

U.S. Office of Personnel Management
Division for Human Capital Leadership and Merit System Accountability
Classification Appeals and FLSA Programs

Center for Merit System Compliance
1900 E Street, NW., Room 6484
Washington, DC 20415-6000

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

Appellant: [name]

Agency classification: Mine Safety and Health Specialist
GS-1822-13

Organization: [group]
[division]
[directorate]
Mine Safety and Health Administration
Department of Labor
[city and State]

OPM decision: Mine Safety and Health Specialist
GS-1822-13

OPM decision number: C-1822-13-01

/s/ Marta Brito Perez

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

June 15, 2004
Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a classification 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 title 5, Code of Federal Regulations, sections 511.605, 511.613, and 511.614, as cited in the *Introduction to the Position Classification Standards*, appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[appellant]

Mr. Joseph Stormer
Director, Human Resources Division
Mine Safety and Health Administration
1100 Wilson Boulevard, Room 2114
Arlington, Virginia 22209-3939

Director, Human Resources
Department of Labor
200 Constitution Avenue, NW.
Washington, D.C. 20210

Introduction

On November 7, 2003, the Center for Merit System Compliance of the U.S. Office of Personnel Management (OPM) accepted a position classification appeal from [appellant], who is employed as a Mine Safety and Health Specialist, GS-1822-13, in the [group] of the [division], [directorate], at the Mine Safety and Health Administration, Department of Labor, in [city and State]. [Appellant] requested that his position be classified at the GS-14 level. This appeal was accepted and decided under the provisions of section 5112 of title 5, United States Code.

We conducted a desk audit with the appellant on February 17, 2004, and a subsequent interview with the appellant's supervisor, [name]. We decided this appeal by considering the audit findings and all information of record furnished by the appellant and his agency, including his official position description [number], and other material received in the agency administrative report on December 15, 2003.

Position information

The appellant provides technical expertise and staff coordination for the [program]. He advises [program] specialists in the district offices on problems and inquiries related to [program activities]; drafts revised procedures prescribing how these operations are to be carried out in response to identified issues; and reviews and recommends approval/denial of related petitions for modification submitted by coal companies. He serves as liaison between the division and the districts, the Solicitors Office, other agency components, the Office of Surface Mining, and State agencies on such matters as reviewing and commenting on proposed regulations and guidelines, coordinating activities, and addressing differences in enforcement. He chairs quarterly meetings of the [program] training committee and coordinates the annual training seminar. He serves as a member on other agency committees, e.g., to revise and update the [program] Handbook and to develop a [program] plan tracking database.

Series determination

The appellant's position is properly assigned to the Mine Safety and Health Series, GS-1822, which covers work involved in enforcing, developing, advising on, or interpreting mine safety and health laws, regulations, standards, and practices. Neither the appellant nor the agency disagrees.

Title determination

The GS-1822 series encompasses two broad functional categories of work: *inspector* work, which involves conducting onsite inspections and investigations, and *specialist* work, which includes, among other functions, developing regulations, policies, guidelines, and enforcement programs. The appellant's position falls within the latter category. The authorized title for nonsupervisory positions in this series engaged in the promotion and enforcement of mine safety and health other than by conducting or supervising the conduct of inspections and investigations is Mine Safety and Health Specialist. Neither the appellant nor the agency disagrees.

Grade determination

The position classification standard for the Mine Safety and Health Series, GS-1822, contains grade level criteria for this occupation. This standard is written in the Factor Evaluation System (FES) format, under which factor levels and accompanying point values are to be assigned for each of the following nine factors, with the total then being converted to a grade level by use of the grade conversion table provided in the standard. The factor point values mark the lower end of the ranges for the indicated factor levels. For a position to warrant a given point value, it must be fully equivalent to the overall intent of the selected factor level description. If the position fails in any significant aspect to meet a particular factor level description, the point value for the next lower factor level must be assigned, unless the deficiency is balanced by an equally important aspect that meets a higher level. The standard also contains benchmark job descriptions, which depict typical positions in this occupation at various grade levels with the applicable factor level assignments identified under each of the nine factors.

