

**U.S. Office of Personnel Management  
Division for Human Capital Leadership & Merit Systems Accountability  
Classification Appeals Program**

Chicago Field Services Group  
230 South Dearborn Street, Room 3060  
Chicago, IL 60604-1687

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

**Appellant:** [appellant]

**Agency classification:** Attorney-Adviser (General)  
GS-905-12

**Organization:** [Office]  
[Wing]  
[Command]  
Department of the Air Force  
[city and state]

**OPM decision:** Attorney-Adviser (General)  
GS-905-12

**OPM decision number:** C-0905-12-02

/s/ Marta Brito Pérez

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Marta Brito Pérez  
Associate Director  
Human Capital Leadership  
and Merit System Accountability

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March 7, 2005  
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]  
[address]  
[city and state]

Classification Officer  
[address]  
[city and state]

Human Resources Officer  
[address]  
[city and state]

Regional HR Office  
[address]  
[city and state]

Director of Civilian Personnel  
HQ USAF/DPFC  
U.S. Department of the Air Force  
1040 Air Force Pentagon  
Washington, DC 20330-1040

Chief, Classification Branch  
Field Advisory Services Division  
Defense Civilian Personnel Management  
Service  
1400 Key Boulevard, Suite B-200  
Arlington, VA 22209-5144

## **Introduction**

On July 28, 2004, the Chicago Field Services Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant]. His position is currently classified as Attorney-Adviser (General), GS-905-12, located in the [Office], [Wing], [Command], Department of the Air Force, [city and state]. He believes his position should be classified as General Attorney (Leader), GS-905-13. We received the complete agency administrative report on August 23, 2004. We have accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.).

To help decide the appeal, we conducted a telephone audit with the appellant on August 12, 2004, and a telephone interview with his first-line supervisor on August 13, 2004. In reaching our decision, we carefully considered the audit and interview findings and all information of record furnished by the appellants and the agency, including the official position description (PD) which we find contains the major duties and responsibilities assigned to and performed by the appellants and we incorporate it by reference into our decision.

## **General issues**

The appellant believes his PD of record (number [#####], classified on May 4, 2004) is accurate, but feels the functions, personal contacts, and nature and scope of recommendations associated with his position warrant greater credit than his agency allowed.

Implicit in the appellant's rationale is a concern that his position is classified inconsistently with other positions. The appellant refers to a higher-graded position (PD number [#####]) of General Attorney (Leader), GS-905-13, that he says involves comparable work with the Staff Judge Advocate, [Wing], [Command], [location] Air Force Base (AFB). The appellant states that because that position concentrates on labor, environmental, and contract law functions similar to his own work and that he also directs the work of 2 or 3 military attorneys, he believes his position is incorrectly classified.

By law, we must classify positions solely by comparing current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Since the comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's position to others as a basis for deciding the appeal. Like OPM, the appellant's agency must classify positions based on comparison to OPM standards and guidelines. Section 511.612 of 5 CFR requires that agencies review their own classification decisions for identical, similar, or related positions to ensure consistency with OPM certificates. Thus, the agency has the primary responsibility for ensuring that its positions are classified consistently with OPM appeal decisions. If the appellant considers his position so similar to warrant the same classification, he may pursue the matter by writing to his agency headquarters human resources office. In doing so, they should specify the precise organizational location, classification, duties, and responsibilities of the positions in question. If the positions are found to be basically the same,

the agency must correct their classification to be consistent with this appeal decision. Otherwise, the agency should explain the differences between his position and the others.

### **Position information**

The appellant is one of about [#] attorneys in the [#] person [Office]. The remainder of the staff includes paralegals, an information manager, a secretary, and a court reporter. The office is headed by the Staff Judge Advocate, a Lieutenant Colonel, to whom the appellant reports. The appellant is the chief of the general law section and holds the sole civilian attorney position in the office. As chief of general law, the appellant is responsible for labor, contract, and environmental law for the [Wing] and all tenant organizations at [location] AFB. Base population is about 11,000, which includes active military and their families, military retirees, and about 500 civilian and contractor employees. Four other chiefs, all Captains, handle military justice, claims, adverse actions, and civil law. From time to time, the appellant directs the work of three attorneys, all Captains, who assist him as his case load demands.

