

Classification Appeal Decision

Under section 5112(b) of title 5, United States Code

Appellant: (Appellant)
Position: Supervisory Attorney-Advisor (General)
GS-905-13
Position Number
Organization: U.S. Department of Army
U.S. Army Garrison
Office of the Staff Judge Advocate
(Appellant's installation)
Decision: Supervisory Attorney-Advisor (General)
GS-905-13
(Appeal denied)

OPM Decision Number: C-0905-13-01

Copy of decision sent to:

(Appellant's name and address)

Department of Army, OASA (M&RA)
Attn: SAMR-CPP-MP
Hoffman Building II, Suite 5N35
200 Stoval Street
Alexandria, VA 22332-0340

(name of personnel officer)
Chief, Civilian Personnel
U.S. Army Garrison, (installation)
(Installation address)

U.S. Army Civilian Personnel Evaluation
Agency
1941 Jefferson Davis Highway, 2nd Floor
Arlington, VA 22202-4508

Civilian Personnel Director
U.S. Army (higher level organization)

Defense Civilian Personnel Management
Service
Classification Branch
400 Key Boulevard, Suite B-200
Arlington, VA 22209-5144

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Richard Quasney
Classification Appeals Officer
Washington Oversight Division

S)))))))))
Date 11/12/97



U.S. Office of Personnel Management
Washington Oversight Division
Office of Merit Systems Oversight

INTRODUCTION

On December 13, 1996, the Washington Oversight Division accepted a position classification appeal from (Appellant), who is employed as a Supervisory Attorney-Advisor (General), GS-905-13, in the (organization), Office of the Staff Judge Advocate, U.S. Army, (installation). The appellant requested that his position be classified as Supervisory Attorney-Advisor (General) GS-905-14/15.

This is the final administrative decision of the Government, subject to discretionary review only under the conditions and time limits specified in title 5, U.S. Code of Federal Regulations, sections 511.605, 511.613, and 511.614.

SOURCES OF INFORMATION

In deciding this appeal, we considered information obtained from the following sources:

1. The appellants' letter of appeal dated August 31, 1996, with attachments, which was sent through several management levels within the Army.
2. The OPM desk audit of the appellants' position, follow-up telephone interview, and an interview with the immediate supervisor, (name).
3. Additional written materials furnished by the appellant during the OPM review.

GENERAL ISSUES

The appellant makes various statements about his agency and its evaluation of his position. In adjudicating this appeal, we must make our own independent decision solely by comparing the appellant's current duties and responsibilities to OPM standards and guidelines. Therefore, we have considered the appellant's statements only insofar as they are relevant to making that comparison.

POSITION INFORMATION

The appellants' duties and responsibilities are described in position description number (#), which was classified as Supervisory Attorney-Advisor (General), GS-905-13, by the Army on August 18, 1996.

The purpose of the appellant's position is to provide supervision over the legal assistance and services rendered in his organization as well as to personally render legal assistance and services. As Chief of the (organization), the appellant is responsible for providing supervision to the appellant's subordinate staff engaged in providing a range of legal advice, assistance and services primarily to individuals. The appellant supervises the legal assistance, claims, and income tax return functions assigned to his organization. The legal assistance function is responsible to provide legal advice,

assistance and services to eligible individuals, who primarily include active duty armed forces personnel and their immediate family members as well as retired military personnel and their immediate family members residing in the (installation) and surrounding areas. Preventive law services in the form of classes, news articles and similar methods are also provided. Legal advice, assistance and services provided generally include such areas as adoption, divorce, paternity, custody, nonsupport, consumer affairs issues, immigration issues, taxation, estate planning, military affairs (correction of records, performance ratings, disability determinations, etc), veterans affairs, contracts, real property, garnishments, bankruptcy and debts as well as others. In providing this legal assistance, the appellant's organization produces such legal documents as court petitions for adoption and divorce, separations and property settlement agreements, notarizations, powers of attorneys, wills, trust agreements, contract settlement agreements, prenuptial agreements, affidavits motions to dismiss, and reviews of litigation reports, among others. The claims function is responsible to provide assistance to individual claimants and military organizations on claims for and against the U.S. Government. As such, assigned staff investigates, adjudicates, settles and approves claims against the Government, recovers claims for medical care and carrier liability, among other specific responsibilities. The income tax function is responsible to provided limited income tax return assistance to eligible individuals during the income tax season primarily by electronically filing individual income tax returns. As might be expected, it is operated only during the income tax filing season, approximately 4 months out of the year. The appellant also personally provides legal advice, assistance, and services to individuals in accomplishing the work of the appellant's organization.

