

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

Atlanta Oversight Division
75 Spring Street, SW., Suite 972
Atlanta, GA 30303-3109

Classification Appeal Decision

Appellant:	[Appellant]
Agency classification:	Equal Opportunity Specialist GS-360-13
Organization:	Federal Transit Administration U.S. Department of Transportation
OPM decision:	Equal Opportunity Specialist GS-360-12
OPM decision number:	C-0360-12-01

/s/

Kathy W. Day
Classification Appeals Officer

1/12/01

Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the Introduction to the Position Classification Standards, appendix 4, section G (address provided in appendix 4, section H).

Since this decision lowers the grade of the appealed position, it is to be effective no later than the beginning of the sixth pay period after the date of this decision, as permitted by 5 CFR 511.702. The servicing personnel office must submit a compliance report containing a Standard Form 50 showing the personnel action taken. The report must be submitted within 30 days from the effective date of the personnel action.

The personnel office must also determine if the appellant is entitled to grade or pay retention, or both, under title 5, United States Code 5362 and 5363 and 5 CFR 536. If the appellant is entitled to grade retention, the two-year retention period begins on the date this decision is implemented.

Decision sent to:

[Appellant]

Director, Office of Human Resources
U.S. Department of Transportation
Federal Transit Administration
400 7th Street, SW, Room 9113
Washington, DC 20590

Director of Personnel
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Introduction

On October 17, 2000, the Atlanta Oversight Division, U.S. Office of Personnel Management (OPM), accepted an appeal for the position of Equal Opportunity Specialist, GS-360-13, [organizational location], Federal Transit Administration (FTA), U. S. Department of Transportation (DOT), [geographical location]. The appellant is requesting that his position be classified as Equal Opportunity Specialist, GS-360-14.

The appeal was accepted and processed under section 5112(b) of title 5, United States Code. This is the final administrative decision on the classification of the position subject to discretionary review only under the limited conditions and time outlined in part 511, subpart F, of title 5, Code of Federal Regulations.

General issues

The appellant believes that his position should be graded at the GS-14 level, and he believes he is entitled to back pay. Comptroller General Decision B-240239, dated October 29, 1990, provides the general rule that an employee is entitled only to the salary of the position to which he or she is actually appointed, regardless of the duties performed. When an employee performs the duties of a higher grade level, no entitlement to the salary of the higher grade exists until such time as the individual is actually promoted.

This decision is based on written information furnished by the appellant and the agency, as well as telephone interviews with the appellant's supervisor and Team Leader, and an onsite audit with the appellant.

Position information

The appellant is assigned to position description number [#]. The appellant, his supervisor and the agency have certified the accuracy of the position description.

The appellant serves as a Civil Rights Officer on the staff of the FTA [organization]. The appellant is responsible for ensuring that the recipients of FTA financial assistance include the full and affirmative implementation of all civil rights programs in their grant requests. The programs include Title VI, Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE), Americans With Disabilities Act (ADA), and 504. He provides technical assistance to FTA grant recipients and contractors, as well as reviews Equal Opportunity Plans submitted with requests for FTA funds. The appellant must make sure that the plans promote equal opportunities and specifically meet regulations and requirements in the program areas listed. If they do not, he must work with the transit authority/grantee to resolve and eliminate barriers to equal opportunity. The appellant ensures that all plans submitted are current and in compliance before they are given to a staff attorney for review. The plans are sent to headquarters for final approval.

The FTA has a team structure in place with each team having primary responsibility for one program area. The appellant is assigned to the [team]. Although he must have knowledge of all program areas to assess whether grant requests meet requirements, he is considered the technical expert concerning the [assigned program area]. As such, he answers questions from other teams concerning [assigned program area] and provides advice and assistance to grantees as required. He, in turn, goes to the other program teams (i.e., ADA, title VI, etc.) with questions concerning their assigned program areas or refers grantees to the appropriate team, as necessary.

The Team Leader, a GS-360-14, assigns work in terms of broadly defined functions. The appellant independently exercises judgment in planning and carrying out assignments and in selecting the appropriate techniques for completing them. The Team Leader and/or the supervisor are available to answer questions as necessary and to discuss potential problems. The appellant's work is reviewed by the staff attorney in the region who forwards completed plans for final approval to the appellant's supervisor, who is the Director, Civil Rights Office, in Washington, DC.