The legal matters he advises base management on and the cases he prepares concern labor, environment, and contract law. He spends about 4 hours a week counseling military personnel regarding marriage, divorce, adoption, property, contracts, wills, and providing other general legal advice. The appellant provided examples of cases representative of the nature of legal problems he confronts in each subject matter. These included, among others, the removal of two union presidents for misconduct; challenges concerning lead, asbestos, and mold hazards present in surplus military housing the base had donated to American Indians; and handling monetary claims, such as a contractor's claim for \$450,000 additional compensation on a \$1.2 million demolition job.

The appellant estimates that he devotes 70 percent of his time to rendering legal advice, preparing interpretations, or drafting, negotiating, or examining contracts or other legal documents for base management. The remaining 30 percent of his time is typically spent preparing and presenting cases for hearings before arbitrators, the Merit Systems Protection Board, or the Equal Employment Opportunity Commission.

### **Series, title, and standard determination**

The appellant believes his position should be classified using the General Schedule Leader Grade Evaluation Guide. However, the appellant does regularly direct the work of three military attorneys, they each assist him on average only about two to three hours per week. The work does not meet the criteria for applying the guide, which is used to evaluate quasi-supervisory duties that occupy, at a minimum, 25 percent or more of a work leader's time.

The GS-905 PCS, covers professional positions, like the appellant's, that require admission to the bar and that advise on legal matters, prepare cases for trial, or present cases before a court or an administrative body or persons having quasi-judicial power.

The official title for a position covered by the GS-905 series is constructed by using the appropriate functional designation (trial, advisor, examiner, general), followed by the appropriate subject-matter designation (contract, labor, public utilities, tax, general, etc.). The parenthetical, General, applies to positions involving two or more functions or two or more subject matters. Though the appellant prepares cases for hearings, most of his time is devoted to advising management on legal issues. Positions are usually classified according to their principal duties, i.e., those that demand the majority of time. The purpose of a position title is to communicate an immediate understanding and identification of the job. As such, Attorney-Advisor is more descriptive of the nature of the appellant's work than General Attorney. The parenthetical, General, however, reflects the multiple subject matters that demand approximately equal portions of the appellant's time. The title that best reflects the nature of the appellant's work, therefore, is Attorney-Advisor (General).

### **Grade determination**

The GS-905 PCS uses two main factors to evaluate the grade of positions: *Nature of the cases or legal problems* and *Level of responsibility*.

#### *Factor 1, Nature of the cases or legal problems*

Three levels of difficulty for this factor are described in the standard: Type I cases or legal problems are simple; Type II cases are difficult; and Type III cases are the most difficult. These levels represent the full span of difficulty or importance of attorney work throughout the federal government. If a case or problem does not satisfy the requirements indicated for the level of one of the types, it is identified with the next lower type because each type is described in terms of the minimum characteristics of the range of difficulty it represents. A position must substantially exceed the next lower level before a higher level may be considered. This work must occupy 25 percent or more of the employee's work time to control the crediting of this factor or the grade level of the position as a whole. This factor incorporates all those elements in a case or a problem which tend to make it more or less difficult to resolve satisfactorily. It addresses such things as the complexity of legal and factual issues, the impact of the case or problem, the importance of the case or legal action as precedent, the nature of the competition, the nature and availability of precedent decisions, the delicateness of the problem, public interest, and the money at stake. Three different levels (types of cases) are described. Each level identifies the minimum characteristics that must be met for credit. Unlike Factor 2, this factor has no intervening credit levels.

