

**United States Department of the Interior
BUREAU OF LAND MANAGEMENT
National Human Resources Management Center
Denver Federal Center, Building 50
P.O. Box 25047
Denver, Colorado 80225-0047**

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To: All Servicing Personnel Officers
From: Director, National Human Resources Management Center
Subject: Classification Appeal Decision - Realty Assistant, GS-986-05

Attached is the Bureau of Land Management's adjudication of a classification appeal. The Decision results in the reclassification of a Realty Assistant, GS-986-05 to a Legal Instruments Examiner, GS-963-07. This Decision must be applied to all similar or like positions within the Bureau of Land Management.

Contact Mark Whitesell, 303-236-6702, if you have any questions pertaining to this Decision.

Signed by:
Linda D. Sedbrook
Director

Authenticated by:
Darlene Robitaille
Secretary

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**BUREAU OF LAND MANAGEMENT
CLASSIFICATION APPEAL DECISION**

Appellant: XXXXX XX XXXXXXXX

Position: Realty Assistant, GS-986-05

Organization: XXXXXXXX XXXXX XXXXXXX (XXX), Division of Minerals & Lands, Minerals/Lands Authorization Group, Lands Authorization Team

Background:

The appellant requests reclassification of xxx position from Realty Assistant, GS-986-05 to Land Law Examiner, GS-965-7/9. A telephone interview was conducted with the appellant April 25, 2000, with two follow-up interviews. Telephone interviews were also conducted with the Supervisory Petroleum Engineer, XXXXXXXX XXXXXXX on May 1st, and with the two seniors Realty Specialists, XXXXXXX XXXXXXX on May 1st, and Xxx XXXXX on May 4th and May 9th. Subsequent interviews were conducted with XXXXXXXX XXXXX and XXXXXXX XXXXXXXX by Mark Whitesell, National Human Resources Management Center.

Xxx XXXXX, Realty Specialist, GS-1170-11 who is assigned withdrawal work was also assigned XXXXXXX xx XXXXXXX XXXXXXXX (XXX) patents and XXXXXXX XXXXXXXX (XX) exchange patents. When the Bureau designated withdrawals and withdrawal reviews as a strategic goal, requiring the Realty Specialist's full attention, a large backlog of XXX patents developed that necessitated a shift of work assignments. In January 2000 all XXX patents and XX exchange patents were removed from the Realty Specialist's position and assigned the appellant on a permanent basis. XXXXXXX XXXXXXXX, Senior Realty Specialist and the appellant drafted a new position description (PD) to include the new duties, which was the edited and submitted to the servicing personnel office (SPO) for reclassification by the supervisor, XXXXXXXX XXXXXXX. Discussions with the realty staff and supervisor indicate that they are divided on whether the appellant's new work assignments are limited to processing functions or whether she performs adjudication work.

In addition, the PD of record identify the appellant's work assignments as 65% land law clerk/easements/rights-of-way grants work and 35% XXX patents and XX exchange patents, but the supervisor states the percentages of work will be reversed until the backlog has been brought up to date. At that point and on a permanent basis, he believes the percentages of time as assigned in the PD will have become accurate. However, the appellant is convinced the percentages will remain 65% XXX patents and XX exchange patents, easements and rights-of-ways and land law clerical work 35% on a permanent basis. Mixed series and grade positions are discussed below in the Decision.

With the new duties assigned, the appellant's position was reclassified January 12, 2000 from

Attachment 1-1

Land Law Clerk (OA), GS-986-05 to Realty Assistant, GS-986-05. The appellant stated that the

SPO did not perform a desk audit or interview the appellant before reclassifying the position.

She also stated that she was not aware that an on site desk audit was available to her at the time she submitted her appeal.

References: Office of Personnel Management (OPM) Grade Level Guide for Clerical & Technical Assistance Work, June 1989; Legal Instruments Examining Series, GS-963, January 1992, TS-112; Land Law Examining Series, GS-965, April 1962, TS-39; Legal Clerical & Assistance Series, GS-986, January 1992, TS-112; The Classifier's Handbook, December 1997

DECISION

Determination of Title and Series:

The appellant does not dispute that her clerical assistant work is properly assigned to the GS-986-05 series and grade. However she believes that her assignments of XXX patents and XX exchange patents as well as her easements and rights-of-way assignments are more appropriately assigned to the Land Law Examining Series, GS-965.