Although including much superfluous information, the appellant's official position description lists the major duties and responsibilities assigned to the position and is, therefore, adequate for classification purposes.

SERIES AND TITLE DETERMINATION

Series

The GS-905, General Attorney Series includes positions that involve rendering legal advice and services with respect to questions, regulations, practices, or other legal matters when the work requires admission to the bar. This is descriptive of the appellant's position.

Title

The standard prescribes the title Attorney-Adviser for positions like the appellant's that involve rendering legal advice and services. The parenthetical subject-matter title of (General) is prescribed for positions that involve areas of law not specifically covered by other subject matter titles or when two or more areas of law are involved. Since the appellant's position meets the requirements for supervision under the General Schedule Supervisory Guide, the official title of the appellant's position must be preceded by the title, supervisory. Thus, the appellant's position is properly classified to the GS-905 series and titled Supervisory Attorney-Advisor (General).

GRADE DETERMINATION

The appellant estimates he spends about 60 percent of the time supervising the organization and the remaining time performing professional legal work. Thus, both the appellant's supervisory and nonsupervisory work must be evaluated. As required, each such work must be evaluated separately. The appellant's nonsupervisory work is evaluated under the standard for the General Attorney Series.

The appellant's supervisory work is evaluated under the General Schedule Supervisory Guide. The appellant indicates in the appeal the belief that the standard does not specifically cover the function that the appellant performs. That is, the provision of legal advice and assistance to individuals as opposed to rendering such advice and assistance to Government officials of an organization. Nevertheless, the appellant has offered his own interpretation of the criteria contained in the standard and evaluation of his position. While it may be true that the standard does not contemplate performance of the specific function performed by the appellant, the standard provides a sufficient range of legal functions and corresponding criteria to be able to discern the intent of the standard and properly evaluate the appellant's position based on the value judgments accorded the criteria by the standard.

General Attorney Series, GS-905

This standard is written in a narrative format, with grade level criteria expressed in terms of two main factors: (1) nature of the case or legal problem and (2) level of responsibility. The final grade of an attorney position is determined on the basis of the combination of the highest factor levels that are representative of the position to a significant extent. The two factors combine to produce a grade level by use of a grade conversion chart provided in the standard.

Nature of Cases or Legal Problems

This factor incorporates those elements in a case or problem that tend to make it more or less difficult to resolve satisfactorily, and is described in terms of three levels or ranges of difficulty (Types I, II, and III.) These levels are described in terms of the minimum characteristics of the range of difficulty each represents. Therefore, if the requirements of one level are not fully met, then the next lower level must be assigned, even if the position exceeds those criteria in certain respects.

Type I legal work is characterized by such features as: (1) the legal question or factual situation can be easily resolved because the facts are clear and the precedents are clearly applicable; (2) the impact of the cases is local or limited to the parties directly concerned (private individuals or a local industry); and (3) relatively limited sums of money are involved (e.g., a few thousand dollars) and there is consequently limited public interest in the case.

Type II legal work is characterized by one or more of the following features: (1) there are either no precedents because of the newness of the program or novelty of the issue, or it is highly arguable which precedents apply 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 case affects, either directly or as a legal or administrative precedent, a significant segment of public or private interests (e.g., a large corporation or labor group, a class of Government contractors, or the producers of a given farm commodity); or (3) large sums of money are directly or indirectly involved, there is considerable public interest, or the case is strongly contested in formal hearings or informal negotiations by the parties involved.

Type III legal work is characterized by one or more of the following features: (1) extremely complex and difficult legal questions or factual issues are involved in the drafting or interpretation of legislation or regulations, requiring a high order of original and creative legal endeavor to balance conflicting interests (e.g., balancing national security versus civil liberties, determining the legality of State and local taxation, preparing anti-trust litigation), or the issues involve extensive research, analysis, and expert testimony in controversial scientific, corporate, or financial areas; (2) the case may substantially broaden or restrict the activities of an agency (e.g., the enforcement of tax laws or food

and drug laws), or it may impact a major industry whose economic position affects the stability of the general economy (e.g., large mergers or reorganizations), or it has an important impact on private or public interests (e.g., a substantial change in veterans benefits, a major revision to a nationwide retirement system); or (3) very large sums of money are involved (e.g., about one million dollars), or the cases are contested by top legal talent (e.g., a major antitrust case), where interest is generally nationwide.