The appellant raises no specific issues regarding Factor 1 in his appeal and does not dispute the agency assignment of credit level Type II to his work. He is already credited with handling Type II cases, which involve difficult legal questions, impact a significant segment of private or public interests, are strongly contested, or involve, directly or indirectly, large sums of money. The standard identifies large sums of money as about \$100,000. Adjustment of the dollar values given in the standard is necessary to account for inflationary or deflationary effects, since an absolute value would serve no useful purpose. The purchasing power of that amount in 1959,

when the standard was published, equates to about \$632,300 in 2003, according to Bureau of Labor Statistics figures.

Type II work is characterized by one or more of the following features:

(1) Difficult legal or factual questions are involved because of the absence of clearly applicable precedents due to the newness of the program or the novelty of the issue; or it is highly arguable which precedents are applicable to the case at issue because of the complexity of the facts or the different possible constructions which may be placed on either the facts or the laws and precedents involved.

(2) The impact of the case or legal problem affects, economically, socially, or politically, either directly or as a legal or administrative precedent, a significant segment of private or public interests (e.g., a large corporation, a large labor group, the residents of a large geographical region of the United States as in a large public works project, a large grant-in-aid program, a nationally organized professional group, the producers of a given farm commodity, the manufacturers of a given product, a class of government contractors; i.e., suppliers of a particular service or product, or an important program of a government agency). Also included in this type are cases or legal problems which have an impact on relations between the United States and foreign governments (e.g., acts by service members or other representatives of the United States stationed abroad, questions such as whether or not to buy foreign or American products, or negotiating and drafting consular conventions) and which must be handled with great care.

(3) Large sums of money are directly or indirectly involved (e.g., about one hundred thousand dollars), or there is considerable interest from a significant segment of the population (see 2 above), or the case is strongly contested in formal hearings or informal negotiations by the private individuals, corporations, or government agencies involved.

The legal problems the appellant confronts typically do not involve large sums of money. For example, the contractor claim for an additional payment of \$450,000 to compensate for difficulties encountered in demolishing a fortified base structure with unusually deep footings is below the Type II threshold. However, the different possible constructions that may be placed on the facts surrounding cases the appellant handles, including such cases as the base's donation of surplus buildings that pose health hazards, or adverse actions that may be strongly contested, such as when firing the union presidents, present legal difficulties that meet, but do not exceed in any respect, the other characteristics of Type II cases. Accordingly, we evaluate Factor 1 as Type II.

### *Factor 2, Level of responsibility*

Factor 2 incorporates those characteristics that are indicative of the level at which the work is performed and is expressed in terms of four elements: (1) nature of functions, (2) supervision and guidance received, (3) personal work contacts, and (4) nature and scope of recommendations

and decisions. Under Factor 2, the levels are described in terms of typical characteristics. For each of these four elements, three levels of intensity (Levels A, C, and E) are described. Unlike Factor 1, intervening levels (B and D) may be assigned when a position compares with both the higher and lower levels in differing respects, or when a position falls clearly between two of the described levels with respect to the majority of elements.

Only three of the five levels used to evaluate the elements of this factor are defined in the standard (Levels A, C, and E). The other two levels (B and D) are not defined, but may be extrapolated from the descriptions of A, B, and C and assigned as appropriate. Accordingly, the intervening Level B is appropriate when, for example, a position compares with Level A in some respects and Level C in others. The intervening level is also appropriate when a position falls clearly between two of the levels described with respect to the majority of elements.

#### (1) Nature of functions

Positions at Level C are characterized by functions such as conducting legal research in connection with: (1) cases pending administrative hearings, trial before courts of original jurisdiction, or arguments in appellate courts; (2) legal questions referred by administrative officials of the employing agency, such as questions concerning the interpretation and application of statutes, rules, and regulations as they pertain to contracts, claims, or other legal instruments involving private business, state, local, national, or foreign governments; and, (3) questions regarding the effects of provisions of proposed legislation or proposed changes in agency policies or regulations.