The GS-965 series includes positions that perform quasi-legal work involved in processing, adjudicating and advising on applications and claims for rights, privileges, gratuities, or other benefits authorized under the various public land, mineral, leasing, and mining laws. The major activity embraced by this series is the adjudication of rights of individuals with respect to their interest in the public lands and resources.

Clerical and assistant work involves receiving, reviewing, and verifying documents; maintains office records; locating and compiling data or information from files; compiles information for reports; keeps a calendar and informs others of deadlines and dates.

The appellant's work with XXX patents includes the process of docketing (serialize) the request and by using the Master Plat Title plats (MTP), Historical Indices (HI), Indian allotments, and various land status documents, determines whether the non-Indian heir is in the chain of title and is entitled to the land. If satisfactory, the appellant prepares the patent, enters the information into the case recordation system and sends the patent to a senior employee for final review. With final review approval, the appellant finalizes the patent and sends it to the patentee. A copy of the patent is submitted to the plat drafting section to be notated in the MTP, HI and control document index (CDI), and when completed, the appellant provides the final check for accuracy.

In xxx XX exchanges, the appellant advises the XX of all land status within the proposed lands for exchange. This is done by checking multiple records (MTPs, CDI, HIs, and other land disposal documents) and listing all these encumbrances for the XX. Once approved the XX issues the patent, which is then docketed and entered into the BLM record system.

In addition to her XXX patents and XX exchange work, the appellant provides oversight for other agency easements and rights-of-way (usually received in packets of 20) which she incorporates into the BLM records system. This procedure involves receiving the documents from another Bureau (FS, F&WL, BOR) and requesting a copy of the MTP to check other encumbrances that might be on the land, entering all the information into the LR2000 and having the MTP and HI noted with the received land disposal. The MTP is returned and the appellant concurs with the accurate notation. If errors are found, the MTP is returned to the plat drafting section with an explanation of what must be changed.

The appellant interprets WO directives and policy relating to the exchanges and patents, rights-of-way grants and easements function and provides the field offices, applicants, and the general public with information and advice.

The supervisor defines the appellant's work with three characteristics. She interprets various laws, determines the authorization of whatever action is being requested, and reviews and lists any prior rights on the land, i.e., rights-of-way, easements, leases, etc. This work is clearly beyond clerical processing due to the knowledge of specific federal land laws and applicable regulations required to evaluate and either determines or recommend actions. There is however, no evidence of the need to make higher level adjudicative decisions described in the GS-965 as quasi-legal work that requires land law examiners to arbitrate, mediate, adjudges, etc. That is, the appellant does not adjudicate applications and claims of individual rights, privileges or other benefits under public land laws within a preestablished legal framework, which reflects through the Department's regulations, and the intent of Congress at a level described in the GS-965 standard.

In determining XXX patents and XX exchange patents, easements and rights-of-way, the appellant examines the appropriate legal and supporting documents pertaining to a case to determine compliance with certain provisions of various laws. Such work resembles that described in the Legal Instrument Examining Series, GS-963. As with the appellant's work, the GS-963 describes a process of examining legal instruments submitted by applicants seeking the permission, registration, licensure, or other action by or from the Government, and may be accompanied by one or more supporting documents that substantiate or give evidence of required items of information. Both the legal instrument and the supporting documents require examination to determine their adequacy in meeting certain requirements of governing provisions. Some characteristics of GS-963 work, which are also characteristic of the appellant's work, include:

- Reviewing legal instruments and supporting documents for completeness of information, proper execution, certification, technical details, and other requirements.
- Obtaining additional data or information to reconcile discrepancies.
- Determining whether the action sought by the party submitting, the instrument corresponds with governing regulations, procedures, and other criteria.

- Arriving at a decision on the requesting action or recommending a decision.

Some positions involve responsibility for notifying the submitting party when the instrument does not meet the requirements, explaining why the action cannot be granted, and advising the party on how such requirements may be met, or providing information on alternative options.

As discussed, this description of work compares favorably to the primary elements of the appellant's patents and exchange patents, easements, and rights-of-way assignments.

Although there is disagreement about the appellant's percentage of time spent performing examining work, the combined duties of realty assistant and examining work meet the required criteria that direct assignment of this position as a mixed series. Mixed series positions are generally assigned to the series that represents the highest level of work performed and basis for the position's grade.

