

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

Appellant: [Name]

Agency classification: Chemist
GS-1320-13

Organization: [Branch]
[Division]
[Office]
[Office]
[Agency]
[City & State]

OPM decision: Chemist
GS-1320-13

OPM decision number: C-1320-13-01

/s/ Robert D. Hendler
Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

February 6, 2009
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 the 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]

[Servicing Human Resources Office]

Introduction

On October 12, 2007, the Center for Merit System Accountability, U.S. Office of Personnel Management (OPM), accepted a position classification appeal from [appellant], who occupies the position of Chemist, GS-1320-13, in the [organization] at the [agency] in [city & State]. He requested that his position be classified as Chemist, GS-1320-14. We accepted and decided this appeal under the provisions of section 5112 of title 5, United States Code (U.S.C.)

Background

The appellant's position was initially classified as Chemist, GS-1320-13, in 1983. The position description was amended in 1998 with no change in classification. The position evaluation prepared at that time indicated the position was not upgraded because of the level of supervisory control exercised over the work. The position was not reviewed again until 2006 when the appellant requested a desk audit from his agency's servicing human resources (HR) office. The desk audit was conducted by two representatives of the Headquarters Operations Division who subsequently reported that the position supported upgrading to GS-14 based largely on their assessment of the degree of supervision being received by the appellant, and the appellant was so notified in writing. However, management refuted the evaluation and the findings were thereafter reversed by the Director, Office of Human Resources, prompting the appellant to file a classification appeal with OPM.

General issues

The appellant states most of his work is similar to that of two other GS-14 scientists in his branch. He also states his performance standards are basically the same as another GS-14 scientist except for one critical element which he believes also applies to his position. However, 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, the grades of other positions which may or may not be classified correctly cannot be a consideration in determining the proper classification of the appellant's position.

The appellant did not specify in his appeal which GS-14 scientists he believes perform work similar to his work. However, we note the GS-14 staff in the branch consists of scientists in other disciplines, including microbiology, toxicology, and environmental engineering. The appellant submitted a copy of a GS-14 position description (PD) from his branch which includes duties he does not perform, such as preparing development plans for the generation of test guidelines and structure-reactivity relationships for the transport and abiotic transformation of chemicals in the environment; assuring the scientific quality of [branch] work products on the transport and abiotic transformation of chemicals in the environment through the establishment, implementation, and management of internal and external peer review processes; identifying research needs to develop better test methods and structure-reactivity relationships and preparing work statements for solicitation of proposals for such research studies; serving as team leader as needed on the development of environmental fate and exposure assessments; and playing a lead role in coordinating testing and assessment requirements and methods for environmental fate

with other Federal and State regulatory agencies and other countries and international organizations. This PD bears no relationship to the appellant's position.

In support of his appeal, the appellant points to an article he wrote in 2006 which was accepted for publication in a peer-reviewed journal. This article presented a model the appellant developed which he believes can be used to estimate the hydrologic degradation rates of about 2,500 compounds. The appellant states he was invited to be on the editorial board of the journal based on the positive reception to this article. However, neither the development of this model nor its submission for publication was assigned by management. It does not represent an assigned and ongoing duty of his position. Management has told the appellant that the category of compounds for which the model was developed is not an agency priority, and the agency has not adopted the model or incorporated it in their suite of models used to assess chemicals. Likewise, the appellant's role on the editorial board of the journal is an external interest he pursues during non-work time and thus cannot be considered in the evaluation of his position, as there is no requirement or expectation for branch employees to engage in such activities. However, the extent to which these activities may indirectly influence the grade level of his position is addressed in the below evaluation.

The appellant also argues he can potentially make significant scientific contributions in certain subject areas and these areas are, in his judgment, branch priorities, but states he has been directed by his immediate supervisor to confine his work to those areas specifically identified by management. He believes this has been done to prevent his position from being upgraded. However, 5 U.S.C. indicates we can consider only current duties and responsibilities in classifying positions. These are the duties assigned by management and actually being performed by the appellant. We may not consider hypothetical duties or personal interests being pursued by the appellant outside of duty time. Further, OPM has no jurisdiction or authority over an agency's operating programs to determine program priorities or work assignments. The authority to assign work is vested by statute in agency management (5 U.S.C. 5102(3) and 7106(a)). Disagreements over programmatic issues should be raised by the appellant within the appropriate agency forum.