Level E lists several examples of functions including reviewing records of suits to determine whether to recommend appeal to a higher court, drafting legislation or preparing reports on changes in basic legislation, and acting as principal attorney in charge of recommending the policies and developing the procedures and regulations implementing new or amended legislation for the agency. One example includes acting as principal attorney in charge of the preparation and presentation of cases before administrative tribunals or before trial or appellate courts where the cases are of such scope that they may warrant the assistance of one or more attorneys and are of such importance that they frequently involve matching professional skills against some of the most distinguished and highly paid legal talent in the country. Another describes acting as legal counsel to the head of a major operating program of the department or agency responsible for advising on questions of law or administrative policy on the operations of the organization and its contacts with industry, private and professional associations, state, local, or foreign government, or the general public.

The appellant believes Level C of the standard fails to recognize the variety of laws, regulations, and decisions he advises on, such as Comptroller General and Board of Contract Appeals decisions and contract matters, such as bid mistakes, bonding, responsiveness, responsibility determinations, impact claims, extended overhead, differing site conditions, and quantum issues. He notes in his appeal that he advises base management on environmental issues involving cleanup, compliance, and waste disposal including aerial spraying for mosquitoes, mercury and

asbestos exposure, safe drinking water, and bird-aircraft strike hazards. He believes he also exceeds Level C in trial and hearing work as the government's lead representative in MSPB and EEO cases and notes that he exercises full responsibility for the development and presentation of cases that include critical issues such as dealing with child pornography, flight line security violations, theft of drugs by health care professionals, and removal of union presidents for misconduct.

At Level C, the appellant is already credited with functions like researching legal questions concerning the interpretation and application of statutes, rules, and regulations as they pertain to labor, environmental, or contract issues involving private business, state, local, or national matters; with preparing opinions outlining and analyzing the factual and legal issues involved, including the legal principles and precedents, and with justifying the recommendations or conclusions he offers. The appellant has also been credited with such functions as preparing and presenting cases in administrative hearings, preparing cases for Department of Justice attorneys before courts of original jurisdiction, or appellate courts; and preparing charges, show cause orders, complaints, briefs, motions, and other documents preparatory or incident to the trial of cases. He is credited with participating in pretrial or prehearing conferences, examining and cross-examining witnesses, arguing motions before courts or hearing officers, and summarizing the cases.

Level E offers greater credit to attorneys who act as the principal attorney when the cases are of such scope that their preparation and presentation demand the assistance of one or more lower grade attorneys or other specialists *and* are of such importance that they frequently involve matching professional skills against some of the most distinguished and highly paid legal talent in the country.

In contrast, the appellant typically functions as the sole attorney rather than the principal attorney. While his work load requires the assistance of other attorneys to stay current, individually the cases themselves are not so complex and highly competitive that they require more than one attorney to prepare and present. Though the appellant has extensive experience and his advice is given great weight by management, Level C fully recognizes the nature of functions he performs, which are capped by the scope of issues and parties involved in legal disputes concerning the base, and which Level C fully recognizes. To warrant greater credit, the nature of the advisory functions the appellant performs would have to significantly exceed those described at Level C. For example, as legal counsel to the head of a major operating program, advice on Comptroller General decisions and other matters assume more significance because of the greater authority and broader impact legal decisions have at this level. Barring unusual authority, program responsibility, or legal issues at the AFB, Level C would not be exceeded. Therefore, we evaluate this element at Level C.

## (2) Supervision and guidance received

At Level C, attorneys work independently on complex cases, but all written work is reviewed for soundness and the supervisor discusses cases before trial. Before a case is presented in an



administrative hearing or before a court, the supervisor discusses the presentation, the line of approach, the possible lines of opposition to be encountered and other aspects of the case to ensure that proper groundwork has been laid for successful prosecution of the case.

At Level E, no preliminary instructions are given to attorneys on their extremely complex cases, but the supervisor is typically briefed on the approach to be taken at the trial. Attorneys at this level independently conduct the investigations or negotiations, plan the approach, and develop the completed decision, report, brief, opinion, contract, or other product; or represent the government at conferences, hearings, or trials.