The appellant provides legal advice and assistance to individual clients within generally defined areas of law much like attorneys employed in private legal practices. The appellant does not, however, represent clients before courts of law in trying cases. The appellant counsels individuals seeking legal advice and assistance in such matters as divorce, custody, paternity, nonsupport, adoption, consumer affairs, taxation, real property, debts, garnishments, correction of records and similar areas. The appellant enters into a confidential attorney-client relationship with many of the individuals who are provided legal assistance. The appellant performs legal research, negotiates with fellow attorneys and other parties in seeking settlement for the appellant's clients. The appellant also provides legal advice and assistance to civilian attorneys who have been hired by the appellant's clients to further handle their legal problems or issues such as in prosecution or defense of legal suits or other disposition. The appellant provides clients courses of action and recommendations and produces legal documents such as petitions for divorce, powers of attorney, wills, settlement agreements, notarizations, and other legal documents. The legal assistance provided primarily affects the individual clients and sometimes their immediate family members, individual merchants and businesses, landlords, and other similar individual parties in dispute. Occasionally, a case will have wider impact such as the active duty military personnel in the geographic area, but this is not typical of the vast majority of cases. Much of the work required of the position is consistent with Type I legal work. However, the appellant performs a significant amount of legal work in the general area of family law, e.g., divorce, custody, paternity. These cases are often performed in an emotionally charged environment where the facts of the case are strongly contested and the parties are resolute in their competing positions. This presents greater difficulties for the attorney in attempting to negotiate settlement of the case to the satisfaction of his client. As such, it is comparable to the criteria in Type II legal work in the standard where cases are strongly contested in formal hearings or informal negotiations and different possible constructions of either the facts or the laws are involved. On this basis, the position is credited with Type II legal work. Unlike Type III legal work, the appellant's work does not involve to any significant degree broad issues of public policy, agencywide impact, very large sums of money or comparable complexity as envisioned by Type III legal work in the standard.

Level of Responsibility

This level 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. For each of these four elements, three levels of intensity (Levels A, C, and E) are described. The 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 levels described with respect to the majority of elements.

Nature of Functions

The appellant counsels individuals on a range of personal legal problems or issues, conducts legal research or investigation of the facts and laws, legal cases, regulations or policies that apply in

advocacy of the client's case, provides clients courses of action, negotiates resolution on behalf of clients, and prepares various legal documents. The appellant assists clients in matters such as divorce, custody, purchases, taxation, personal injuries and property damage, garnishments, repayment of debts, internal appeals of adverse actions, correction of military records, and other matters. This is most comparable to the nature of functions performed at Level C in the standard where attorneys conduct legal research in connection with questions on cases pending hearings or trials and in connection with interpretation and application of laws and regulations as they pertain to such things as contracts, claims or other legal instruments. Comparable to the appellant's work, work at Level C requires analyzing the factual and legal issues involved, reviewing policies, regulations and other agency publications as well as reviewing policies and operations of other Government agencies, business or of the States or local bodies, conducting legal research in support of the case, preparing necessary legal documents, providing recommendations on the advisability of instituting a suit, hearing or other disposition, providing technical guidance to another attorney in matters before a court, and examining documents for legal sufficiency. Work at Level E involves such functions as reviewing cases for agencies responsible for the conduct of litigation or appellate litigation in Federal courts or higher appellate courts, drafting legislation, reviewing or drafting proposed agency decisions, acting as principal attorney in preparing and presenting cases of such scope and importance as to require other attorneys or specialists or involve the most distinguished and highly paid opposing counsel, acting as principal agency attorney in charge of recommending policies, regulations, and procedures in implementing legislation, acting as legal counsel to the head of a major operating program of the agency, or hearing and deciding cases as a quasi-judicial officer. The common theme of this criteria is the broad scope of legal action taken (at or near agency level). This is not characteristic of the work of the appellant's position which requires providing legal advice and assistance to individuals experiencing personal legal problems or in need of individual legal assistance. In the appeal, in addressing the agency's evaluation of this element, the appellant indicates that the agency failed to credit the appellant's supervision of the claims and income tax functions. However, these responsibilities are supervisory and are properly considered in evaluating the appellant's supervisory work, not his nonsupervisory legal work under the General Attorney Series standard. The appellant also indicates that credit should be given for several other activities that the appellant has undertaken such as providing legal services to military members involved in "black operations," assisting with local legislation, reviewing proposed policies and regulations, and negotiating application of the personal property tax to military personnel in the area with local Government officials. However, these activities are not the primary purpose of the appellant's position in performing professional legal work. As discussed, the purpose of the appellant's position in providing nonsupervisory legal work is to provide legal advice, assistance, and services to individuals eligible for such assistance. Moreover, these activities are not a significant part of the regular and recurring nonsupervisory legal work required to be performed by the position. These activities are primarily the result of the appellant's experience and expertise in certain areas of law and will be further considered in the discussion of "Stature" in this decision. Level C is most typical of the nature of functions required to be performed in the appellant's position.

