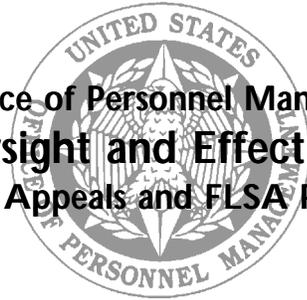


U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs



Atlanta Oversight Division
75 Spring Street, SW., Room 972
Atlanta, GA 30303

**Classification Appeal Decision
Under Section 5112 of Title 5, United States Code**

Appellant:	[Appellant]
Agency classification:	Appraiser GS-1171-12
Organization:	U.S. Army Corps of Engineers
OPM decision:	Appraiser GS-1171-12
OPM decision number:	C-1171-12-02

/s/ _____
Kathy W. Day
Classification Appeals Officer

2/22/00 _____
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]

[Personnel Officer]

Dr. Susan Duncan
Deputy Chief of Staff for
Human Resources
U.S. Army Corps of Engineers
(CEHR-2A)
20 Massachusetts Avenue, NW
Washington, DC 20314-1000

Mr. David Snyder
Deputy Assistant Secretary
Civilian Personnel Policy/
Civilian Personnel Director for Army
U.S. Department of the Army
Room 23681, Pentagon
Washington, DC 20310-0300

Mr. James Feagins
Chief, Position Management and
Classification Branch
Office of the Assistant Secretary
Manpower and Reserve Affairs
U.S. Department of the Army
Attn: SAMR-CPP-MP
Hoffman Building II
200 Stovall Street, Suite 5N35
Alexandria, VA 22332-0340

Mr. Harrel Sholar
Director, U.S. Army Civilian Personnel
Evaluation Agency
Crystal Mall 4, Suite 918
1941 Jefferson Davis Highway
Arlington, VA 22202-4508

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

Introduction

On October 8, 1999, the Atlanta Oversight Division, U.S. Office of Personnel Management, accepted an appeal for the position of Appraiser, GS-1171-12, [organization], U.S. Army Corps of Engineers, [location]. The appellant is requesting that his position be classified as Appraiser, GS-1171-13.

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 contends that the complexities of the public works projects with which he is involved and his status as the District's technical authority on appraisal related issues and matters support a classification of GS-13. He believes that the agency failed to consider these points in determining the grade of his position. He is also requesting that his position be upgraded to GS-13 retroactively to May 1994.

The Comptroller General of the United States (Decision B-180144, September 3, 1974) stated that: "It has long been the rule of this office that a personnel action may not be made effective retroactively so as to increase the right of an employee to compensation." 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 rule was reaffirmed by the United States Supreme Court in United States v. Testan, 424 U.S. 392, at 406 (1976), where the court stated "... the federal employee is entitled to receive only the salary of the position to which he was appointed, even though he may have performed the duties of another position or claims that he should have been placed in a higher grade." Therefore, the appellant is not entitled to back pay.

Position information

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

The primary purpose of the position is the performance of a wide range of activities related to the valuation of real estate for the U.S. Army Engineer District, [location], serviced military activities, and local, state, and Federal government agencies and organizations. The appellant's responsibilities include the preparation and review of real estate appraisal reports, economic and feasibility analyses, market impact and highest and best use studies, and resolution of highly difficult real estate valuation problems.

The appellant works under the supervision of the Chief, Real Estate Division, who assigns work, provides general administrative direction, and establishes overall objectives. The appellant independently plans, develops and carries out all appraisal and appraisal review duties and responsibilities. He resolves any conflicts between procedural and regulatory requirements or program and project objectives that may arise while carrying out assignments. The supervisor is kept informed of the progress on assignments and any problems that impact program or project schedules. Problems involving issues related to agency policy, applicable laws and regulations, or of a precedent setting nature are referred to the supervisor. Completed assignments are considered technically authoritative and are normally accepted without change.

Series and title determination

The appellant does not contest the series or title determination. The agency placed the position in the Appraising Series, GS-1171, and we agree. The GS-1171 series covers positions that involve supervising or performing work in appraising or reviewing the appraisal of real or personal property or property interests. *Appraiser* is the authorized title for all nonsupervisory positions in this series primarily responsible for appraising property.

Standard determination

Appraising Series, GS-1171, November 1992.

Grade determination

The GS-1171 standard is written in the Factor Evaluation System (FES) format. Under the FES, positions are placed in grades on the basis of their duties, responsibilities, and the qualifications required as evaluated in terms of nine factors common to nonsupervisory 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 levels. 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's evaluation of factors 1, 2, and 7. We have reviewed the agency determination for factors 3, 4, 5, 6, 8, and 9 and concur with their findings. Therefore, our evaluation will address only those factors with which the appellant disagrees.

Factor 1 - Knowledge Required by the Position:

This factor identifies the nature and extent of appraisal concepts, practices, principles, and methodologies the employee must know to do acceptable work, and the nature and extent of skills required to apply the knowledges. The agency credited Level 1-7. The appellant believes that Level 1-8 should be credited.