Series and Title determination

The appellant does not contest the agency's determination of his series and title. The Equal Opportunity Compliance Series, GS-360, covers positions concerned with the application of civil rights and equal opportunity laws, regulations, and precedent decisions to eliminate illegal discrimination and to remove barriers to equal opportunity. This series also includes equal opportunity or civil rights positions of an analytical, evaluative, and interpretative nature, which are not properly classified in another series. Positions in this series involve factfinding, analysis, writing, and application of civil rights or equal opportunity principles to identify and/or solve problems. The appellant's position involves analyzing grant submissions to ensure they comply with equal opportunity and civil rights laws and regulations; answering technical questions concerning FTA's external civil rights program requirements; and applying an understanding of various associated policies, regulations, and procedures.

The appellant's position is properly placed in the GS-360 series. The title authorized for nonsupervisory positions in this series is *Equal Opportunity Specialist*.

Standard determination

Equal Opportunity Compliance Series, GS-360, November 1980.

Grade determination

The GS-360 standard uses the Factor Evaluation System (FES) format. Under the FES, positions are evaluated on the basis of their duties, responsibilities, and the qualifications required in terms of nine factors common to non-supervisory General Schedule positions.

A point value is assigned to each factor based on a comparison of the position's duties with the factor-level descriptions in the standard. The factor point values mark the lower end of the ranges for the indicated factor level. For a position factor 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 in the standard, the point value for the next lower factor level must be assigned, unless the deficiency is balanced by an equally important aspect which meets a higher level. The total points assigned are converted to a grade by use of the grade conversion table in the standard.

The appellant disagrees with the agency determination of factors 1, 3, 5, 6, and 7. We have reviewed factors 2, 4, 8, and 9. We agree with the agency determination of factors 8, and 9. However, we disagree with factors 2 and 4. We will, therefore, discuss factors 1, 2, 3, 4, 5, 6, and 7.

Factor 1- Knowledge Required by the Position:

This factor measures the nature and extent of information or facts that a worker must understand to do acceptable work, such as the steps, procedures, practices, rules, policies, theories, principles, and concepts; and the nature and extent of the skills needed to apply this knowledge. The agency credited this factor with Level 1-8. The appellant believes Level 1-9 should be credited. We found Level 1-7 to be correct.

At Level 1-7, equal opportunity specialists must have a thorough and comprehensive knowledge of laws, regulations, Executive orders, court decisions, and issues related to an equal opportunity program area and skill to apply this knowledge to a variety of difficult and complex work assignments. They must have a broad knowledge of the structure, policies, operating or business practices of the institutions covered by the equal opportunity laws being enforced. Specialists use methods and techniques such as factfinding, analysis, and problem resolution. At this level, specialists:

- Plan, conduct, and report on complete contract compliance reviews of business firms or local facilities of large corporations when significant equal employment issues must be resolved during the review or as a result of the review; or
- Review and monitor agency grants, projects, and programs to determine whether or not they meet equal opportunity requirements and provide technical assistance to local governments, recipients of, and applicants for agency program funds to assist them in meeting the requirements of the program.

Level 1-7 is met. The appellant uses a comprehensive knowledge of EEO and civil rights related laws, regulations, Executive orders, and court decisions to offer technical advice and to ensure that all plans submitted by grantees are in compliance with program requirements. He must be knowledgeable of the organizations submitting the grant requests in order to review and assess

compliance and recommend solutions to problems. Like the examples of assignments described as typical of this level, the appellant reviews and monitors grant requests to ensure compliance with various equal opportunity and civil rights program requirements and provides technical assistance to grantees. He uses factfinding and analysis to resolve compliance problems that may be complex.

At Level 1-8, specialists must possess a mastery of the concepts, principles, and methods of a broad major area of the field of equal opportunity. This involves expert knowledge of the problem solving and/or enforcement techniques of the field and the legal framework in which the program operates; a high level of skill in interpreting regulations within the program area, where accepted methods and principles are questioned or challenged; and skill in negotiating and otherwise resolving unprecedented, broad, difficult, or complex problems. For example, specialists:

- Investigate or conciliate remedies involving novel and highly complex and significant issues that are likely to result in major precedent decisions, involve powerful competing interests (such as national corporations) that strongly contest the case, and potentially involve remedies that materially affect the interests of the parties to the complaint; or
- Resolve major fundamental issues arising from contract compliance reviews through enforcement of decisions and negotiations with contractors or other recipients of Federal funds when the issues are novel, broad, and highly complex. The issues affect the vital interest of the parties and are strongly contested.