Supervision and Guidance Received

The appellant shares in accomplishing the legal work of the office. Cases are developed generally as a result of individuals contacting the appellant's office for legal advice, assistance and services and not through supervisory assignment. In those cases that go beyond providing relatively routine legal advice and services, the appellant enters into a confidential attorney-client relationship. This fact alone generally operates to preclude discussion of cases with the supervisor. Beyond that, the appellant is an experienced attorney who has expertise in the legal assistance area. The appellant performs the full range of legal assistance work assigned to his office and does so completely

independently including preparing and releasing any necessary legal documents in rendering legal assistance to this clients. The supervisor is provided periodic reports. However, they only contain general workload counts by type of legal service provided by the appellant's organization. This compares favorably with the criteria at Level E where attorneys carry out any assignments within their area of responsibility without preliminary instruction. Attorneys at this level independently conduct the investigation or negotiation, plan the approach, and develop the completed decision, report, brief, opinion, contract, or other legal work product. Completed work is reviewed before it is signed out for consistency with agency policy, for possible precedent effect, and for overall effectiveness. The appellant's legal work exceeds the supervision and guidance at Level C where attorneys typically receive some amount of instruction with their legal assignments such as any unusual circumstances surrounding the case or problem. While attorneys at Level C are expected to independently plan, organize, and conduct studies of legal problems that are encountered in their areas, much like attorneys at Level E, their legal assignments typically do not include the most difficult work in their assigned areas. The completed work of attorneys at Level C is subject to review for such considerations as soundness of approach and argument, application of legal principles, and consistency with governing policies, procedures, and regulations. The appellant's position meets the requirements for Level E.

Personal Work Contacts

The appellant's regular and recurring personal work contacts required in providing legal advice, assistance and services to individuals include the client individuals, agency officials, other attorneys, officials of state and local Government agencies, court officials, local merchants and proprietors, officials from other Federal agencies, and similar contacts. The contacts are made for the purpose of providing the range of legal assistance previously described in this decision. The appellant's personal work contacts are similar to those at Level C. Personal work contacts are an important characteristic at Level C, just as they are in the appellant's position. Attorneys at Level C may present cases to administrative hearings and courts making personal work contacts with judges, administrative judges and hearing officers, and other attorneys. At this level, attorneys may participate in pretrial or prehearing conferences making personal work contacts with industry representatives or private citizen claimants, defendants or petitioners and their attorneys in explaining points of law, charges, or qualifications of claimants, and refer suggested settlements or compromise offers to superiors with appropriate recommendations. Other attorneys at this level may participate in conferences with representatives of State and local governments, industry, private organizations, or other Government agencies in developing or evaluating proposed changes in legislation, agency policies, or regulations or in negotiating resolutions concerning conflicts in State and Federal requirements. Still other attorneys at this level may make personal work contacts with the staffs of congressional committees such as in assisting with technical drafting of legislation. While the appellant may refer suggested settlements or compromise offers to his client individuals in the context of negotiating with the other parties or their representatives, rather than make such referrals to his superiors within the context of participating in pretrial or prehearing conferences, as described above at Level C, this does not change the basic purpose or level of his contacts, which are most similar to those described at Level C.