The criteria for mixed grade positions are duties that occupy only a small portion of the employee's time but are the highest graded duties of the position, and are grade controlling if they:

- Are a regular and continuing part of the job;
- Are performed for at least 25% of the time; and
- Involve a higher level of knowledge and skill that would be a factor in recruiting for the position.

In this situation the appellant's position meets the criteria for series and grades assignment based on a minority of the appellant's work time. Since the higher level work is found in GS-963 Legal Instrument Examining Series, the grade band for this series is GS-06 through GS-09, this position is assigned to that series and given the title of Legal Instrument Examiner.

Determination of Grade:

As discussed, the appellant does not dispute the grade of her clerical assistance assignments. She defines this work as assisting and supporting the work of the higher graded realty positions, and agrees that it has been GS-05 level work in the past and she continues to perform that same work. She is contesting the GS-05 grade as it relates to her newly assigned XXX patents and XX exchange patents, and the continuing easements/rights-of-way oversight assigned to her position; duties that we have allocated to the Legal Instrument Examining Series, GS-963. Using this series, we will evaluate those duties under the Factor Evaluation System (FES) nine factors and a grade conversion table at grades GS-06 through GS-09.

In the FES, each factor level description in a standard describes the minimum characteristics

needed to receive credit for the described level. Therefore, if a position fails to meet the criteria in a factor level description in any significant aspect, it must be credited at a lower level. That is to say that the position may exceed the criteria in some aspects and still not be credited at a higher level. Our evaluation with respect to the nine FES factors follows.

Knowledge Required by the Position:

This factor measures the kind or nature of knowledge and skills that are required and used in doing acceptable work.

Factor level 1-4 of the standard describes work that requires knowledge of particular regulations, interpretive material, procedures, and processes that have been established by an agency to conduct examinations of a type of legal instrument and associated supporting documents. Instruments are examined in order to present straightforward, readily verifiable, needing little development information and facts and require limited reference, file, or historical material searches. Comparisons use explicit criteria. Also necessary are skills in oral and written communication sufficient of obtain information and to deal with inquiries.

Illustrations at this level include employees who examine applications, legal attachments, and technical showings for private licenses. They consider operational and technical details and eligibility of service requested. They check available records, maps, charts, previous filings and compare to standard technical specifications and clearances. They answer questions and provide information by phone, mail and in person regarding certain regulatory and policy specifications, status of applications, filings and processing procedures.

Factor level 1-5 describes two work environments. The work requires either (A) a greater depth of knowledge of the application of laws, regulations, and agency requirements and pertinent aspects of the subject-matter fields involved in order to examine the type of legal instrument and associated supporting documents, or (B) a breadth of different regulatory and procedural knowledge, similar in depth to that described at level 1-4, to examine more than one type of legal instrument and associated supporting documents.

Illustrative of Situation A are employees who examine or "audit" realty case's records covering civil and military real estate transactions. They confirm that all deeds, appropriate curative instruments, and final opinions have been received, that awards have been made in condemnation cases; and that proper court documents, and formal transfer papers, and letter permits have been received. They verify that necessary remedial action has been taken on any outstanding interests such as minerals, oil and gas leases, roads or utility lines and that it has been properly reflected on the official project summary and map. As other real estate actions are accomplished, they review the record and certify that the tract file is complete and accurate.

Situation B requires the examination of more than one type of legal instrument and associated supporting documents. This knowledge is used to examine instruments that differ in subject

matter and/or purposes and that requires the application of multiple or unrelated bodies of governing provision. Illustrations at this level include employees who examine, process, and maintain documentation for a variety of special use permits, mineral rights agreements, and licenses for use of Government lands or facilities from individuals, organizations and businesses. Applications may concern a wide variety of uses including but not limited to pasture land, mineral leases, ski areas and resorts, outfitters and guides, marinas, clubs and camps, summer home tracts, and electronic and communications sites. Once the document review is completed and found to be acceptable, employees prepare the permit to be issued, include fee calculations.

The appellant's work assignments exceed Level 1-4 which describes cases that are limited to straightforward readily verifiable facts and information needing only limited searches, and is an equitable match to Level 1-5, more comparable to Situation A than Situation B.

