

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF CONSOLIDATED CLASSIFICATION APPEAL NO. 1-  
2003:

<b>DEBBY CLAYTOR, TIMOTHY HERSHBERGER,</b>	)	Case No. 399-2003
<b>JOHN PALMER AND WILLIAM REICHERT,</b>	)	
<b>LICENSING/CERTIFICATION/PERMIT</b>	)	
<b>SPECIALISTS, AKA CDL SPECIALISTS, MOTOR</b>	)	
<b>VEHICLE DIVISION, DEPARTMENT OF JUSTICE,</b>	)	
Appellants,	)	FINDINGS OF FACT;
	)	CONCLUSIONS OF LAW;
vs.	)	AND RECOMMENDED ORDER
<b>STATE PERSONNEL DIVISION,</b>	)	
<b>DEPARTMENT OF ADMINISTRATION</b>	)	
Respondent,	)	

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**I. INTRODUCTION**

In this matter, four licensing/certification/permit specialists (CDL examiners) appeal the Department of Administration's (DOA) application of two factors of Benchmark Factoring Methodology (BFM) in evaluating the proper pay classification of CDL examiners. The CDL examiners contend that the DOA determinations regarding the factors of (1) complexity and (2) scope and effect of actions and decisions (scope and effect) are incorrect.

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on June 9, 2003. Dick Letang represented the CDL examiners. Vivian Hammill represented the DOA. Debra Claytor, CDL examiner, testified under oath on behalf of the appellants. Chris Blazer and Hal Peck, human resources consultants, Anita Drews-Oppendahl, field operations chief, Esther Schneider-Fantry, personnel specialist, and Gary Syvertson, compliance specialist, testified under oath on behalf of the DOA.

Appellants' Exhibits 1 through 9 and DOA's Exhibits A through M were admitted into the record. Following the hearing, the parties requested and were granted leave to file post-hearing memoranda. Responsive memoranda were received on August 5, 2003, and the hearings process closed. Based upon the evidence adduced at the hearing and the parties' post-hearing memoranda, the hearing officer determines that the DOA's determinations regarding the complexity and scope and effect benchmarks were correct. Complexity is properly factored at

level 4 and scope and effect is properly factored at level 3. This recommended decision is supported by the following findings of fact, opinion, and conclusions of law.

## **II. ISSUE**

The issue in this case is whether, under the point factoring methodology, inappropriate levels have been assigned to the complexity factor (factored at level 4) and the scope and effect factor (factored at level 3).

## **III. FINDINGS OF FACT**

1. Debbie Claytor's position as a CDL examiner is representative of all four positions under review in this case.<sup>111</sup> She is employed by the Montana Department of Transportation as a CDL examiner. Her position is currently classified at grade 12.

2. In this position, Claytor performs commercial driver's license (CDL) examinations, Stage III vehicle identification number (VIN) inspections in Great Falls, Helena, Butte, and Lewistown, Montana, and other tasks not relevant to this proceeding. Claytor has received training to learn how to complete the Stage III vehicle inspections. This training included training in Missoula, Montana, in 2001 and 2002 under the direction of Cliff Chisolm, a vehicle inspection expert.

3. Claytor's job involves both field work and office work. She tries to complete at least one office day per week. Her monthly CDL office work takes approximately eight hours each month and her monthly VIN office work takes about 16 hours per month. As demonstrated by appellants' Exhibit 8, during the 15 month period between January 2002, and April 2003, Claytor completed 524 hours of CDL field examinations and 524 hours of field VIN inspections. All together, her office and field activities in CDL and VIN work comprise more than 50% of her total work hours each month.

4. In conducting CDL examinations, Claytor checks the applicant's identity, residence, and whether the applicant has sufficient documentation to demonstrate compliance with United States Department of Transportation medical standards. Claytor conducts written, pre-trip, and road tests for applicants according to predetermined standards. When conducting these various portions of the application process, Claytor uses an extensive checklist to score an applicant's performance (Exhibit I, vehicle inspection test checklist and road test checklist). The CDL testing that Claytor does is governed by very specific guidelines and does not permit her to exercise much discretion.

5. Claytor's VIN work involves both routine and non-routine or irregular inspections. Routine inspections involve vehicles where the vehicle's VIN is found and the VIN matches the vehicle's accompanying title documents. There are no discrepancies encountered in these types of inspections. Non-routine vehicle inspections involve cases where some discrepancy in the vehicle's documentation or VIN raises a red flag about the vehicle's ownership (i.e., whether it might be stolen) or whether parts used to repair a vehicle might be stolen. In some cases, documentation is missing or a vehicle's VIN numbers do not match the vehicle's

documentation or the vehicle type. In other cases, a vehicle's VIN plate is scratched, bent, or missing.