The appellant also raises several other issues involving disputes between himself and management unrelated to the classification of his position. In adjudicating this appeal, our responsibility is to make an independent decision on the proper classification of his position. We have no jurisdiction over matters outside the immediate scope of this process.

Position information

The mission of the [branch] is to evaluate human and environmental exposures and the environmental fate and transport of chemicals and genetically-engineered microorganisms. These exposure and fate assessments are used by other components of [office] to determine whether exposures to chemicals or biological agents may result in risks that should be managed. Within this context, the appellant is an expert on the abiotic fate of chemicals; i.e., degradative processes other than biodegradation (such as the actions of water or light) that break down and/or ultimately transform the chemicals in the environment. All of his duties relate to reviewing and

assessing individual chemicals to determine their abiotic fate within the parameters of specific program activities.

The appellant's current primary duty is his role as the Work Assignment Manager (WAM) for the Chemical Assessment and Management Program (ChAMP). Under this program, [agency] fulfills U.S. commitments under the Security and Prosperity Partnership of North America, wherein the U.S., Canada, and Mexico are cooperating to ensure the safe manufacture and use of industrial chemicals. The U.S. has committed to complete, by 2012, screening-level hazard and risk characterizations and initiate needed actions on over 6,750 chemicals produced or imported in quantities above 25,000 pounds per year. [Agency], by combining these screening-level hazard characterizations with use and exposure data, develops risk-based prioritizations that identify the potential environmental and health risks of each chemical and indicate priorities for potential future action to manage or restrict their use.

The role of [branch] in the ChAMP program is to produce environmental fate assessments for each chemical under review. The actual fate assessments are prepared by a contractor by researching available literature/databases and applying mathematical models. The contractor assigns a rating to each chemical using established criteria, prepares reports in a predetermined format, and transmits the reports to the [branch]. The appellant, as the WAM, assigns reports to himself and other staff in the branch for quality control review, indicates due dates, and tracks completion. Staff reviewers are responsible for making corrections or sending the reports back to the contractor if extensive changes are required. For review purposes, there is no distinction made between abiotic fate and biodegradation, as the purpose of the review is largely to determine agreement with the rating assigned by the contractor. These are screening-level reviews that take about two hours for each case. The appellant serves as the Contracting Officer's Technical Representative and as such is responsible for issuing technical direction to the contractor on stylistic and format requirements, clearing invoices for payment, and performing other required administrative tasks. The fate assessments are integrated with health and toxicity information by the [other division] to derive screening-level risk assessments, the final end products of the program.

The appellant's other major ongoing assignment is to serve as a branch representative for the New Chemicals Program on the Structure Activity Team (SAT), which is an interdisciplinary working group responsible for the assessment of all new chemicals by experts in their respective disciplines for health effects, ecotoxicity, and environmental fate before they become commercialized. This program is designed to ascertain what restrictions, up to and including a ban on production, should accompany a chemical before it can be used commercially. [Agency] has a very structured process for reviewing new chemicals. The SAT is chaired by a senior staff member of [other division]. The appellant and five other [branch] staff (GS-13 and GS-14) rotate as branch representatives to the SAT meetings. The purpose of the meetings is to review contractor-generated reports on the proposed new chemicals and assign ratings relating to their persistence/bioaccumulation in the environment. These ratings are driven largely by consideration of the chemicals' toxicity/health hazard. The producing industry is not required to perform testing on the chemicals at this stage, but the reviewers may apply models to estimate their degree of breakdown in the environment. The appellant participates in this process by reviewing the abiotic fate portion of the reports as a component of the rating process and lending

his expertise to any questions that arise in that area. He is not, however, involved in decisions to require the producing industry to do testing on new chemicals, and each chemical's actual rating is assigned by the SAT chairperson. When testing is required, [agency] provides the industry with test guidelines; and the industry must then submit test protocols. The appellant may review these protocols for conformance to the guidelines. He may also participate in meetings with industry representatives to clarify test protocols, but does not have the authority to negotiate with industry or determine testing requirements.