As at Level 1-5, when XXX patents are received, the appellant examines the case for easements and rights-of-way (i.e., roads, pipelines, power lines, communication sites); other patents; withdrawals; etc. She reviews the legal land descriptions to confirm their accuracy and pulls the Executive or Secretary's orders to determine heirship records. Problem resolution and any modifications required are usually made by telephone with the responsible XXX Realty Specialist. The patent is then finalized and sent to the patentee. Forest Services exchanges require the examination of similar types of documents. Although the XX issues the patents, the appellant is required to examine and document a complete history of the XX property involved in the exchange.

Level 1-5 is assigned for a total of 750 points.

Supervisory Controls:

This factor measures how the work is assigned, the employee's responsibility in carrying out the work, and how the work is reviewed.

Factor level 2-3 assigns work according to a standardized control system. The supervisor provides standing general instructions and assists the employee with unusual situations that do not have clear precedents. The employee independently performs complete examining functions and carries out the successive steps, handles problems and deviations with instructions, policies, and previous training or accepted work practices by the supervisor or senior workers. The work is reviewed by quality sampling or spot checked and work methods are not normally reviewed in detail. This is an accurate description of the supervision received by the appellant and described in the PD. That is, supervision is provided as necessary by either the supervisor or senior workers. The appellant works with moderate degree of independence and carries out assignments in accordance with laws, regulations, established policy, etc. For example, she prepares draft patent and exchange correspondence which is submitted to a senior employee for technical and administrative review. The appellant then prepares and issues the patent or exchange in final form.

Level 2-4 is not met because this level is appropriate only for positions in which the employee is delegated authority to take final disposition action, not subject to further technical review. As discussed, senior employees provide technical review of the appellant's work.

Level 2-3 is assigned for a total of 275 points.

Guidelines:

This factor measures the nature of guidelines for performing the work and judgment needed to apply the guides or in developing new guides.

Factor Level 3-2 describes guidelines that are procedures having well established and written guidelines, such as straight forward regulatory and technical specifications and instructions that are available for all aspects of the work. The employee selects the appropriate references and procedures, and the appropriate guidelines according to circumstances arising from the particular instrument being examined. Portions of the guide may change from time and time and the employee needs to adjust, but situations requiring significant deviations are referred to the supervisor.

This accurately describes guides used by the appellant and as described in the PD. Guides are described as numerous and available, however, the appellant must exercise good judgment in determining when available guides require additional assistance. When guides are, inadequate assistance is readily available.

Level 3-3 is not met because this is a level that requires numerous and varied procedures, and may contain frequent and extensive amendments or revisions, or superseded laws that continue to have certain applicability. They may contain differing provisions of overlapping jurisdictions (Federal, State, county, municipal, international or foreign laws that must be applied) or unique and deviant requirements. The employee has to choose from among a variety of guides, selects the most appropriate, and interprets/adapts them to the specific problems. The reference material is complex and voluminous and precedents are incomplete and not specific to the situation. The employee describes problem conditions and recommends changes or additions to the procedures that are inadequate or missing from existing guides. This level exceeds what is required of the appellant.

Level 3-2 is assigned for a total of 125 points.

Complexity:

This factor measures the nature of the assignment, difficulty in identifying what needs to be done, and difficulty and originality involved in performing the work.

Factor Level 4-2 describes complexity as requiring the employee to review instruments and supporting documents to determine whether they conform to governing provisions and whether the submitting party has met all requirements. They obtain additional information and search available records, databases, and historical material to insure that no conditions or conflicts exist that might preclude approval. The legal instruments examined are standard in format, function, and/or content, and supporting documents' give direct, firsthand evidence and are usually conclusive in establishing the point in question. Actions are taken based on the results of searching, selecting, comparing and decision whether the submission meets the criteria and previously recorded information. The employee pays attention to detail and is meticulous and accurate in searching file material, documenting records, and making precise notations and exact calculations.

Level 4-3 describes employees who review the instruments and supporting documents, obtain additional data or information to reconcile discrepancies, and determine whether the instruments conform to governing legal criteria. They must insure that the submitting party has met all requirements, and search the records, databases, and historical material to confirm that no conditions exist that might preclude or limit approval. When such conditions are found, the employee notifies the submitting party, explains the problem and advises on how to meet the requirements. They decide on the appropriate disposition. The legal instruments are not standardized with respect to format, function and/or content, and supporting documents require interpretation and analysis of the basic instrument. Actions taken may be complicated by situations where facts are not clearly established; information is likely to be fraudulent; contradictions, conflicts, and inconsistencies must be reconciled; and/or verification of external source information is required. The employee chooses an appropriate course of action from among several possible outcomes.

