

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

Chicago Oversight Division
230 S. Dearborn Street, DPN 30-6
Chicago, IL 60604-1687

Job Grading Appeal Decision
Under section 5346 of title 5, United States Code

Appellant: [Name]

Representative: [Name]

Agency classification: Motor Vehicle Operator
WG-5703-06

Organization: Department of Veterans Affairs
Medical Center
[Name] Division
[Name] Service
[City, State]

OPM decision: Motor Vehicle Operator
WG-5703-06

OPM decision number: C-5703-06-03

/s/

Douglas K. Schauer
Classification Appeals Officer

August 22, 2001

Date

As provided in section S7-8 of the *Operating Manual: Federal Wage System*, this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in section 532.705(f) of title 5, Code of Federal Regulations (address provided in the *Introduction to the Position Classification Standards*, appendix 4, section H).

Decision sent to:

Representative:

[appellant's name and address]

[name and address of appellant's representative]

Agency:

[name and address of appellant's servicing personnel office]

[name and address of contact in appellant's servicing personnel office]

Ms. Ventris C. Gibson
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Introduction

On May 3, 2001, the Chicago Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [Appellant] employed at the U.S. Department of Veterans Affairs, [City] VA Medical Center, [Name] Division in [City, State]. The appellant is employed as a Motor Vehicle Operator, WG-5703-6 in the [Name] Unit, [Name] Section, [Name] Service branch of the [Name] facility. He believes that his position is properly classified as Motor Vehicle Operator, WG-5703-7. He also believes that he is entitled to back pay due to the misclassification of his position. As required by statute, [Appellant] initially appealed the classification of his position to his agency, and they sustained the organization's classification. We accepted and decided his appeal under section 532.705 of title 5, Code of Federal Regulations. The appellant has chosen an attorney to represent him in the appeal, and we have kept the attorney informed of all matters concerning the appeal. During the course of the fact-gathering, we interviewed [Appellant] and his supervisor, [Name], and reviewed all the material submitted by the appellant, his attorney, and the agency.

General Issues

Because of the types of vehicles he is required to operate within the State of [Name], the appellant is required to obtain and retain a [State] Class B commercial driver's license with both passenger and air brake qualifications. He believes that this proves his contention that the passenger vehicle he regularly operates meets the definition and description of a "bus" at the WG-7 level of the Job Grading Standard for Motor Vehicle Operator, WG-5703. The General Services Administration in its classification of motor vehicles refers to the vehicle he regularly operates as a "bus," and he believes that this also supports his position that he is performing WG-7 level work. In addition, the firm that manufactured the vehicle called it a "bus" which he believes further supports his contention.

The label that the above named organizations use to refer to the vehicle is not relevant to the classification of this position. In adjudicating his appeal, our only concern is to make an independent decision on the proper classification of the position. By law, we must make that decision solely by comparing his current duties and responsibilities to appropriate OPM standards and guidelines. Therefore, we have considered the above references only insofar as they are relevant to making that comparison.

The appellant believes that if his appeal is upheld, he will be entitled to back pay retroactive to September 9, 1997. However, the U.S. Comptroller General states that an "...employee is entitled only to the salary of the position to which he 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. Consequently, back pay is not available as a remedy for misassignments to higher level duties or improper classifications" (CG decision B-232695, December 15, 1989).

Position Information

One of the appellant's primary duties is to operate a passenger bus to pick up and deliver patients and employees between the VAMC installation and parking facilities located approximately five

blocks away. The bus he usually operates was originally designed for 28 seated passengers plus the driver and up to 10 standing passengers. The bus was modified to accommodate wheel chair-bound people via the removal of eight seats and the addition of a wheel chair lift device. With the modification the seating capacity is now 20 passengers, but he may at times carry over 30 passengers to and from the parking facilities. He operates this type of bus between three and three and three quarters of an hour per day.

The bus is between 24 and 34 feet long. It has two axles with dual tires on the rear axle. It has an automatic transmission with three to four forward gears and one reverse. The braking system is either hydraulic disc brakes or drum, but the bus does not have air brakes. The majority of time the bus is operated on the [Name] VAMC facility and on city streets to and from the parking facilities five blocks away from the VAMC installation. Periodically the appellant must drive the bus to the contract maintenance facility that is some distance away and is reached over city streets and highways.

For most of the remainder of the appellant's time, he is utilized as the [Name] VAMC city pickup driver. In this capacity he usually operates a cargo van to pick up and deliver supplies from sources through the city and county and, if necessary, across the river into [State]. He typically drives to other medical facilities and medical supply firms, and occasionally drives to the [City, Name] Division VAMC facility. These destinations are located anywhere within the driving area requiring the appellant to be knowledgeable of driving in all types of physical constraints resulting from traffic and built up areas, open highway driving conditions, and weather conditions.

The appellant also occasionally operates other types of vehicles such as a dump truck, front end loader-type vehicle known as a bobcat, sedans, snow plow truck, and a box truck. When necessitated by the absence of a driver at the [Name] VAMC facility, the appellant may have to operate a 44-45 passenger bus. This work will not be evaluated, however. Section II.C.3 of the Job Grading System, Part 1 indicates that duties that are not regular and recurring cannot affect the grade of a job.