The appellant notes in his appeal, and his supervisor agrees, that because of his institutional knowledge and subject matter expertise, he operates without preliminary instructions from his supervisor and that his assignments flow from contacts with the contracting office, environmental office, and civilian personnel office. He also notes that he works directly with base managers and AMC staff on environmental, labor, and contract law issues.

The appellant's independence significantly exceeds Level C. Though he functions with independence similar to Level E, it is without Level E's responsibility for extremely complex cases, as noted under Factor 1, so Level D is appropriate. Therefore, we evaluate this element at Level D.

### (3) Personal work contacts

At Level C, personal work contacts are important. Effectiveness is required in presentation, exposition, and argument in presenting cases to administrative hearings and courts. Attorneys participate in pretrial or prehearing conferences, explain points of law, changes, or qualifications of claimants, and refer suggested settlements or compromise offers to superiors with appropriate recommendations. They advise negotiating officials in contractual matters by recommending clauses, provisions, and general wording; participate in conferences with representatives of operating programs, state and local governments, industry or other government agencies in developing or evaluating proposed changes to legislation or agency policies; participate in negotiations concerning conflicts in state and federal regulations; and assist staffs of Congressional committees in technical drafting of legislation.

Level E is characterized by the most responsible personal contacts including: (1) conferring or negotiating with top administrative personnel in the agency, private business, or state, local or foreign governments on important legal and policy questions; (2) advising and assisting Congressional committees and their staffs in drafting legislation or giving expert testimony before Congressional hearings on legislative proposals; and (3) trying cases before courts or administrative bodies.

The appellant states that his contacts include agency officials, administrative law judges, witnesses, and complainants' attorneys and that his contacts are comparable to Level E since he represents the installation at every state of litigation and routinely contacts higher headquarters

and the central labor law office. The highest personal contacts recognized under the standard are at Level E. For attorneys engaged in advisory functions, these involve advising top agency managers on legal issues of considerable consequence or importance to the agency, a responsibility which others at higher organizational levels have been credited with. The appellant informs and consults with higher agency officials on legal matters, but his advice is directed towards base managers, rather than the agency's top managers.

For attorneys engaged in hearing functions, Level E cites administrative hearings for credit without specifying the nature of the contacts or distinguishing them from Level C's administrative hearing contacts. Since classification standards credit increasing degrees of difficulty, the necessary implication is that Level E refers to the most difficult level of contacts to be found at hearings, contacts equivalent to advising top level agency managers on important issues or Congress on proposed legislation, both of which Level E specifically cites as examples. To be comparable to these two examples, hearings would have to concern issues of considerable consequence or importance to the agency and entail the deposition or examination of prestigious witnesses (e.g., high ranking officials such as presidents of large national firms, presidents of national unions, governors, etc.) or confrontations with exceptional opposing counsel (e.g., the country's most distinguished and highly paid lawyers). Such contacts rarely occur in the legal cases the base encounters.

At Level C, the appellant already has received credit for the personal contact skills required at prehearing conferences with industry representatives, or claimants and their attorneys to explain points of law, charges, etc. Level C also recognizes the persuasive skills associated with the representation, exposition, and argument of cases presented at administrative hearings and at court.

Level C fully recognizes the personal contacts entailed in the appellant's advisory and hearings work. Therefore, we evaluate this element at Level C.

#### (4) Nature and scope of recommendations and decisions

At Level C, recommendations to those outside the agency or to administrative officials at higher levels are normally made through the supervisor. Typically, recommendations include whether to initiate criminal or civil suits against alleged violators of Federal laws and regulations; settlement of claims against the government brought by private citizens; the organization, order of presentation, and line of argument to be used in the presentation of cases or hearings where the employee functions as the trial attorney; settlement of suits brought by the government against others, e.g., offers in compromise in income tax cases; replies to requests for legal advice or interpretations of law arising out of the day-to-day operations of agency programs; substantive changes in legislation and agency policies or regulations to make them more equitable, responsive to needs, or easier to administer; and whether to approve a contract or other legal document in its proposed form and content.