6. When Claytor encounters a non-routine vehicle inspection, she must use resources other than the information contained on the vehicle or in the vehicle's documents to verify the vehicle's ownership. To resolve non-routine inspections, she sometimes contacts the National Insurance Crime Bureau. On other occasions, she contacts Compliance Specialist Brent Sells of Missoula, Cliff Chisolm, or she consults co-workers who complete Level III vehicle inspections.

7. Claytor does not have any set method of completing these non-routine inspections. Claytor has a manual that contains approximately nine pages of discussion about VIN inspections. The manual, among other things, describes requirements for completing Level I, II, and III VIN inspections. The manual does not tell her how to go about making the determination at the required level, i.e., where to locate corroborating information in order to determine the legitimacy of a vehicle's title. This is something she has developed through experience.

8. All four CDL examiners are supervised by regional managers. Regional managers are trained in Level III VIN inspections. The regional managers are available for consultation and CDL examiners contact them with questions from time to time.

9. Claytor initiated a formal appeals process in this dispute on April 23, 2002. In the appeal, Claytor challenged the factoring in the complexity and scope and effect factors for the CDL examiners. The position description fixes the complexity factor of CDL examiners positions at level 4 and fixes the scope and complexity level at level 3. At the step one appeal, the deputy director of the Department of Justice determined that the complexity and scope and effect factors were properly factored and that the position could not be properly factored at level 5 for either complexity or scope and effect.

10. Claytor then initiated her step two appeal. This level of review was undertaken by Hal Peck, human resources consultant with the State Personnel Division of the Department of Administration. Peck has worked for approximately five years as a human resources consultant classifying positions and completing research and writing on state personnel policies. He has classified at least 50 positions and completed at least 6 step two appeals.

11. In reviewing Claytor's appeal, Peck followed Benchmark Factoring Methodology. He began by determining the predominant work of the CDL examiner. After first determining the proper class series, he then went through the language of each level, starting at level 1 and progressing to the first level that described the predominant work of the CDL examiner.

12. Peck examined in detail the position description for CDL examiners. He also reviewed other position descriptions in the bureau to get a better understanding of the work conducted by a CDL examiner. He noted that the CDL examination and VIN inspections comprise more than 50% of the CDL's working hours. Based on this, he determined the CDL examinations and VIN inspections to be the predominant work for the position.

13. In addition to reviewing and considering all documentation applicable to the position, Peck formulated questions for Claytor which inquired in detail about the CDL examiner position. He interviewed Claytor at length about the position in three separate interviews on January 27, 2002, February 10, 2002, and February 23, 2002. During the February 10 and February 24 meetings, Peck observed Claytor conduct both a VIN inspection and a CDL examination.

14. Peck explained in detail the duties that a CDL examiner has in both CDL examinations and VIN inspections (Exhibit C, position classification review form addendum). The accuracy of Peck's understanding of the CDL examiner's position is corroborated by Claytor's testimony. Peck's written determination (Exhibit C) sets forth in detail the factors noted above in findings 4 and 5.

15. Peck also discussed the non-predominant work that CDL examiners complete. He noted that this included conducting some contested license revocation proceedings, and, occasionally, filling in to complete other types of licensing for non-commercial drivers.

16. Peck concluded that licensing, certification and permitting series was the most appropriate series in which to review the position.

17. Peck also concluded that the complexity level was properly classified at level 4. In reaching this conclusion, Peck reviewed the factor level comparison completed by the agency classifier at the step 1 appeal. He also considered the various components of completing the VIN inspections and determined whether these various components were more properly classified at level 4 or level 5. He noted that the activities of reviewing paperwork (e.g., salvage titles) for accuracy, searching for vehicle identities on parts and vehicles, inspecting vehicles for VIN numbers to determine whether those numbers have been tampered with, all fit well within the level 4 factor language that speaks of assignments that require examining and interpreting data, searching for additional data, and drawing conclusions from that data, and changing guidelines for interpreting that data.

18. Peck concluded that the VIN activities did not fit well within the level 5 factor. He reached this conclusion noting, among other things, that VIN work does not involve analysis, evaluation, and interpretation of multiple variables and the application to practical problems as discussed in the level 5 language. Peck further reasoned that the VIN work did not approach the level 5 language because "the full intent of level 5 involves the analysis and interpretation of a much broader and, more varied body of complex information that requires a deeper level of evaluation and interpretation, etc., than occurs at level 4."