Series and Title Determination

The primary purposes of the appellant's position is to operate a passenger bus to pick up and transport passengers between the [Name] VAMC and the parking facilities, and to operate a cargo van to pick up and deliver supplies throughout the city and county. This work is covered by the Motor Vehicle Operator, WG-5703 occupation that includes positions involved in the operation of gasoline and diesel powered wheeled vehicles to haul cargo and transport passengers. The designated title for nonsupervisory positions in this occupation is Motor Vehicle Operator. The appellant does not disagree with the assigned occupation or title of his position.

Grade Determination

The WG-5703 Job Grading Standard (JGS) contains job grading criteria expressed in the form of four factors.

Skill and Knowledge:

Motor Vehicle Operators at the WG-6 level operate van trucks, dump trucks, patient transport vehicles, passenger shuttle vans, and cargo vans which typically have a gross vehicle weight of from 10,000 pounds to 26,000 pounds. Some of them may be equipped with air brakes, and they operate them over Federal, state and county roads and city streets in all traffic conditions. The vehicles operated may be equipped with a power take off device for transferring engine power to special-purpose accessory equipment, such as winches, power lifts, and plows.

Drivers operate cargo vans to pick up and deliver materials and equipment. They maneuver vehicles over uneven terrain, over improved or unimproved roads, and through congested areas exercising caution when backing up to load or unload at docks, ramps, and similar locations. They determine the manner and sequence of loading cargo to achieve load balance and adequate protection for fragile items. Drivers secure the cargo with tie-down ropes or a tarpaulin to prevent shifting and to protect the load, and mark dangerous or protruding cargo with flags, placards or reflection lights. They check material loaded or delivered against various documents to prevent errors and to certify the condition of the items and obtain signatures from receiving personnel.

Some drivers operate passenger shuttle vans over predetermined routes and arrive at and depart from pick up and discharge points at scheduled times. They adhere to all state, local and installation traffic laws and ordinances. They are required to maneuver the vehicles in and out of constricted areas including narrow city streets and congested parking lots.

At the WG-6 level operators must make judgments relative to the vehicle concerning loading and arranging cargo, overhead and side clearances, the turning radius, braking distance, and distance to be maintained from other vehicles. They must be selective in determining which routes to take because of the size and weight of the vehicle and the laws restricting the use of some roads by the types or size of vehicles driven. Drivers of passenger shuttle vans know the route and the time schedule to follow, and have skill in maneuvering and braking the vehicle to avoid jostling the passengers. They have the ability to deal effectively with people in a hospitable manner. Also, they have skill in selecting alternate routes to avoid heavy traffic or other delaying conditions, and skills in map reading in order to reach unfamiliar locations.

At the WG-7 level drivers operate motor vehicles, including platform, van and stake trucks and dump trucks, which have a gross vehicle weight of from 26,000 to 32,000, and passenger buses or passenger ambulance buses regardless of gross vehicle weight. All of these vehicles are usually equipped with air brakes. They are operated over public roads (or the equivalent) at highway speeds to transport passengers, patients, supplies, materials, or equipment and tools. Some drivers at this grade level operate a variety of passenger buses on scheduled or special runs from one location to another. Scheduled runs include work runs and shuttle runs. They are required to maneuver the bus around sharp corners and through narrow streets and roadways.

Drivers at the WG-7 level know how to operate vehicles that are larger and longer than those driven by lower graded drivers. The vehicles they operate have air brakes and are more

susceptible to sliding and tipping. They are difficult to maneuver, particularly when turning and backing. Drivers have skill and knowledge to operate these vehicles over a variety of roads including interstate highways, narrow country roads, and on steep winding grades. Also, because of the size and weight of these vehicles, drivers are knowledgeable about which routes may be legally driven and the overpass clearances and other restrictions on such routes. Drivers of passenger buses at this level have knowledge of safe braking distances because of the weight and size of the bus and the added weight of the passengers. They also know when mechanical or operational problems indicate that the bus is unsafe to drive and should be recovered by a tow vehicle.

The appellant's position does not meet the WG-7 level for the skill and knowledge. The appellant operates a passenger bus as defined at the WG-7 level with a 20 passenger capacity (plus 10 standing). Originally built as a 30-passenger bus, it can and still does carry up to 30 passengers including those standing. Typical of a bus, passengers can and do stand up and walk around inside of the bus. It has a manual rather than a hydraulic door opener and a power takeoff lift for wheel chair-bound passengers. However, to meet the WG-7 level, an operator must apply the full range of skill and knowledge described at that level. For example, the operator must be skilled in maneuvering the large bus on narrow streets and among buildings on the installation, and must be skilled in judging stopping distances in order to stop the bus without jostling the passengers. Because the bus is by nature a top heavy vehicle, it must be carefully maneuvered and is susceptible to tipping. However, because of the limited distances and driving conditions dealt with by the appellant, his position does not meet the intent of the WG-7 level for this factor.

