



United States  
Office of Personnel Management

**Office of Merit Systems Oversight and Effectiveness**  
*Digest of Significant Classification Decisions and Opinions*  
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**Standard:** [Research Grade-Evaluation Guide](#)  
**Factor:** N/A  
**Issue:** Classification action vs. performance-based action

### **Identification of the Classification Issue**

The issue arose after a research scientist was reduced in grade from GS-14 to GS-13 by reclassification of his position. The employing agency took the action following a determination by a research grade-evaluation panel that the incumbent's position no longer supported its GS-14 classification when the Research Grade-Evaluation Guide was applied.

The employee appealed the downgrade to a Merit Systems Protection Board (MSPB) regional office, contending that the downgrade was a performance-based action in which he was denied the protections required by chapter 43 of title 5, United States Code, including the right to appeal the action to MSPB. The agency contended that the downgrade was a position classification action in which the employee received grade retention and was, therefore, not appealable to MSPB.

### **RESOLUTION**

A position may be changed to a lower grade through a position classification action for either of the following reasons: (1) application of a new Office of Personnel Management classification standard, or (2) correction of classification error. Change to a lower grade due to erosion of duties may also be effected as a position classification action unless the action is subject to reduction-in-force (RIF) procedures. (See Federal Personnel Manual Supplement 351-1.) None of these reasons was cited by the agency as the basis for reclassifying the employee's position, and MSPB determined that none of them applied.

The grade of the position may also be reduced if management removes duties and responsibilities. However, the removal of duties is considered to be a reorganization, and the agency must follow reduction-in-force procedures unless the agency reassigns all affected incumbents to vacant positions at their same grades. These circumstances did not apply in the appellant's case.

The agency stipulated that the appellant's performance of his duties was the "primary factor" in the evaluation which led to the grade reduction. A performance-based action may be taken under either chapter 43 or chapter 75 of title 5, United States Code. Under chapter 43, an employee has a substantive right to an opportunity to improve his performance. No such opportunity was afforded the appellant. Under chapter 75, an employee is entitled to various procedural protections set forth at section 7513. The appellant did not receive any of these procedural protections before the action was taken. The administrative judge found that "Such complete denial of adverse action procedures constitutes harmful procedural error which would warrant reversal of an action under chapter 75." He ordered the agency to cancel the reduction in grade and to restore the appellant to the GS-14 grade level.

It should also be noted that retained grade is intended to provide protection for employees whose positions are downgraded through reclassification or reduction-in-force. An employee who is downgraded because of poor performance is not entitled to retained grade.