19. Peck then reviewed and determined the propriety of the bench mark comparison of the CDL position to the positions of eligibility examiner, position #195081 (examining eligibility for various social services programs), highway patrol officer, position # 375002, and unemployment insurance benefits examiner, position #169181. Peck found that the position could be reasonably compared to eligibility examiner (level 4 complexity) in that the work is very similar because "of duties such as examining and interpreting data collected through research when the benchmark incumbent (eligibility examiner) suspects fraud" (Exhibit C, page 7). Peck found that the CDL

examiner position was weaker than the highway patrol officer position (level 5 complexity). He reached this conclusion by noting that the highway patrol officer has many more variables to consider when, for example, investigating accidents and making determinations regarding fault. He also found that the CDL examiner position was weaker than the work engaged in by an unemployment insurance benefits examiner in determining whether an applicant is qualified for unemployment insurance benefits.

20. Peck engaged in a similar methodology to review the scope and effect factor. He again first looked at the factor level comparison and found level 3 to be the appropriate level for classification. In doing so Peck concluded that the CDL examiner's position directly affects the operation of regular and routine services provided by an agency. He found that the CDL examiner's determinations directly affect the accuracy of their own work, but not that of other CDL examiners. He noted also that, in conformity with level 3 criteria for scope and effect, CDL examinations must be made in conformity with established driver's license criteria in the case of driver's license work and in conformity with vehicle inspection standards with respect to VIN inspections.

21. Peck found that neither level 4 nor level 5 were appropriately applied to the CDL examiner's position. He reasoned that the level 4 language applied to making decisions that affect customized services an agency provides to its clients or the public, such as decisions made to tailor state programs to meet specific needs of clients or the public in financial assistance, job training, and family counseling. Peck noted that a CDL examiner is not free to tailor driver's licenses examinations but must follow explicit statutes and regulations in determining eligibility. Peck found that level 5 could not be applied to the CDL position because level 5 is reserved to decisions having a direct effect on the administration of large consequential projects or services provided by the state to the citizens of Montana.

22. Peck also compared various benchmarks for the level and found that level 3 was proper. In doing so, he compared the position of licensing, certification, and permitting technician, eligibility examiner, licensing, certification and permitting specialist working for the Board of Architecture and the Board of Dentistry, occupational safety and health specialist, social worker, and engineering manager. He concluded that eligibility examiner (the same position compared in determining the complexity factor) provided a reasonable comparison as the eligibility examiner, like the CDL examiner, "uses knowledge of program eligibility rules and regulations to determine whether fraud has occurred." He also found the licensing, certification and permitting specialist to be a good match, reasoning that the specialist oversees testing, examination scoring, issues licenses and renewals to approved applicants and, as is true with the CDL examiners, the specialists supervisors assume the specialist's decisions are made within the boundaries of established criteria. He further found that both the specialist and the CDL examiners make decisions that directly affect the standardized services their respective agencies provide.

23. Peck distinguished the benchmark positions of occupational safety and health specialist and social worker which have a scope and effect rated at level 4. He concluded that a CDL examiner's position is not comparable in scope and effect to an occupational safety and health specialist because that specialist investigates workplace accidents and "develops, designs,

and delivers safety programs that are tailored to each individual employer's needs" (Exhibit C, page 11). He further concluded that "much of the work involves research of a variety of sources to develop new approaches to solve unique industrial accident problems and that "no specific guidelines or policies determine the standards for adequacy of the safety programs developed by the benchmark." *Id.* This is very different from the CDL examiner who does not develop customized driver's safety programs or research new methods of VIN fraud detection. With respect to the social worker position, Peck found that the social worker benchmark position customizes counseling, intervention, and other services to meet the needs of individual clients "whose safety and well being are directly impacted by the actions of the benchmark position." In contrast, the CDL examiner does not customize services to individual driver's license applicants.

24. Peck also found that the scope and effect of the CDL examiner positions was much weaker than the level 5 scope and effect accorded to an engineering manager. Peck noted that this benchmark position oversees "the development of all bureau related policies, procedures, and standards" and 60 full time equivalent positions in the "planning, implementation, and negotiation of highway materials contracts and research programs" (Exhibit C, page 12). CDL examiners, on the other hand, do not make decisions that affect large consequential projects nor do they make decisions that commit their agency to a particular course of action in driver's licensing or VIN inspections.

25. Based upon his benchmark comparisons, conducted in conformity with the benchmark comparison hierarchy, Peck concluded that Claytor's position had been properly classified with respect to the complexity and scope and effect levels.