Level 1-8 is not met. The appellant has expert knowledge of the regulations and requirements of the external transportation civil rights program. However, according to the Team Leader and the supervisor, the appellant does not make precedent setting decisions when resolving problems nor does he routinely deal with issues where accepted methods and principles are challenged or do not apply. To better understand the intent of Level 1-8, the Primary Standard is referenced. The Primary Standard is the standard on which all other FES standards are based. Level 1-8 in the Primary Standard describes a level of mastery to apply experimental theories and new developments to problems not susceptible to treatment by accepted methods; or to make decisions significantly changing or developing important public policies or programs. Although the appellant may have to handle complex problems and interpret equal opportunity laws and regulations, his program responsibilities are limited to external civil rights programs as they relate to the FTA grants program. The methods, principles, and enforcement techniques he uses or recommends are more often considered traditional or accepted rather than novel. His decisions do not impact public policy or significantly change the FTA external civil rights program. The appellant does not meet the intent of Level 1-8.

Level 1-7 is credited for 1250 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 for carrying out assignments, and how completed work is reviewed. The agency credited this Factor with Level 2-5, and the appellant agrees. We believe Level 2-4 is correct.

At Level 2-4, the supervisor sets the overall objectives and resources available. The employee exercises judgment in planning and carrying out the assignment and selects the appropriate techniques to complete the assignment. The supervisor is informed when major unexpected problems or significant controversial issues arise. Completed work is reviewed in terms of fulfillment of the assignment objectives within established target dates.

Level 2-4 is met. The appellant works under the direction of the Regional Team Leader and under the supervision of the FTA Director, Office of Civil Rights, who is located in Washington, DC. The appellant is responsible for independently planning and carrying out assignments and selecting the appropriate policy or regulation to resolve issues. He coordinates his work with other Team Leaders and Group Leaders. The Director and the Regional Team Leader are advised of any unusual problems or those of significant controversy or sensitivity, and are available to provide substantive guidance when needed. The appellant does not have the authority to make precedent setting decisions; he makes recommendations to his Team Leader and/or the Director. A staff attorney reviews his work, as well as other members included in his team. If there is ever a question of non-compliance, the appellant must notify the Team Leader and the Director, in which case the Director intervenes.

At Level 2-5, the supervisor provides administrative direction and gives assignments in terms of broadly defined missions or functions. This may include setting budget and personnel limits on the employee's program or project or setting broad policy goals and objectives. The employee is responsible for independently planning, designing and carrying out assignments. The results of the employee's work are considered technically authoritative and are normally accepted without change. If the work is reviewed, the review concerns such matters as fulfillment of program objectives, or the overall effect of the program.

Level 2-5 is not met. This level describes independent responsibility for broad programs and authoritative advice that may affect organizational policies. It reflects administrative supervision only with full technical authority delegated to the employee. Typically, this level of authority is accompanied by responsibility for a significant program or function. While the appellant has significant technical responsibility, his supervisor has ultimate program responsibility. The appellant's assignments are focused on ensuring grantees comply with EEO regulations and guidelines as required by FTA's external civil rights programs. Once the appellant has reviewed the grantees' plans and determines they are in compliance, the plans are reviewed by a staff attorney and forwarded to headquarters for final approval. Such review by two other levels of authority is more extensive than intended to credit Level 2-5.

Level 2-4 is credited for 450 points.

Factor 3 - Guidelines:

This factor covers the nature of guidelines used and the judgment needed to apply them. The agency credited Level 3-4. The appellant believes Level 3-5 is correct.

At Level 3-4, equal opportunity specialists perform work covered by guidelines such as laws, Executive orders, policy statements, and government wide or agency directives. In some instances the guidelines may include broadly stated or incomplete procedural manuals. These guidelines are inadequate in dealing with unusual cases such as developing EEO programs or materially redesigning existing programs to meet new objectives. The employee uses initiative and resourcefulness in extending or redefining guidelines, or deviating from traditional principles and practices.

Level 3-4 is met. The appellant uses various laws, regulations, Executive orders, and agency guidelines on a daily basis. The laws and policies cover a range of external transportation civil rights protections including Title VI of the 1964 Civil Rights Act, the ADA of 1990, 49 U.S.C., section 5332 of the Transportation Efficiency Act, and section 504 of the Rehabilitation Act of 1973. He shows initiative and resourcefulness in extending or redefining guidelines, and occasionally deviating from traditional practices in order to ensure compliance.

At Level 3-5, guidelines are broad and nonspecific and require extensive interpretation. The guidelines constitute a framework in which major compliance decisions are made. The specialist uses considerable judgment and ingenuity in interpreting the guidelines that do exist to develop new policies and guidelines covering major equal opportunity areas or to make major precedent setting decisions. The employee is considered a technical expert.