We conducted an on-site audit with the appellant and an on-site interview with his first-level supervisor. We decided this appeal by considering the audit findings and all other information of record furnished by the appellant and his agency, including his official PD and other material received in the agency administrative report on March 4, 2008.

Series and title determination

The appellant's position is properly assigned to the GS-1320 Chemistry Series. Neither the appellant nor the agency disagree.

The basic title for nonsupervisory positions in this series is Chemist.

Grade determination

Evaluation using the Job Family Position Classification Standard for Professional Work in the Physical Science Group, GS-1300

This standard is written in narrative format with positions evaluated by direct comparison to the criteria provided at each grade level.

GS-13

The law

“Grade GS-13 includes those ... positions the duties of which are to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and marked attainments in professional, scientific, or technical research, practice, or administration...”

The appellant's position is consistent with this grade level because he performs scientific work of unusual difficulty and responsibility under administrative direction with wide latitude for the exercise of independent judgment. His work involves determining the abiotic fate of chemicals that do not necessarily behave the same as conventional organic compounds (difficulty) as input in determining whether these chemicals should be banned or restricted (responsibility). He works under administrative direction in that his work is generally accepted as technically authoritative, and he has wide latitude for the exercise of independent judgment because he

generally functions as a member of a team with full responsibility for the abiotic fate portion of the analysis.

The standard

This is a senior expert level, involving work for which technical problem definitions, methods, and/or data are highly incomplete, controversial, or uncertain. Evaluations and recommendations are accepted by others as those of a technical expert. Typically, scientists at this level represent an authoritative source of consultation for other scientists and program specialists and are called upon to perform a key role in resolving issues that significantly affect scientific programs. They make long-range and controversial proposals and defend their findings and recommendations in public or high-level forums. GS-13 scientists represent their organizations or programs or the Government's interests, in some cases including representing the agency before public bodies on controversial projects. Some positions include staff work with responsibility for reviewing and coordinating field work in a narrow program area or reviewing and developing legislative or regulatory proposals. Other positions may involve planning, organizing, and leading teams to prepare requirements and specifications for new, large-scale systems or to evaluate overall plans and proposals for significant systems developed by contractors.

The appellant's position is fully represented at this level in that he is recognized as a technical expert in abiotic fate, is consulted on such by other scientists within the agency, and plays a key role in the analysis of chemicals to determine whether they should be regulated by the agency. His role as WAM for the ChAMP program is comparable to reviewing and coordinating field work in a narrow program area.

GS-14

The law

“Grade GS-14 includes those classes of positions the duties of which are (A) to perform, under general administrative direction, with wide latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and *unusual* attainments . . . (C) to plan and direct or to plan and execute major professional, scientific, technical, administrative, fiscal, or other specialized programs, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or (D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.”

The appellant states in his appeal that the article he wrote that was published in a refereed journal in 2006 “qualifies as both an *unusual* attainment for grade GS-14 . . . and as an *exceptional* attainment for grade GS-15 . . .” Beyond the consideration addressed earlier regarding this having been neither an assigned or ongoing task, publication of one journal article does not in itself constitute an *unusual* attainment. Any such attainment would relate entirely to the actual

substance of the article and its degree of contribution to or impact on the scientific field rather than the mere fact of its publication. However, the appellant provided no evidence that the model presented in the article has been used, adopted, or validated by other scientists or organizations or that it has otherwise had a significant impact in this area of chemistry. Therefore, the publication of this one article does not establish a GS-14 grade value for this work.

Comparing the GS-13 and GS-14 grade level definitions, the GS-13 level basically covers what could be characterized as highly difficult and technical staff-level work performed independently and resulting in significant accomplishments (or products) in the occupational field. As was noted above, this accurately describes the appellant's work and its outcome. The GS-14 level has the additional elements of a higher degree of difficulty in the work itself resulting in unusual attainments/accomplishments, or a higher degree of responsibility exercised such as would be achieved through directing or administering a major program. There is no indication that the appellant's position includes any of these elements as is addressed below.