The GS-1822 standard instructs that positions in this series should be evaluated using the benchmarks to the extent possible, but that factors in individual positions that cannot be matched to factors in the benchmarks may be point rated by reference to the factor level descriptions. It also states that positions not fully covered by the benchmarks or factor level descriptions should be graded by application of sound classification judgment and by analogy with, or extension of, the criteria in the standard. Accepted classification practice in such instances also allows comparing the work to other standards for similar occupations.

Factor 1, Knowledge required by the position

This factor measures the nature and extent of information an employee must understand in order to do the work, and the skills needed to apply that knowledge.

The agency assigned Level 1-7 under this factor. The appellant believes that Level 1-8 should be assigned, based on his role as the national technical expert and program coordinator for the [program].

At Level 1-8 (the highest level described in the standard under this factor), the standard lists the following required knowledges:

- Expert technical knowledge of the mining industry or of specialized areas of mining; or expert knowledge of broad areas of occupational health and/or safety.
- An in-depth and up-to-date knowledge of worldwide developments in mining technology and occupational health and safety; and ability to determine their impact on health and safety in the mining industry.
- Ability to apply these knowledges to plan and direct major new agencywide programs on an experimental or on-going basis applying new theories and developments to resolve critical and heretofore insoluble problems in mine safety and health; to advise top agency and industry officials on the safety and health

implications of critical and controversial new developments in mining; to plan and direct agencywide enforcement programs directed at new and unusual mine safety and health issues and conditions; and to analyze mine accidents, disasters, or other occurrences for their broader implications for the overall mine safety and health program.

The standard does not provide any benchmarks that describe the type of staff work performed by the appellant, nor does it include a benchmark where Level 1-8 is credited. Under the Level 1-8 criteria cited above, the first two components are generalized knowledge requirements, whereas the third relates those requirements to a specific type of assignment. Although the language used in this factor level description is not precise in terms of its exact intent, we interpret the third component as a collection of *examples* of the application of Level 1-8 knowledge requirements rather than the exclusive work situation that may meet that level. We base this on two considerations. First, it would be unduly restrictive to require that any one position in the type of program management capacity inferred by the third component to encompass this wide range of program responsibilities in order to meet Level 1-8. Second, this level does not address the types of common staff functions listed in the standard as “specialist” duties, such as developing regulations, policies, and guidelines, that are typically described at Level 1-8 across a wide spectrum of occupations. For these reasons, we referenced the Level 1-8 knowledge requirements in the following related occupational standards:

Grade Level Guide for Compliance Work – At Level 1-8, the work requires mastery of the concepts, principles, and methods associated with a compliance program. Typical assignments include developing enforcement strategies, model investigative or review plans, or significant investigative procedures for use by other compliance specialists to implement new laws or regulations or address areas where existing guidelines have been ineffective, or *developing authoritative interpretations of regulations and program policies for use by other compliance specialists* when accepted methods or provisions are questioned, challenged, or inadequate and important issues must be resolved.

Safety and Occupational Health Series, GS-018 – At Level 1-8, the work requires knowledge sufficient to serve as a technical authority and make significant decisions or recommendations in the development, interpretation, or application of the principle agency safety and occupational health policies or criteria. This may include *developing safety and occupational health technical standards and controlling requirements* for major industrial operations.

In each of these standards, Level 1-8 requires expertise in a defined program or functional area to perform such assignments as developing new program regulations, guidelines, or criteria and providing technical advisory services to other agency specialists. None of these standards includes program management as a prerequisite for that level. Since the functional responsibilities described above parallel those performed by the appellant, Level 1-8 is considered to best represent both his role in the organization as staff technical expert, and the degree of technical knowledge and skills that role demands.

Level 1-8 is credited (1550 points).

Factor 2, Supervisory controls

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibility, and the review of completed work.

The agency assigned Level 2-5 under this factor, citing the appellant's independence of action in giving technical advice and taking actions, and the limited technical review of his work.