Level 3-5 is not met. The appellant has both specific and nonspecific guidelines to apply and is considered a technical expert in his area. However, he is not responsible for developing policies or making precedent setting decisions. In addition, his program area is limited to ensuring compliance with external transportation civil rights protections and providing advice and assistance on related transportation and transit issues. This falls short of fully meeting Level 3-5. Therefore, Level 3-4 must be credited.

Level 3-4 is credited for 450 points.

Factor 4- Complexity:

This factor covers the nature of the assignment, variety, intricacy of tasks, steps, processes, or methods required and the difficulty and originality required to perform the work. The agency credited Level 4-5. We believe that Level 4-4 is appropriate.

At Level 4-4, specialists typically perform complete assignments with widely varying duties including the complete cycle of factfinding, problem definition and identification, determining cause and effect relationships, making conclusions, and recommending a decision or proposing action. They usually perform comprehensive analyses of broad policies and practices of complex organizations such as industrial plants or large service organizations. Problems of the type encountered typically have been soluble, but solutions require selection and modification of appropriate methods and approaches used by the office. Decisions regarding what needs to be done include planning the project or assignment so the essential facts and issues are adequately covered; making major modification in methods and approach to the problem during the assignment as conditions warrant; and sorting relevant facts from a vast body of information, opinions, and conditions.

Level 4-4 is met. The appellant's work assignments involve the complete cycle of factfinding, problem definition and identification, determining cause and effect relationships, reaching conclusions, and recommending solutions or proposing action. He determines the best approach to use based on his analysis of the situation and may have to adjust or modify the approach, if necessary.

At Level 4-5, specialists perform complete assignments individually or as a team leader involving a wide variety of duties, employing a broad range of factfinding and analytical techniques, and requiring decisions in interpreting varied and complex factual situations in the context of the requirements of laws, regulations, or policies. Assignments are to solve highly complex problems generally characterized by: (1) a large body of disputed interrelated facts that must be reconstructed from circumstantial evidence; (2) rapidly changing conditions requiring consideration of changes over relatively short periods of time (e.g. less than 6 months); (3) issues to be resolved which are important because of their precedent setting nature or because of their impact on the community and on large numbers or persons; (4) broad policies and practices of highly complex organizations which must be analyzed in depth; (5) powerful organizations effected by the case, such as large organizations, civil rights organizations, or unions that vigorously support their interests at each stage of the assignment by challenging facts, and disputing methods, approaches, and principles employed by the equal opportunity specialist; (6) major parties (typically organizations or persons having considerable resources) who are uncooperative (e.g., they provide misleading or false information, threaten or take legal action at various stages of the case or project, argue the case or issues in the public media, or place roadblocks to access of necessary information; (7) problems are of a type that have been particularly resistant to solutions in the past. Decisions regarding what must be done include major areas of uncertainty in planning projects, determining the scope of the project, defining issues, determining applicable precedents, laws, or regulations to apply and determining the most effective approach and methodology. Equal opportunity specialists make major or precedent

setting technical decisions concerning enforcement cases that change agency policy, or establish criteria for deciding future cases of the same type, or change fundamental policies and practices of major institutions such as national or regional organizations.

Level 4-5 is not met. Although the appellant's assignments involve a degree of complexity, they do not normally contain the additional characteristics typical of Level 4-5. For example, they do not require that he spend significant time reconstructing factual information from circumstantial evidence nor do the grantees typically provide false information or threaten legal actions. His cases are not normally of a precedent setting nature. Additionally, his assignments typically involve compliance issues with individual grant requests which can be resolved, as opposed to recurring longstanding systemic problems which have historically been resistant to resolution.

Level 4-4 is credited for 225 points.

Factor 5 - Scope and Effect:

This factor covers the relationship between the nature of the work (i.e., the purpose, breadth, and the depth of the assignment) and the effect of work products, services, or programs both within and outside the organization. The agency credited Level 5-5. The appellant believes Level 5-6 should be credited. We believe that Level 5-4 is appropriate.

At Level 5-4, the work involves projects that resolve broad, difficult, and complex equal opportunity problems through systematic factfinding, analysis, and consulting efforts. The work results in resolution of a wide variety of problems ranging from individual complaints to elimination of systemic barriers to equal opportunity, such as policies or widespread practices in a segment of a Federal agency. The work affects the equal opportunity of many persons.

Level 5-4 is met. The appellant has a responsibility to ensure that all transportation and transit authorities who wish to pursue FTA grants do not discriminate and to ensure that the external transportation civil rights programs are properly implemented in the region he services. This may involve resolving a complex problem dealing with a state or local transit authority's practices or providing advice and assistance to resolve an individual compliance issue.