The standard

Responsibilities at this level involve highly unstructured and interconnected problems involving both difficult technology and complex human relations or programmatic issues. This level differs significantly from the GS-13 level in that the GS-14 scientist is one that other recognized senior technical experts turn to for advice and counsel, not only because of the position but because of the incumbent's personal reputation in the field. At this level, the work typically has special significance for the success of the organization, e.g., it may have significant direct effects over a wide region or over multiple programs or may include responsibility for a new technology especially critical to the organization's programs. Typically, GS-14 assignments include a wide area of responsibility carried out under administrative direction in terms of broad agency policies, objectives, and mission statements. In contrast, GS-13 assignments generally involve project or program responsibility of a lesser scope that is covered by general guidance such as precedents, recent work, and developments in a specialty area.

The distinctions between the GS-13 and GS-14 levels relate *both* to the breadth and complexity of the work and the personal stature of the employee. In relation to the work itself, the appellant's assignments are consistent with the GS-13 level in that they consist of project responsibility where the actions to be taken are covered by general guidance. Specifically, under the ChAMP program, the appellant performs screening-level reviews of contractor assessments of individual chemicals. He does not determine the criteria used to make these assessments. For the New Chemicals Program, he provides input on the abiotic fate of individual chemicals and reviews contractor assessments based on the application of computerized models. He has not, however, developed any of the models used for assessing the chemicals nor is this a requirement or expectation of his position.

These are discrete, individual technical assignments; i.e., they are not interconnected and each case is self-contained, and they are carried out in a structured environment in terms of the criteria and methodology applied. Although the appellant's input regarding the abiotic fate of any particular chemical affects how that chemical is ultimately rated, this is only one element in a

process that includes consideration of biodegradation, physical/chemical properties, toxicity, and health effects. This is not comparable to having “significant *direct* effects over a wide region or over multiple programs.” His work does not involve “difficult technology” in that he is involved only in the application of established models. Likewise, it does not include “complex human relations or programmatic issues.” First, he is not responsible for negotiating or otherwise representing the organization with outside parties. His interactions within the organization consist of providing staff input on limited, individual technical issues relating to the behavior of specific chemicals. The absence of these types of negotiating, representational, or program coordinative responsibilities basically precludes the difficult interpersonal relations expected at this level. Second, he is not responsible for either deciding or recommending policy or other programmatic issues; i.e., those matters that affect the overall administration or execution of broad programs. He provides technical input which is considered in any associated policy determinations, but is not a direct participant in the deliberative processes that ultimately decide that policy.

In terms of the appellant’s personal stature, he is recognized as an expert in the abiotic fate of chemicals and is consulted by others within the associated programs as such. This is largely because of his long tenure in the branch working primarily in this area. There is no indication, however, that he has a “personal reputation in the field” that engenders the consultations described at this level. He is recognized as a technical expert in the abiotic fate of chemicals within the organization and may be asked for his opinion or advice as such. This is a direct match to the GS-13 level. However, there is no indication that he has an equivalent degree of recognition *in the field*; i.e., outside the organization. He has published only one article in a refereed journal, he has not been invited to speak at any national or international conferences, he has not received requests for consultation by other scientists external to the organization, and he does not represent the branch or agency in meetings or negotiations with outside parties.

Evaluation using the Grade Level Guide for Test and Evaluation Work in Engineering and Science Occupations

The agency evaluated the appellant’s position using the Grade Level Guide for Test and Evaluation Work in Engineering and Science Occupations (Guide) and derived a GS-14 grade outcome. However, this is not a valid source of grade-level criteria for the appellant’s position. The Guide is intended for use in determining the grade level of test and evaluation work performed by engineers and physical scientists in planning, monitoring, and conducting tests of equipment, materials, and systems; assessing or evaluating test data and results; and preparing reports of findings. Work covered by the Guide typically includes: (a) modifying, adapting, or extending standard test and evaluation guides, precedents, criteria, methods, and techniques; (b) designing and using new test procedures and approaches; or (c) performing staff assignments such as technical consultant, planner, evaluator-advisor, and/or program coordinator in a test and evaluation organization.