The level of responsibility under which the appellant works is comparable to Level 2-4. At that level, the supervisor may assign to the employee continuing responsibility for a particular area of work. The employee plans and carries out the work independently, providing on-the-spot technical advice requiring interpretation of policy in areas where regulations and precedents are unclear. Decisions that deviate from established policies and precedents are discussed within the agency before being communicated to the mining industry. Reports are typically submitted as recommendations to a supervisor or manager who has signatory authority, although the employee's judgment is accepted as technically sound.

This level accurately depicts the manner in which the appellant operates. He is assigned continuing responsibility for program activities related to [program activities]. He plans and carries out the work independently, including providing unreviewed technical advice and policy interpretations in response to field inquiries. He determines the need for and prepares procedural instructions for both internal and industry distribution. However, internal instructions (procedure instruction letters, or PIL's) are submitted as drafts to the division chief for signature, and industry instructions (program information bulletins, or PIB's) are signed by the Assistant Secretary after a broader policy review by agency management. The appellant is recognized as the technical expert within his program area and is designated as the agency point-of-contact for subsequent inquiries.

The position does not meet Level 2-5. At that level, the supervisor provides general administrative direction with assignments in terms of broad nationwide program objectives and resources of the agency (e.g., to reduce the number of nationwide injuries and fatalities, to induce industrywide compliance with standards and regulations, to abate hazardous conditions in many different geographic locations.) The employee independently plans, organizes, and carries out major programs, projects, and studies. Results of the work are considered technically authoritative and are normally accepted without significant change. Work products in the form of recommendations and proposals for major policy changes are evaluated for such considerations as availability of resources, accomplishment of overall program objectives, and furtherance of the agency's mission.

This factor encompasses three elements – supervisory controls, employee responsibility, and supervisory review. Within that context, Level 2-5 represents not only increased independence of action over Level 2-4, but also a corresponding increase in the level of responsibility assigned to the employee. This increased responsibility is largely a function of the nature of the assignment. For example, Level 2-5 is predicated on the employee being delegated a significant degree of program authority, which provides the context for the degree of supervisory controls described (“administrative direction with assignments in terms of broad nationwide program

objectives and resources of the agency”), and the type of supervisory review performed (i.e., major policy changes that are reviewed for “availability of resources, accomplishment of overall program objectives, and furtherance of the agency’s mission”). In other words, these three elements are interdependent, so that the supervisory controls and review described at Level 2-5 can only be exercised in relation to the corresponding program responsibility assumed at that level.

The appellant carries out his continuing assignments with a considerable degree of independence, and his work is generally accepted as technically reliable. However, he does not have the degree of program authority assumed at Level 2-5. He is not assigned *overall* responsibility for the [program] in terms of its broad objectives and available resources. Rather, he serves as a staff coordinator for certain *aspects* of the program. Therefore, he is not delegated the breadth of responsibility that would allow for the exercise of Level 2-5 supervisory controls and review.

Level 2-4 is credited (450 points).

Factor 3, Guidelines

This factor covers the nature of the guidelines used and the judgment needed to apply them.

The agency assigned Level 3-4 (the highest level described) under this factor, and the appellant does not dispute this factor level. This level covers developing new regulations and procedures to enforce health and safety in mines. This is the appropriate factor level assignment to express the manner in which guidelines relate to the appellant’s position, given his responsibility for developing operational instructions for implementation by the field offices and industry.

Level 3-4 is credited (450 points).

Factor 4, Complexity

This factor covers the nature, number, variety, and intricacy of the tasks or processes in the work performed, the difficulty in identifying what needs to be done, and the difficulty and originality involved in performing the work.

The agency assigned Level 4-5 under this factor. The appellant believes that Level 4-6 should be assigned.

The complexity of the appellant’s work matches Level 4-5. At that level, employees are recognized for their expertise in responding to the most serious crises and the most unusual, sensitive, and stubborn problems that occur in dealing with mines and mine operators. They develop unique approaches to conducting inspections, collecting data, applying standards and regulations, and enforcing safety and health measures in situations where established procedures and precedents would not be effective. Examples of Level 4-5 assignments described in the standard include developing new standards, regulations, and enforcement procedures to promote safety and health in major problem areas where differing needs must be taken into account on an

industrywide basis; advising other employees on how to handle unusual conditions and phenomena which they may encounter in their assignments; and advising on the application of standards and regulations to unusual or marginal situations. This exactly describes the appellant's role in developing operational procedures and advising field personnel on the application of these procedures to unusual conditions or in circumstances that are not specifically addressed.