The appellant's position does not meet the requirements at Level E. Personal work contacts at this level are the most important and responsible. Attorneys at this level confer or negotiate with top administrative personnel in the agency, private business, or State, local or foreign governments on important legal and policy questions; advise and assist congressional committees and their staffs in drafting legislation or giving expert testimony before congressional hearings on legislative proposals; or try cases before courts or administrative bodies. In the appeal, the appellant states his belief that

his position meets the requirements for Level E for this element because he negotiates with top administrative personnel in the agency. In support, the appellant cites "the entire command structure of (installation) and its (many) tenant commands, every echelon of the Navy, Air Force, Marines, Coast Guard, and the Army worldwide," though he does not state the purposes for which such contacts are made. The appellant also cites his negotiations with local, State, and federal authorities on both civil and criminal matters "that are `important' to the lives and economic status of individuals as opposed to an agency by its staff attorney." The examples cited have been credited in this decision, e.g., agency officials, other attorneys, officials of state and local Government agencies, local merchants and proprietors and similar contacts, and officials from other Federal agencies, and are consistent with the level of contacts described at Level C. Clearly, the purpose behind making those contacts required in the appellant's position does not approach the broad scope of legal problems or issues for resolution as described at Level E. With respect to the last criterion at Level E, trying cases before courts or administrative bodies, the appellant states that "I do try cases before administrative bodies." In support, he cites his representation of individuals in presenting their case before Medical Boards, Physical Evaluation Boards, and military boards for correction of military records. However, this is consistent with Level C where attorneys are expected to present cases to administrative hearings and courts. The legal services provided by the appellant stop short of trying cases before courts. Nevertheless, the Level E criterion of trying cases before courts or administrative bodies envisions attorneys who act as principal attorney in charge of the preparation and presentation of cases before administrative tribunals or before the trial or appellate courts, where the cases are of broad scope and importance. In summary, in making personal work contacts as described above in providing legal advice, assistance, and services to individual clients, the appellant's position clearly meets neither the level of personal work contacts nor the purpose of making those contacts as required at Level E.

Nature and Scope of Recommendations and Decisions

Recommendations or decisions characteristic of Level C include whether to initiate criminal or civil suits against alleged violators of Federal laws; 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 delegated to the attorney as the trial attorney; settlement of suits brought by the government against others; 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. Where recommendations at this level are made to those outside the agency or to administrative officials at higher levels within the agency, they are normally made through the supervisor.

The nature of recommendations or decisions characteristic of Level E are similar to those at Level C. The major differences are at Level E the recommendations are given directly to top officials and concern matters of broad scope and complexity. Matters dealt with at this level are of such scope and complexity that they typically require the concentrated efforts of several attorneys or other specialists and the attorney is responsible for directing, coordinating, and reviewing the work of the team. Recommendations at this level are made directly to heads of programs, bureau chiefs, cabinet officers, congressman, or representatives of State and local governments.

The nature and scope of the appellant's recommendations are consistent with Level C. In providing legal advice, assistance and services, the appellant's recommendations are primarily made to client individuals such as active duty and retired military personnel and their immediate family members and

in some cases, to civilian attorneys representing such clients, rather than to top officials as required at Level E. The purpose of the recommendations made by the appellant is to offer legal advice and assistance in resolving personal legal problems or issues experienced by the clients and concern such questions as, for example, whether to sue for property settlement in divorce cases, whether to contest wills, whether to sue a landlord for damages, whether to sue for personal injuries sustained, whether to appeal the findings of a medical evaluation board or petition military boards for the correction of military records, and similar questions concerning the range of legal matters for which the appellant's position is responsible to provide legal assistance. While these are certainly important matters, especially to the clients involved, they do not approach the broad scope and complexity of matters required at Level E. In addition, consistent with Level C, the appellant settles claims against the U.S. Government for up to \$10,000 that are adjudicated by lower graded nonprofessional staff in the claims function. Both the appellant and the chief of the claims function have this authority and this duty is only performed in the absence of the chief of the claims function. Thus, the nature and scope of recommendations and decisions made in the appellant's position are consistent with those at Level C and do not approach those at Level E in any respect. Accordingly, Level C is credited this element.

Effect of Individual Stature

The agency has credited stature in their evaluation of the appellant's position and we agree that credit is warranted. The appeal record is well documented in support of its crediting including an extensive statement from the management of the organization. Since we agree with the crediting of this element of evaluation, we will only briefly discuss our evaluation of stature.