The major difference at Level E is that advice on the interpretation of law or on proposed changes in legislation, policy, and regulations is often given directly to heads of programs, bureau chiefs, cabinet officers, Congressmen, or representatives of state and local governments. In some instances, recommendations are made through supervisors, but these recommendations are usually tantamount to final decision. This is particularly pertinent to positions concerned with recommending whether to prosecute cases or to appeal adverse decisions in agencies responsible for litigation. The employee is responsible for recognizing when the matter under discussion is of such precedent-setting nature or of such importance or delicacy that the advice must be cleared with superiors before it is given out. Attorneys at Level E often deal with matters of such scope and complexity that they require the concentrated efforts of several attorneys or other specialists. In such circumstances, attorneys at this level are normally responsible for directing, coordinating, and reviewing the work of the team.

The appellant states in his appeal that because there is no other environmental counsel present he is solely in charge of issue identification and resolution of all environmental issues and for recognizing when sensitive matters must be cleared with superiors, that he often directly presents recommendations outside the agency and to higher administrative officials rather than through his supervisor, and that his work has direct impact on the base's mission. He notes that he provides legal opinions regarding complex contracts involving millions of dollars in expenditures and handles delicate labor issues like performance based terminations, suspensions, debarment, and fraud, all of which he feels exceed Level C.

At Level C, attorneys' recommendations on such issues as initiating lawsuits, settling claims, arguments to be made at trial, and settlement agreements to be pursued are made normally through their supervisors. Their recommendations to those outside the agency or to administrative officials at higher levels also are normally made through their supervisors. At Level E, attorneys make recommendations regarding matters similar to those at Level C, but differ in that they are made to high level management officials such as program heads, bureau chiefs, or cabinet officers and concern matters of the broadest scope and complexity.

The recommendations the appellant makes exceed Level C in one respect, but not others. In making direct recommendations, he exceeds Level C, where recommendations are usually through the supervisor. For this, he received Level D credit under the Supervision and Guidance element of Factor 2. In all other respects, the nature and scope of his recommendations are like Level C, as they typically are directed to local officials and concern local issues. Level E, in contrast, typically entails advising top agency managers on complex legal issues affecting large populations or agencywide programs. Informing or consulting with higher administrative officials about local issues is not the same as advising Level E officials on what legal courses to pursue.

Similarly, Level E negotiations outside the agency would involve top level government officials or top officers of national corporations or industries and concern matters of the broadest scope and complexity. Where money is at stake in resolving the complex issues, very large sums (over \$6 million in 2003 dollars) must be at risk. The amount at risk is the contested amount, not the

amount sought and, in the case of contract payment disputes, not simply the total value of the contract. The contested amount is the difference between the payment the agency would allow and the payment the contractor demands.

The appellant's recommendations outside the agency are not of the same caliber as Level E. For example, they involve state officials in environmental and inspection programs, but not the governor's office. Where he cites contracts worth millions of dollars, it is the total value of the contract rather than contested amounts Level E considers. Therefore, we evaluate this element at Level C.

#### *Factor II summary*

Only one of the four elements (Supervision-Level D) of this Factor exceeds Level C. Accordingly, we evaluate Factor 2 at Level C.

#### *Effect of individual stature*

In evaluating a position that meets the requirements of a level of responsibility with respect to some elements of evaluation, but falls short with respect to other elements, a position is awarded the higher responsibility level, if warranted by the incumbent's outstanding legal stature (i.e., the incumbent's opinions in a particular area of law are generally recognized by other attorneys as especially authoritative). Except in unusual circumstances, this is applicable only to GS-13 positions and above. Based on our review of the record, neither the appellant nor agency management advance any argument regarding extra credit based upon individual stature, and therefore, no adjustment to the assigned level of responsibility is warranted.

#### *Summary*

By application of the Grade-Level Conversion Chart in the GS-905 PCS, a factor level summary of a Type II, Level C position converts to grade GS-12.

### **Decision**

The appellant's position is properly classified as Attorney-Adviser (General), GS-905-12.