In a note to users, the JGS explains that an underlying premise of the standard is that the vehicles described at each grade level are operated on Government installations and on public roads in a full range of traffic conditions, or in installation environments that exhibit the same driving characteristics as public roads, on a regular and recurring basis, and it goes on to define those public road characteristics. The standard further states that in those instances where drivers do not use their vehicles on public roads (or the equivalent), a lower grade level than the one depicted in this standard for the type of vehicle operated is appropriate.

The appellant operates his bus to transport passengers between the [Name] VAMC and the parking facilities located five city blocks away. This does not meet the intent of the WG-7 level for the skills and knowledge factor which reflects the skill of drivers who operate vehicles over a variety of roads including interstate highways, narrow country roads, and on steep winding grades. Also, because of the size and weight of these vehicles, drivers at this level must be knowledgeable about which routes may be legally driven and the overpass clearances and other restrictions on such routes. It is not possible that in driving a loaded bus over a five-block route a driver could encounter the driving conditions described at the WG-7 level. We understand that when the appellant takes his bus to the contracted maintenance facility he must operate the bus over longer distances and under the conditions described at this level. However, he drives it when empty and does not have to concern himself with passengers, and this, again, fails to meet the intent of the WG-7 level. The appellant is credited at the WG-6 level for the skill and knowledge required to operate the passenger bus.

The other vehicle that the appellant operates on a regular and recurring basis is a cargo van with under 10,000 gross vehicle weight, even when fully loaded. This type of vehicle is identified at the WG-5 level in the JGS. While it is true that he operates the cargo van in all kinds of traffic and weather conditions, this is a match to the WG-5 level. His work does not meet the WG-6 level where it requires more skill and knowledge to operate a vehicle that is typically higher, wider, longer, and heavier than those described at the WG-5 level. The cargo van does not meet the vehicular characteristics described at the WG-6 level.

WG-6 appropriately credits the highest level of skill and knowledge required by the appellant to operate the vehicles he drives on a regular and recurring basis.

Responsibility:

Drivers at the WG-6 level receive instructions from the supervisor as to the type of vehicle to be operated, destination, cargo, passengers or patients to be transported, deadlines to be met, and any special information important to the mission. Their work is assessed in terms of safe and expeditious completion of the assigned job. They are responsible for selecting routes and obeying all traffic laws and safety regulations, as well as the safe loading and unloading of the vehicle. Performance of preventive maintenance and preparation of trip tickets are reviewed for adequacy and compliance with instructions.

WG-7 level drivers receive instructions similar to that described above. Additionally, some drivers determine the route to be followed, taking into consideration such factors as the clearance of underpasses, overhead power lines, weight limitations, highway restrictions, and alternate bypass routes. Other drivers who are assigned prescribed routes for such trips as work runs, shuttle runs, or medical transportation runs are responsible for knowing acceptable alternative routes for use in emergency situations which will legally accommodate the size and length of the vehicle being driven.

The manner in which assignments are received and work is reviewed is similar at the WG-6 and WG-7 levels. However, in operating the passenger bus the appellant's position does not meet the WG-7 level in other aspects of this factor. Unlike that described at this level he does not determine the route to follow taking into consideration such factors as the clearance of underpasses, overhead power lines, weight limitations, highway restrictions, and alternate bypass routes. He does not have to know acceptable alternative routes for the bus to use in emergency situations which will legally accommodate the size and length of the vehicle. He does not have to maneuver the bus in difficult traffic and in a variety of constricted locations while maintaining time schedules to the extent intended in the standard at this level. The appellant's position meets the WG-6 level for this factor.

Physical Effort:

At the WG-6 level drivers use greater physical effort than at lower levels in order to maneuver the longer and heavier vehicles. Patient transport vehicle drivers may be required to assist patients into and out of the vehicle, and this involves physical exertion and frequent stooping and bending. In addition to the physical effort described at this level, drivers at the WG-7 level exert

moderate physical effort in operating, turning, backing, and controlling the vehicle which carries larger numbers of people than the bus credited at the grade 6 level.

The appellant operates a bus that is described at the WG-7 level. Because he does not utilize all of the skills and knowledge described at that level, the bus that he operates does not require him to utilize the physical effort described at the WG-7 level. The bus is longer and heavier than the vans described at the WG-6 level, and the manual door opener and lift operation device require both physical effort and coordination that approaching the WG-7 level. However, the limited driving functions that he performs do not require him to exert the physical effort required to maneuver this vehicle under the wide variety of road and traffic conditions found at that level. Therefore, this factor meets the WG-6 level.

Working Conditions:

The working conditions for grades WG-5 through WG-7 are identical. That is, drivers operate vehicles in all types of traffic and weather on public roads and are exposed to the danger of serious accidents, and they drive in heavy traffic and highway speeds over complicated road and interchange systems. In view of the skill and knowledge required and the responsibility exercised, we also equate the appellant's position to the WG-6 level for this factor.

Summary:

The JGS instructs that the final grade is to be based on a consideration of the four grading factors as applied to the total job. Because all factors do not exceed the WG-6 level, the position is evaluated at the WG-6 level.

Decision

The appellant's position is properly classified as Motor Vehicle Operator, WG-5703-6.