At Level 5-5, specialists work to eliminate major barriers to equal opportunity in large important institutions such as national corporations, state, urban, or regional school systems. The work results in changes in national policy in a particular issue area. Typically, the work affects the rights or economic welfare of entire classes of employees, or persons served by the institution involved.

Level 5-5 is not met. The record does not support that the appellant's work results in major national policy or procedural changes in large important institutions. His work ensures that recipients of FTA's Federal grants do not promote discriminatory practices. Recipients of grants are state or local transit authorities in the region serviced.

Level 5-4 is credited for 225 points.

Factor 6 - Personal Contacts:

This factor includes face-to-face contacts and telephone and radio dialogue with persons not in the supervisory chain. Levels described under this factor are based on what is required to make the initial contact, the difficulty of communicating with those contacted, and the setting in which the contact takes place. The agency credited Level 6-3. The appellant believes Level 6-4 is correct.

At Level 6-3, the contacts are typically with persons outside the employing agency such as attorneys, managers of firms or public agencies, or complainants or other parties to complaints from outside the agency. The content of each contact is different, and the role or authority of each party is identified and developed during the course of the contact.

Level 6-3 is met. The appellant's routine personal contacts are with attorneys, DOT and FTA officials, various managers and employees of state and local transit authorities, and the general public. The content of the contacts may vary depending on the situation (e.g., grantee asking for advice, individual complaining about a discriminatory situation, etc.).

At Level 6-4, contacts are characterized by problems, such as the officials may be relatively inaccessible; arrangements may have to be made for accompanying staff members; appointments may have to be made well in advance; each party may be very unclear as to the role and authority of the other; and each contact may be conducted under different ground rules. Typical of contacts at this level are those with Members of Congress, leading representatives of foreign governments, presidents of large national or international firms, nationally recognized representatives of the news media, presidents of national unions, state governors, or mayors of large cities.

Level 6-4 is not met. Although the appellant provided numerous letters which he believes support crediting Level 6-4, we find that these contacts represent local transit managers, a local level official of a nationally recognized public action group, a state transportation official, and various internal and external agency employees. The letter he provided from a state senator was not in relation to a work assignment and is not typical of his everyday contacts. His routine interactions do not involve the high-ranking persons at a national or international level described at Level 6-4.

Level 6-3 is credited for 60 points.

Factor 7- Purpose of Contacts:

The purpose of personal contacts ranges from factual exchanges of information to situations involving significant or controversial issues and differing viewpoints, goals, or objectives. The personal contacts which serve as the basis for the level selected for this factor must be the same as

the contacts which are the basis for the level selected for Factor 6. The agency credited Level 7-3. The appellant believes Level 7-4 is correct.

At Level 7-3, the purpose of contacts is to negotiate procedural points, conduct formal interviews (or interrogation) of witnesses or other persons having information on a complaint, or to persuade individuals. The persons may be a party to a complaint, a representative of a party to a complaint, or a representative of an organization challenging the agency's policies. At this level, persons contacted may be fearful, skeptical, or uncooperative, requiring the equal opportunity specialist to be skillful in conducting the meeting to obtain the desired results.

The purpose of the appellant's contacts is comparable to Level 7-3. He negotiates with grantees in an effort to persuade them to comply with various civil rights laws and regulations. The appellant must use skill in conducting meetings to obtain the desired results.

At Level 7-4, the purpose is to negotiate or conciliate resolutions to highly controversial or major issues, or to justify or defend decisions (as opposed to recommendations) on major controversial issues. Work at this level usually involves active participation in meetings, hearings, or presentations involving problems or issues of considerable consequence. The persons contacted typically have diverse goals or objectives.

Level 7-4 is not met. The appellant assists and negotiates with state and local transit authorities to develop equal opportunity plans that are in compliance with external transportation civil rights protections. Both the appellant and his contacts have the same ultimate goal, which is to achieve compliance in order to receive FTA grant money.

Level 7-3 is credited for 120 points.

Factor Point Summary

Factor	Level	Points
1. Knowledge Required by the Position	1-7	1,250
2. Supervisory Controls	2-4	450
3. Guidelines	3-4	450
4. Complexity	4-4	225
5. Scope and Effect	5-4	225
6. Personal Contacts	6-3	60
7. Purpose of Contacts	7-3	120
8. Physical Demands	8-1	5
9. Work Environment	9-1	5
	Total	2,790

In accordance with the grade conversion table in the standard, a total of 2790 points falls within the range for a GS-12, 2755 to 3150 points.

Decision

The appellant's position is properly classified as Equal Opportunity Specialist, GS-360-12.