The appellant has over 30 years legal experience including military Judge Advocate Corps service in which he has held numerous responsible positions and is recognized as an expert in his field of Legal Assistance, as well as others. Over time, the appellant has undertaken many activities that go beyond the primary purpose of his position to supervise the organization and personally provide legal advice, assistance and services to individual clients. Included among those activities are the appellant's efforts in amending (specific) State laws that impact military personnel. The appellant's involvement was initiated by the appellant's superiors, e.g., the installation Staff Judge Advocate, and were in recognition of the appellant's expertise in the field of Legal Assistance. The Staff Judge Advocate of an Army installation in (another state) contacted the appellate for his assistance in authoring an amendment to one similar law in that state. The appellant has provided his expertise in this effort including a recent site visit to the installation. As an outgrowth of his case work, the appellant has conducted negotiations with top tax officials of surrounding local government jurisdictions concerning application of Virginia's personal property tax to military personnel in the area. The appellant is frequently contacted for his expertise by other attorneys in the military services including officials from the Office of the Army Judge Advocate. He assisted (another agency) in setting up their legal assistance program. He has taught legal assistance topics at the Army's Judge Advocate General's School and his expertise has been further recognized by the school's faculty members in their referral of attorneys to the appellant for consultations. The appellant has been instrumental in his office and installation receiving several awards of excellence in legal assistance. As a representative to the American Bar Association committee on military practice, he has authored articles on legal assistance practice. He has provided comments on proposed Army, major command, and installation regulations and "lessons learned" reports covering such topics as family law, notary authority, mobilization and deployment, and legal issues experienced with operations Desert Shield and Desert Storm. In addition, because of his expertise in legal assistance, top secret security clearance, and background in intelligence, the appellant has been permitted to represent military members involved in top secret duties or "black operations" in criminal and civil investigations. The

stature attained by the appellant, as reflected by the above accomplishments and activities, meets the requirements for crediting this special element in the evaluation of the appellant's position.

Conclusion

In discussing the crediting of stature, the standard indicates that the effect of the individual on the position should be recognized in evaluating the position to the higher level of responsibility when some elements meet the requirements of the higher level and some fall short of meeting the higher level, i.e., when a borderline situation results. The four elements under Level of Responsibility were evaluated at Levels C, E, C, and C. Since only one element equates to a higher level than the other three, the evaluation of the Level of Responsibility factor does not result in a borderline situation. Thus, Degree C is credited for this factor since three of the four elements are at that level. Using the grade conversion chart on page 25 of the standard, the combination of Nature of Cases or Legal Problems at Type II and Level of Responsibility at Level C equates to a GS-12 grade level. The appellant's nonsupervisory attorney work is evaluated as GS-12.

General Schedule Supervisory Guide

The appellant's supervisory duties were evaluated by application of the OPM General Schedule Supervisory Guide (GSSG), dated April, 1993, which is used to determine the grade of General Schedule (GS) supervisory positions in grades GS-5 through GS-15. The GSSG employs a factor-point evaluation method that assesses six factors common to all supervisory positions. These are: (1) Program Scope and Effect, (2) Organizational Setting, (3) Supervisory and Managerial Authority Exercised, (4) Personal Contacts, (5) Difficulty of Typical Work Directed, and (6) Other Conditions. To grade a position, each factor is evaluated by comparing the position to the factor level definitions for that factor and crediting the points designated for the highest factor level which is met in accordance with the instructions specific to the factor being evaluated. In order to assign a level within a factor, the level must be fully met or the next lower level must be assigned. The total points accumulated under all factors are then converted to a grade by using the point-to-grade conversion table in the Guide.

Although there appears to be some questions within the agency over compliance with internal regulations and procedures concerning the establishment and/or revision of the structure of the appellant's organization, based on materials submitted with the appellant's appeal request, this is of no consequence to OPM. We are only concerned with the actual duties and responsibilities assigned and performed by the appellant in determining the proper classification of the appellant's position.

The appellant has not disagreed with the agency evaluation of Factors 1, 2, and 6. Since our independent evaluation of these factors resulted in crediting Levels 1-3, 2-1, and 6-5, respectively, the same factor levels credited by the agency evaluation, our evaluation of these factors will not be further discussed in this decision.

Factor 3, Supervisory and Managerial Authority Exercised

This factor covers the delegated supervisory and managerial authorities that are exercised on a recurring basis. Duties measured under this factor are only those related to managing the organizational unit or units under the supervision or management of the position being evaluated. To be credited with a level under this factor, a position must carry out the authorities and responsibilities to the extent described for the specific level. The criteria for each level represents the minimum criteria for a particular level. Levels under this factor apply equally to the direction of

specialized program management organizations, line functions, staff functions, and operating and support activities.

The appellant's position clearly meets the requirements of Level 3-2. Meeting the requirements of either 3-2a, b or c described on pages 15-17 in the GSSG warrants credit at this level. The appellant's position meets 3-2c. The appellant carries out all or nearly all of the authorities and responsibilities described in 3-2c.