At Level 1-7, employees use knowledge of a wide range of appraisal concepts, principles, and practices to appraise and/or review the appraisals of properties with complex characteristics and to analyze complicated valuation problems. This may include resolving value problems for properties with limited comparable sales, multiple or questionable ownerships, numerous encumbrances (e.g., easements and rights of way that conflict with the proposed uses), various possible highest and best uses that may be entirely different than the current use, unusual physical constraints, sensitive environmental concerns, partial takings whose use will have a negative impact on the remainder of the property, and other equivalent characteristics. This knowledge is used to devise strategies and plans for resolving property value problems; modify, adapt, or depart from established appraisal techniques and procedures; or assess, select, and make use of appraisal precedents.

Employees use data gathering skill and ingenuity to locate information that is not readily available. They use appraising knowledge and skill to analyze and interpret the effects of unstable social, economic, and political trends on property uses and values (e.g., changing market conditions, zoning problems, and conflicting public and private interests). They also use knowledge of advanced financing techniques and complicated tax, real estate, and environmental laws and regulations to determine their effect on property values.

At Level 1-8, employees apply a mastery of appraisal concepts, principles, and methodologies. They function as technical authorities applying new theories and standards to appraisal problems or assignments:

- not susceptible to treatment by accepted and established appraisal procedures;
- for which no accepted or established appraisal procedures exist; or
- where conflicts exist between policy and program objectives.

For example, employees use their knowledge and technical expertise to:

- appraise and/or review the appraisals of a broad range of properties with extremely complex characteristics similar to those of a military base or a large forest with a variety of diverse, and often conflicting, recreational, mining, timber, commercial, industrial, or residential uses;

- appraise and/or review the appraisals of properties that may involve controversial condemnations or whose values have significant impact on the economy of a community or budget of an agency; and typically involve intense public, or congressional scrutiny;
- review and analyze very complex appraisal reports for the impact of recommendations and estimated values on agency policies, goals, and objectives; or
- evaluate the impact of new or modified appraisal, real estate, tax, and environmental legislation on current and projected appraisal standards and programs and prepare important policy changes based on impact.

Level 1-7 is met. The appellant's work requires that he possess and use a variety of appraisal, economic, and legal concepts, principles and practices related to the acquisition and valuation of real estate. He is responsible for the entire range of appraisal activities, including analyses and studies, for property being acquired for local cooperation civil works and military projects falling under the jurisdiction of the [District]. The appellant must be knowledgeable of all applicable state, environmental, Federal and other laws that impact the acquisition of real property involving the use of Federal funds; the rights of the property owners; valuations of partial interests; the effect of partial acquisition on the value of remaining property; and the effect of governmental acquisition on overall property value. He functions as the review appraiser for valuation reports prepared by contract appraisers employed by the sponsors of local cooperation projects. In this capacity, he is responsible for ensuring that all applicable Federal, state, and local appraisal requirements are met, that appraisals are correct, and that the interests of Federal taxpayers are protected.

Level 1-8 is not met. The appellant's work does not require the application of new appraisal theories and standards to resolve problems. He contends that, as a technical authority for appraisal related matters and issues for the District, state, and local governmental agencies, he is involved with a variety of highly complex projects. However, he can use existing and established procedures to resolve problems. In addition, his assignments do not typically involve conflicts between agency policy and program objectives to the extent that project funding is threatened. Also, unlike the Level 1-8 description, the appellant is not responsible for evaluating the impact of legislation and preparing agency policy changes.

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, and the extent to which completed work is reviewed. The agency credited Level 2-4. The appellant believes that Level 2-5 should be credited.

At Level 2-4, the supervisors set overall objectives and identify the resources available. Employees and supervisors, in consultation, develop the deadlines, projects, and work to be done such as ways to appraise or review the appraisals of properties with complicated or unusual characteristics. The employees plan and carry out the assignment, resolve conflicts that arise, coordinate the work with others, and interpret policy on own initiative in terms of established objectives. The employees keep the supervisors informed of progress and potentially controversial matters.

At Level 2-5, the supervisors provide administrative direction with assignments in terms of broadly defined missions or functions. The employees plan, design, and carry out appraisal review programs, projects, and studies. They may also independently prepare extremely complex or highly controversial appraisals. Supervisors consider the work technically authoritative and normally accept results without change. They evaluate recommendations for new projects and alterations of objectives for such considerations as availability of funds and other resources, broad program goals, or national priorities. Review appraisers or supervisors review extremely complex or highly controversial appraisals for their impact on policies, conflicts with legal premises, and whether the processes used or conclusions made set precedents.

Level 2-4 is met. The appellant is assigned appraisal cases by the supervisor. He estimates that his time is evenly divided between preparing appraisals himself and reviewing those prepared by contract appraisers and appraisers located in [another District] (for which [appellant's District] does all review work). The supervisor stated that he provides administrative control but does not get involved with the technical aspects of the appellant's day-to-day appraisal work. The overall objectives and resources for the work performed are established and the appellant works within them. This level fully recognizes the appellant's independence and authority to handle unusual problems and complex assignments.