The appellant's work assignments require that she insure that the submitting party has met all requirements, and it is her responsibility to search records, data bases, historical material, etc. to confirm that requirements are met. She notifies the submitting party of missing information and provides advice and assistance to resolve problems. She typically works with a variety of instruments and supporting documents. Her work requires a high degree of accuracy. Once the accuracy of a XXX case is confirmed, the appellant finalizes and issues the patent to the patentee. Likewise, on XX exchanges, she reviews and confirms the accuracy of all historical data and activity of the property. She determines if there are any conflicts or conditions on the property, resolves any issues, and submits the case to the XX who in turn issues the patent. This work fully meets Level 4-2, but does not meet the described complexity level of 4-3.

Level 4-2 is assigned for a total of 75 points.

Scope and Effect:

This factor measures the purpose of work and impact of the work product or service.

Factor Level 5-2 describes the purpose of work to examine legal instruments and supporting documents to determine whether portions of the submission meet governing provisions. The

work is circumscribed by well-defined and precise specifications and the employee shares responsibility with other persons or units. It comprises part of the examination process and affects the timeliness, accuracy, and acceptability of the work products, and provides the basis for subsequent actions taken to provide services.

Level 5-3 describes work that determines whether requested actions meet governing provisions. The work is accomplished in accordance with established criteria. It directly affects the ability of individuals, partnerships, corporations, and others to obtain licenses, permits, rights, or privileges; to conduct various financial and contractual matters; to determine that persons have ownership or interest in property or securities, or to carry out transactions that affect personal livelihoods.

The purpose of the appellant's work is to make determinations on whether her patent and exchange cases meet governing provisions. The work is local in impact but has significant public interest. Impacts include other BLM offices and Federal agencies, and may involve several parties including large corporations, American Indians and their descendants, other Government bureaus and agencies, landowners, special interest groups, legal community and the general public. Some of the assigned cases have high economic values, and may be contested. Clearly, these work assignments exceed Level 5-2 because of the limitations on this level, i.e., determining portions of the submission and sharing that responsibility with others and providing interim work that is a basis for subsequent actions are not characteristic of the appellant's work. Her work is an equitable match to Level 5-3.

Level 5-3 is assigned for a total of 150 points.

Factor 6, Personal Contacts and Factor 7, Purpose of Contacts:

These two factors measure people and conditions or setting under which the contacts are made and reasons for the contacts.

Factor Level 6-1 limits persons contacted to immediate office personnel or related units, while Level 6-2 includes various members of the general public, and employees at various levels in the employee's agency and with other Federal, State, or local entities on a routine basis in the course of normal activities.

The appellant's contacts are an equitable match to Level 6-2 because they include other BLM offices and various personnel from other Federal, State and local government personnel as well as the various groups and organizations, general public and/or their representatives.

Level 7-a describes the purpose of the contacts to obtain, provide, or clarify factors of information that is easily understood to highly technical, and Level 7-b to explain certain provisions of laws, regulations, programs, and policies and to answer questions that go beyond the procedural aspects of obtaining approval. These contacts take into account the particular circumstances of the inquiring party and may include providing explanations on why approval was not given and/or explain alternative options that may be available. The employee at this

level deals with disgruntled or angered applications or parties who seek restricted information.

Because the appellant's work is characterized by mutual respect shown between the involved parties, with no anger shown by applicants or their representatives, Level 7-a is assigned.

Level 6/2 – 7/a is assigned for a total of 45 points.

Physical Demands:

Level 8-1 is assigned to the position. This level requires no special physical demands and work is primarily performed while sitting.

Level 8-1 is assigned for a total of 5 points.

Work Environment:

Level 9-1 is assigned to the position. This level involves everyday risks or discomforts that require normal safety precautions typical of offices and meeting rooms, commercial vehicles, etc.

Level 9-1 is assigned for a total of 5 points.

Summary of FES nine factors:

Factor 1-5	750 points
Factor 2-3	275 points
Factor 3-2	125 points
Factor 4-2	75 points
Factor 5-3	150 points
Factors 6/7(2/a)	45 points
Factor 8-1	5 points
Factor 9-1	5 points
Total	1430 points = GS-07 (1355-1600)

Conclusion:

Legal Instruments Examiner, GS-963-07

Mark Whitesell
Supervisory Personnel Management Specialist