corporations, and other governmental agencies such as Forest Service department heads, field examiners, Coast Guard attorneys, FAA realty specialists and the head of the Department of Rights of Ways for Air Strips, the IRS, the Public Health Service regarding settling ponds, and the BIA. As typical of GS-11 examiners, the appellant's contacts include discussion or explanation on such matters as the intent of laws that she works with, special provisions and stipulations in orders or permits, who has jurisdiction or ownership based on amendments to existing orders, and what claims

may be initiated or asserted affecting lands involved under existing land laws. Similar to the GS-11 level, the appellant is called upon to exercise considerable ingenuity in meeting the public land needs of the public, especially when researching and citing very old or seldom used existing laws. For example, she used provisions of the [name of act] and various Executive Orders (both dating back to the 1800s) in the [name of application] application, in order to make the hot springs available to the general public.

Summary

We have found that both the nature and complexity of the appellant's work, and her level of responsibility, meet the GS-11 level. Therefore this position is graded at the GS-11 level.

Decision

The appellant's position is properly classified as Land Law Examiner, GS-965-11.