Level 2-5 is not met. This level describes independent responsibility for broad programs and authoritative technical advice that may affect organizational policies. It reflects administrative supervision only, with full technical authority delegated to the employee. The existence of a technically qualified supervisor in the management chain makes Level 2-5 highly unlikely. The appellant does not independently prepare or review extremely complex, highly controversial appraisals. Appraisals which present issues or conflicts related to agency policies or may potentially set a policy precedent are referred to the supervisor. Additionally, the limits placed on the appellant's delegated approval authority restrict the possibility of his involvement with the type of appraisal typical of this Level. He has delegated authority to accept or reject appraisal reports for rental space prepared by realty specialists, and fee and easement appraisals, and gross appraisal reports prepared by contract or staff appraisers within specific dollar limits. His authority to approve annual rentals is limited to quarters under \$15,000, recruiting office space under \$24,000, and \$150,000 for base rent. His delegated authority limit for fee and easement appraisals is \$750,000 and \$500,000 for gross appraisals. For appraisals exceeding his delegated authority, the appellant prepares written recommendations and forwards the appraisal to higher authority for final action.

Level 2-4 is credited for 450 points.

Factor 7 - Purpose of Contacts:

The purpose of personal contacts ranges from factual exchanges of information to situations involving significant and controversial issues and differing viewpoints, goals, or objectives. The agency credited Level c. The appellant believes that Level d should have been credited.

At Level c, the purpose of contacts is to influence, motivate, or question persons or groups to provide data, accept recommended values, and/or comply with policies. At this level, the persons contacted may be fearful of the intent of the questions or results of the recommendations, skeptical about trusting Government employees, unwilling to provide the information, or, at times, dangerous. Employees must have the skill to establish rapport with uncooperative contacts and to approach and persuade individuals or groups to obtain the desired effect.

At Level d, the purpose of contacts is to justify, defend, negotiate, or settle matters involving significant or controversial topics. Work at this level usually involves active participation in conferences, meetings, hearings, or presentations involving problems or issues of considerable consequence or importance. The persons contacted typically have diverse viewpoints, goals, or objectives, requiring employees to achieve a common understanding of the problem and a satisfactory solution by convincing them, arriving at a compromise, or developing suitable alternatives.

Level c is met. The appellant has contacts with individuals or groups outside his agency. These parties represent a variety of organizations having an interest in the valuation of real property acquired for projects or programs under the jurisdiction of the [District]. The interest of these parties may be self-serving, competing, or conflicting and they may be reluctant or unwilling to provide information to Government agencies or their representatives. These contacts are typically made to prepare appraisal reports; to obtain information establishing the fair market value of property; to conduct market impact and best use studies, or economic and feasibility analyses; and to review, approve, or disapprove the appraisal decisions of staff or contract appraisers. Additionally, contacts are made to explain or gain acceptance of the agency's valuation decisions, processes, procedures and requirements. Contacts are also made to resolve valuation issues which will negatively impact District project or program acquisition and/or construction scheduling.

Level d is not met. The appellant furnished, as an example, an instance where he attended a meeting and had a major role in resolving property valuation issues which he considers to represent contacts typical of Level d. In the example provided, the success of a number of local projects depended on the acquisition of a significant amount of railroad property. The railroad disagreed with the value arrived at by the appraiser representing the local sponsor. Acquiring this property without the railroad company's consent would have required a complex and lengthy legal process requiring the involvement of a state commission. A meeting was convened to reach an agreement and avoid delaying or canceling the projects. Parties attending the meeting included

appraisers and other individuals representing the railroad, local sponsors, and the Corps of Engineers. The appellant's role in this meeting was to resolve differences in the value of the property as established by the appraisers representing the local sponsors and those representing the railroad. This does not fully meet the intent of Level d where the appraiser is routinely involved in defending, justifying, negotiating, and settling matters involving significant or controversial topics. The example given represents an instance commonly encountered by appraisers where the party owning the real estate disagrees with the value as determined by the party seeking to acquire it. There is no indication that the appellant is routinely involved in the type of significant negotiating intended to credit this level.

The purpose of contacts is evaluated at Level c. The agency evaluated Factor 6 at Level 3. The combined factors are evaluated at 3c for a total of 180 points based on the conversion table in the GS-1171 standard.

SUMMARY		
FACTOR	LEVEL	POINTS
1. Knowledge Required By The Position	1-7	1250
2. Supervisory Controls	2-4	450
3. Guidelines	3-4	450
4. Complexity	4-5	325
5. Scope and Effect	5-4	225
6. Personal Contacts and 7. Purpose of Contacts	3c	180
8. Physical Demands	8-2	20
9. Work Environment	9-2	20
	TOTAL	2920

A total of 2920 points falls within the range for GS-12, 2755 to 3150 points, according to the Grade Conversion Table in the standard.

Decision

The appellant's position is properly classified as Appraiser, GS-1171-12.