The position does not meet Level 4-6. At that level, employees conceive, plan, and conduct broad programs dealing with serious, industrywide safety and health issues and problems. Few, if any, established practices or precedents are available to assist in problem-solving, progress is difficult, and new techniques and approaches must be devised. Employees plan and coordinate programs including nationwide data collection, experimentation, and engineering research to develop an acceptable approach to the problem. Often, the work results in new knowledge of mine safety and health which influences the development and use of mining equipment and practices throughout the industry.

In the appellant's case, the [program] does not present the types of issues and activities that would support the level of complexity described above, nor is he delegated the program management responsibility this level demands. Level 4-6 is the highest level of complexity described in the standard under this factor. It involves responsibility for *developing and conducting a broad program* in response to serious identified safety and health problems based on data collection (to define the extent of the problem) and experimentation/research (to devise engineering solutions to the problem). In contrast, the [program] is a relatively narrow, established program. It acquired more emphasis following an [incident], but the response to this mishap consisted mainly of increased inspections at the field level and changes in operational procedures. The program does not encompass planning and coordinating engineering research and experimentation contributing to the development and use of new mining equipment and practices. The appellant claims that he has "developed and implemented a nationwide effort for revision of the program, including various data collections and analyses, in-depth policy reviews, regulation research and solicitor consultations, along with nationwide inspection procedure adjustments." However, this work is clearly represented at Level 4-5, which describes developing unique approaches to *conducting inspections, collecting data, and applying standards and regulations* in responding to the most serious crises or unusual problems.

Level 4-5 is credited (325 points).

Factor 5, Scope and effect

This factor covers the relationship between the nature of the work, and the effect of the work products or services both within and outside the organization.

The agency assigned Level 5-5 under this factor. The appellant believes that Level 5-6 should be assigned.

The scope and effect of the appellant's work match Level 5-5. At that level, assignments involve resolving problems that are critical to the accomplishment of the agency's mission. Work at this

level typically involves evaluating program accomplishments throughout the agency's field offices and modifying agency standards, regulations, inspection, and enforcement criteria to meet critical objectives of the mine safety and health program. The work determines how inspectors and others in the agency's field offices carry out the program, and whether major aspects of the agency mission are accomplished. Work frequently affects the well-being of mine workers in many mines throughout the country owned and operated by the nation's largest mining companies. This fully covers the appellant's work in initiating changes in operational procedures to address recurring problems or improve enforcement, which affects how [program] specialists in the district offices conduct their inspections.

The position does not meet Level 5-6. At that level, the work typically involves planning, developing, and carrying out agencywide projects and programs that are essential to accomplishment of the agency's mission. Assignments involve sweeping changes in major portions of health and safety regulations and standards, new enforcement programs, new agencywide organizational structures, or other special features of comparable breadth and originality. The assignments contribute substantially to reducing accidents and disasters in the mining industry on a long-term basis.

The appellant does not have the degree of program authority that would permit crediting of this level. He is not responsible for planning and developing the overall content and the governing rules and regulations of the [program]. He drafts changes in operational procedures relating to technical aspects of [program activities], not "sweeping changes in major portions of health and safety regulations." He coordinates the ongoing activities of an established inspection program, rather than developing a "new enforcement program." He may make staffing recommendations for the agency's [program] activities, but he is not responsible for developing "new agencywide organizational structures." In short, Level 5-6 describes the far-reaching impact that would be associated with high-level program development or policy analysis work that is well beyond the parameters of the appellant's role in the organization.

Level 5-5 is credited (325 points).

Factor 6, Personal contacts

This factor includes face-to-face and telephone contacts with persons not in the supervisory chain. The relationship between Factors 6 and 7 presumes that the same contacts will be evaluated under both factors.

The agency assigned Level 6-4 under this factor, citing the appellant's contacts with "representatives of labor unions, industry, manufacturers, and professional safety groups as well as high ranking government officials."