Two situations are intended for credit at Level 3-3. The first situation, covered in 3-3a on page 17, involves positions primarily concerned with program planning and development that must exercise significant management authorities, e.g., program planning and development of overall goals and objectives for the functions assigned to, and performed by, lower level and subordinate organizational units. Clearly, this does not pertain to the appellant's position. The other situation, covered in 3-3b on pages 17 and 18, involves higher level supervisory positions that must exercise more extensive supervisory authorities to supervise fairly large organizations that are typically further subdivided into separate organizational units that require their own supervisors. We apply the criteria for this situation to the appellant's position.

The first part of the criteria at 3-3b requires the exercise of all or nearly all of the delegated supervisory authorities and responsibilities described at Level 3-2c of this factor. As we have stated above in determining that the appellant's position meets the requirements of Level 3-2, the appellant carries out all or nearly all of the authorities and responsibilities described in 3-2c. The second part of the criteria requires exercise of a minimum of 8 of the 15 delegated supervisory authorities and responsibilities that are listed under 3-3b on pages 17 and 18. The appellant's position does **not** exercise at least 9 of the 15 authorities and, consequently, cannot meet the second part of the criteria. Specifically, the appellant's position does not exercise the authorities in items 1, 3, 4, 5, 6, 8, 10, 12 and 13. Item 12 is not applicable; the appellant does not oversee contractor performed work. The appellant's organization consists of a single subordinate supervisory position, a military position in charge of the claims function and currently occupied by an individual of the rank of captain. Thus, the appellant's position cannot meet items 1, 3, 5, 6, and 8 which require, in part, multiple subordinate supervisors. The appellant's position cannot meet item 4 because his position does not direct a program or major program segment with significant resources, e.g., one at a multimillion dollar level of annual resources. In the appeal, the appellant believes his position should get credit for this item because of the claims function and the amount of money involved. The appellant also cites the amount of money in income tax return refunds accomplished through electronic filing. However, this item pertains to the annual resources assigned to and under the direct control of the position being evaluated in order to carry out the programs for which responsible and not the monies that the appellant has cited. The appellant also does not exercise the management authority in item 10. The appellant's delegated authority for disciplinary actions is similar to that contained in Level 3-2, i.e., effect minor disciplinary measures, such as warnings and reprimands, recommending other action in more serious cases. Like is typical of many organizations that are at a similar level and are of similar size as the appellant's organization, the authority to review and approve serious disciplinary actions, e.g., suspensions, has been retained by higher level management. In the appellant's case, the Staff Judge Advocate has retained this authority. Finally, the appellant's position does not exercise the management authority in item 13, i.e., approving expenses comparable to within-grade increases, extensive overtime, and employee travel. Authority to commit organization funds does not reside with the appellant's position, but elsewhere in the overall organization, e.g., Staff Judge Advocate's office or other staff offices. In summary, the appellant is neither delegated the degree of management authority nor does the size and scope of the appellant's organization require the exercise of authorities

to the extent described at Level 3-3 on pages 17 and 18. Since the appellant's position does not fully meet Level 3-3, Level 3-2 is properly credited.

Factor 4, Personal Contacts

This is a two-part factor which assesses the nature and the purpose of personal contacts related to supervisory and managerial responsibilities. Contacts measured under this factor are only those related to managing the organizational unit or units under the supervision or management of the position being evaluated. The same contacts that serve as the basis for the level credited under Subfactor 4A must be used to determine the correct level under Subfactor 4B.

Subfactor 4A, Nature of Contacts

This subfactor covers the organizational relationships, authority or influence level, setting, and difficulty of preparation associated with making personal contacts involved in supervisory and managerial work. To be credited, the level of contacts must contribute to the successful performance of the work, be a recurring requirement, have a demonstrable impact on the difficulty and responsibility of the position, and require direct contact.

The appellant has not disagreed with the level credited for subfactor 4A by his agency, Level 4A-2. Our evaluation also found that Level 4A-2 is properly credited. A summary of our analysis is provided.

The appellant's primary contacts include the staff of his organization, supervisors and managers within the offices of the installation Staff Judge Advocate, recipients of legal and other services provided by the appellant's office, representatives from administrative and staff offices at the installation or at other levels of the agency, case workers or staff from congressional offices, and officials at other Government agencies. These contacts are comparable to the external contacts listed at Level 4A-2 such as members of the business community or the general public, higher ranking employees within the agency, and case workers in congressional district offices. The appellant's supervisory duties do not require that he make recurring contacts at the level depicted by Level 4A-3 nor would the appellant's contacts require the degree of preparation intended at Level 4A-3, e.g., key congressional staff, journalists from influential newspapers, key staff of public interest groups with significant political influence or media coverage, and high ranking managers within the agency and at other agencies. This subfactor is credited at Level 4A-2.