The appellant’s actual role in the testing of chemicals is indirect and limited to making recommendations for abiotic fate testing and reviewing test protocols developed by industry for conformance to established test guidelines. However, the grade-level criteria in the Guide are based entirely on performing, overseeing, consulting, or evaluating in a staff capacity, test

design, coordination, and direction with subsequent data analysis. Grade distinctions are based on the relative difficulty and complexity of the actual testing. The appellant does not perform work of this nature. He may recommend that industry conduct additional testing, but has no role in designing, overseeing, or evaluating the testing. Since the appellant does not perform the work on which the entire foundation of the grade-level criteria rests, application of the Guide would result in an invalid grade conclusion. However, we noted that the agency's GS-14 grade outcome using the Guide was based largely on its evaluation of Factor 2, Supervisory Controls. The language used under this factor is largely generic rather than occupation-specific. We address this factor below only because the servicing human resources office has regarded the issue of supervision as integral to the grade of the position and it is related to other arguments made by the appellant regarding the degree of expertise he brings the position.

Factor 2, Supervisory controls

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, project leader, senior engineer or scientist, or other designated employee. It is evaluated on three major aspects: how the work is assigned to the employee; the employee's responsibility, independence, and authority in carrying out the work; and the extent and purpose of the review of the employee's work.

The agency credited Level 2-5 under this factor.

The level of responsibility under which the appellant works is comparable to Level 2-4. At this level, the supervisor sets the overall objectives and available resources. The employee and supervisor, in consultation, develop the deadlines, projects, and work to be done. The employee, having developed expertise in the line of work, is responsible for planning and carrying out the work, resolving most of the conflicts that arise, coordinating with others as necessary, and interpreting agency policy in relation to established objectives. In some assignments, the employee also determines the approach to be taken and the methodology to be used. The employee keeps the supervisor informed of progress, potential controversies, far-reaching implications, or intractable problems. Completed work is reviewed only from an overall standpoint in terms of feasibility, compatibility with other work, or effectiveness in meeting requirements or expected results.

This accurately represents the manner in which the appellant operates. The appellant is regarded as a technical expert and carries out his work largely independently. As at this level, his work is not reviewed technically but rather for considerations related to its accomplishment and the feasibility of recommendations made.

The position does not meet Level 2-5. At this level, the supervisor provides administrative direction with assignments in terms of broadly defined missions or functions. The employee has responsibility for planning, designing, and carrying out programs, projects, studies, or other work independently. Results of the work are considered technically authoritative and are normally accepted without significant change. If the work is reviewed, the review concerns such matters as fulfillment of program objectives, effect of advice and influence on the overall program, or the contribution to the advancement of technology. Recommendations for new projects and

alteration of objectives are usually evaluated for such considerations as availability of funds and other resources, broad program goals, or agency priorities.

Factor 2 is designed to measure not only the degree of independence with which the employee operates but also the extent of responsibility inherent in the assignment. Level 2-4 describes work carried out with a high degree of independence and recognized expertise and as such fully represents the manner in which the appellant operates. Level 2-5 recognizes not only independence of action, but also a higher degree of responsibility and authority as the context for the independence exercised. Level 2-5 is predicated on responsibility for independently planning, designing, and carrying out a significant program or function, with only broad administrative and policy direction. In contrast, the appellant carries out defined and ongoing assignments that constitute elements of broader programs or activities. This work does not constitute a discrete program or function in the sense intended at Level 2-5 but rather serves as input to the broader programs with which it is associated. The content and boundaries of his work are well defined and do not allow for the development of new projects or program initiatives. Regardless of how independently he works in completing these assignments, the nature of his work is not such that it would permit the exercise of this level of responsibility and authority, which is properly credited to the head of a program or functional area.

Decision

The appellant's position is properly classified as Chemist, GS-1320-13.