The appellant's personal contacts meet but do not exceed Level 6-2. At that level, contacts are typically with employees in other organizations of the same agency (e.g., mine safety instructors, inspectors, or specialists from field offices or headquarters, etc.) Correspondingly, these represent the appellant's regular and recurring contacts, which are almost exclusively internal to the agency.

Level 6-3 is not met. At that level, contacts are with other employees in the agency and with persons outside the agency involved in the mining industry, such as mine operators and their representatives and union leaders, and occasionally with representatives of the public and the news media. The appellant's work does not require regular contacts with mining industry representatives, union leaders, the public, or the media. (Level 6-4 represents an even higher level of external contacts with high ranking officials on a *national* level of major mining companies, manufacturers, and unions, *nationally* recognized news persons, and *top* government officials at the State or national level. The nature of the appellant's work is not such that he would have these types of national-level contacts, nor would he be authorized to independently conduct such contacts.)

Level 6-2 is credited (25 points).

Factor 7, Purpose of contacts

This factor covers the purpose of personal contacts ranging from factual exchange of information to situations involving significant or controversial issues and differing viewpoints and objectives.

The agency assigned Level 7-4 under this factor, citing the appellant's contacts in gathering information, giving technical advice, resolving problems, and developing or revising policies and regulations, such as with field personnel and Solicitors to gain consensus in producing compliance/enforcement procedures.

The purpose of the appellant's contacts is consistent with Level 7-2. At that level, the purpose of contacts is for planning and coordination and for advising on and resolving problems and issues. Examples include analyzing and recommending solutions to safety and health problems or arriving at mutually agreeable means of correcting substantive deficiencies where the parties involved have cooperative attitudes. This accurately characterizes the appellant's role in working with other agency personnel in drafting operational procedures.

Level 7-3 is not met. The difference in contacts at this level from Level 7-2 stems from the attitudes of the persons contacted (i.e., an adversary relationship). Examples include convincing mine operators to comply with mandatory safety practices; investigating the cause of accidents and determining culpability; or negotiating contested assessments. The appellant's contacts are with agency staff and although there may be differences of opinion, these contacts are not adversarial in the sense intended at Level 7-3. (Level 7-4 involves settling controversies or disagreements between the agency and mine operators, mine workers, or their representatives on very serious or important matters, such as proposed regulations or enforcement programs or unresolved accidents or disasters. Contacts on issues of this magnitude would be handled at higher management levels within the appellant's agency.)

Level 7-2 is credited (50 points).

Factor 8, Physical demands

This factor covers the requirements and physical demands placed on the employee by the work situation.

The agency assigned Level 8-2 under this factor, stating that the appellant “is on call and is designated” to conduct occasional mine inspections. However, our review indicated that the appellant has not conducted any site visits in at least the past year. Therefore, Level 8-1, which covers sedentary work (with allowance for occasional site work involving walking and climbing), is the appropriate factor level assignment.

Level 8-1 is credited (5 points).

Factor 9, Work environment

This factor considers the risks and discomforts in the employee’s physical surroundings or the nature of the work assigned and the safety regulations required.

The agency assigned Level 9-2 under this factor, again based on the appellant being designated to conduct occasional mine inspections but acknowledging that most of his work is office-based. However, this is covered under Level 9-1, which states that “employees may occasionally visit mines or mills where conditions are similar to Level 9-2 or 9-3, however, this does not warrant consideration in hiring or retaining them on the job.” In contrast, at Level 9-2 “the work environment in which employees spend *a large portion* of their time includes mines and mills.”

Level 9-1 is credited (5 points).

Summary

<u>Factors</u>	<u>Level</u>	<u>Points</u>
Knowledge Required	1-8	1550
Supervisory Controls	2-4	450
Guidelines	3-4	450
Complexity	4-5	325
Scope and Effect	5-5	325
Personal Contacts	6-2	25
Purpose of Contacts	7-2	50
Physical Demands	8-1	5
Work Environment	9-1	<u>5</u>
Total		3305

The total of 3185 points falls within the GS-13 range (3155-3600) on the grade conversion table provided in the standard.

Decision

The appealed position is properly classified as Mine Safety and Health Specialist, GS-1822-13.