Subfactor 4B, Purpose of Contacts

This subfactor covers the purpose of the personal contacts credited in Subfactor 4A, including the advisory, representational, negotiating, and commitment-making responsibilities related to supervision and management.

At Level 4B-2, the purpose of contacts is to ensure that information provided to outside parties is accurate and consistent; to plan and coordinate the work directed with that of others outside the subordinate organization; and/or to resolve differences of opinion among managers, supervisors, employees, contractors or others.

The appellant's contacts are most comparable to this level. The purpose of the appellant's contacts is to communicate management goals and positions, and counsel and advise staff, coordinate the work of the appellant's office with that of other offices within the organization and agency, clarify

misunderstandings and resolve problems arising from the provision of office services with clients or recipients of those services, obtain information and advice from staff offices concerning personnel and other administrative matters, respond to congressional inquiries or requests for information, and similar purposes.

At Level 4B-3, the purpose of contacts is to justify, defend, or negotiate in: (1) representing the project, program segment(s), or organizational unit(s) directed; (2) obtaining or committing resources; and (3) gaining compliance with established policies, regulations or contracts.

Established OPM guidance stipulates that all three conditions must be present in order to warrant Level 4B-3. This level requires justifying, defending, or negotiating on behalf of the organization, i.e., having the necessary level of authority to be able to commit resources and gain compliance with established policies of the organization. This guidance further indicates that in order to represent the organization in program defense or negotiations, a manager must necessarily have the requisite control over resources and the authority necessary to gain support and compliance on policy matters.

The purpose of the appellant's recurring contacts are not for the purposes required at Level 4B-3. These activities would be undertaken at management levels higher than the appellant's level. The authority to commit resources has been retained by the Staff Judge Advocate. Thus, there is no requirement for the appellant to defend, justify, or negotiate in obtaining or committing resources and, consequently, the appellant's position cannot meet the requirements at this level. The appellant's position is properly credited at Level 4B-2.

Factor 5, Difficulty of Typical Work Directed

This factor measures the difficulty and complexity of the basic work most typical of the organization(s) directed, as well as other line, staff, or contracted work for which the supervisor has technical or oversight responsibility, either directly or through subordinate supervisors, team leaders, or others.

Under the GSSG, the base level of work is determined by the highest grade which (1) best characterizes the nature of the basic (mission-oriented) nonsupervisory work performed or overseen by the organization directed, and (2) constitutes 25 percent or more of the workload (not positions or employees) of the organization.

Since the basic mission-oriented work of the appellant's organization is the provision of professional legal services, the work of the claims and income tax return functions are excluded. Further excluding the supporting positions in accordance with the instructions in the GSSG, the work of the professional attorney positions constitutes the base work. Although the agency has classified the two civilian attorneys positions at the GS-13 level, our evaluation of the nonsupervisory attorney work performed by the appellant and our review of the position description for the GS-13 nonsupervisory attorney positions, indicates that these positions would be properly classified at GS-12. Thus, the base level work is credited at the GS-12 level.

Summary of Factors

<u>Factor</u>	<u>Level</u>	<u>Points</u>
1. Program Scope and Effect	1-3	550
2. Organizational Setting	2-1	100
3. Supervisory and Managerial Authority Exercised	3-2	450
4. Personal Contacts		
4A, Nature of Contacts	4A-2	50
4B, Purpose of Contacts	4B-2	75
5. Difficulty of Typical Work Directed	5-7	930
6. Other Conditions	6-5	<u>1225</u>
 TOTAL POINTS:		 3380

The total of 3380 points falls within the GS-13 range (3155-3600) on the point-to-grade conversion chart provided on page 31 of the GSSG. The appellant's supervisory work is evaluated at GS-13.

DECISION

Since the supervisory work constitutes the majority of the work performed, the appellant's position is properly classified as Supervisory Attorney-Advisor (General), GS-905-13.

This decision constitutes a classification certificate issued under the authority of section 5112(b) of title 5, United States Code. This decision is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Please note that section 511.612, Title 5, U.S. Code of Federal Regulations, requires agencies to insure that their classification of identical, similar, and related positions is consistent with OPM certificates.