#### **IV. OPINION**

Montana law requires the Department of Administration to develop a classification plan for state employees and permits employees to appeal the allocation of positions to classes in the system. Mont. Code Ann. §§ 2-18-201 and 2-18-203(2). The function of developing guidelines for classification is delegated to the Department of Administration. Mont. Code Ann. § 2-18-202.

The Board of Personnel Appeals' function in this matter is limited to determining whether a position is properly classified. The purpose of that function is to review the actions of the DOA and to ensure that the DOA properly adheres to its rules, regulations, and practices. *Mead v. Board of Personnel Appeals* (1988), 235 Mont. 208, 213-14, 766 P.2d 1300, 1303.

The appellants bear the burden of proof in this matter to demonstrate by a preponderance of the evidence that they have been aggrieved by the DOA classification of their positions. Mont. Code Ann. § 2-18-1012; Admin. R. Mont. 24.26. 513(f). Accordingly, the appellants must show by a preponderance of the evidence that either the factor levels of complexity and scope and effect are incorrect or that the Department's application of the BFM process to the position was flawed.

The Classification Manual, Vol. III, sets out the principles of application of the BFM to a given position. These rules require:

(1) Use of the predominant work principle, meaning that the work to which the factors are applied must be work performed 50% of the time or more. In those instances where no duty is performed 50% or more of the time, the predominant work is defined as those tasks or duties comprising at least 50% of the time at or above complexity level assigned.

(2) That the predominant work be fully equivalent to the intent of the factor level chosen.

(3) That predominant work factors be applied to the same body of predominant work.

(4) That a reviewer start at the first factor level and progress to the first level that most fully describes the total predominant work.

(5) Comparison to benchmark positions. Comparison requires more than just matching specific words and phrases to the position description. ***It requires looking at the full intent of each factor level and selecting the level that best reflects the nature of the position under review.*** The intent of factor level language is demonstrated in the benchmarks.

Classification manual, Vol. 3, pp. II-4 through II-6.

The BFM assigns a level to positions on seven factors, two of which, complexity and scope and effect, are at issue in this case. The levels are then assigned points. The points are added together to arrive at a total which establishes the classification. Appellants in this case contend the respondent assigned incorrect levels to the factors of complexity and scope and effect.

## COMPLEXITY

Complexity measures the "nature and difficulty of tasks, steps, processes or methods, and difficulty of the mental processes necessary to identify what needs to be done, and the originality, problem solving, resourcefulness, and conceptualization required to complete the tasks." Evaluating this factor requires looking at "qualities inherent in the work itself, apart from the organizational or functional setting." Classification manual, Vol. 3, p. IIIA-1. As the respondent correctly notes, factors such as the amount of supervisory guidance available or the personal contacts may influence the degree of difficulty involved, "but they are measured separately and should not influence the allocation of this factor." *Id.*

The parties do not dispute that the predominant work here is the combination of CDL examinations and VIN inspections. Boiled to its essence, Claytor contends that the lack of supervision and the lack of a set procedure makes the work of the position more akin to level 5 complexity than level 4. This argument ignores that supervisory guidance should not influence the allocation of the complexity factor. It also ignores the central role of comparison to the benchmarks in making the determination.

Comparison to the position description of eligibility examiner, which has a complexity factor of level 4, provides a good match for determining the complexity level for a CDL examiner. The eligibility examiner's work consists of "collecting, verifying, and processing information by applying a number of related eligibility program rules and standards to a variety of benefit requests . . . . Some case and investigations will involve more examination and interpretation of

data as well as more extensive research dependent on the eligible programs and the completeness of the information. Those cases may involve individual circumstances which are not clearly covered by rules and standards." (Exhibit D, benchmark position, eligibility examiner). The CDL examiner does essentially the same thing, except in the context of completing CDL examinations and VIN examinations. The CDL examiner's work with respect to completing CDL examinations is highly circumscribed. Though there is less circumscription in the VIN inspection area, the work nonetheless involves assignments "that require examining and interpreting data, searching for additional data, and drawing conclusions from data," the level 4 description for the complexity factor. The appellants have failed to point out any significant differences between the eligibility examiner and the CDL examiner position that would warrant ranking complexity for the CDL examiner higher than level 4.

In contrast, benchmark positions ranked at level 5 complexity involve a far wider range of analysis, evaluation, and interpretation of interrelationships of multiple variables and the application to practical problems. For example, the benchmark position description for highway patrol officer, complexity level 5, indicates that "approximately 70% of the work involves intellectual analysis of the principles and practices of law enforcement and related disciplines such as psychology and sociology to perform standard, routine assignments . . . . The work also involves the skilled application of numerous law enforcement methods, procedures and techniques . . . . Of similar complexity is the determination of the appropriate enforcement action to be taken which takes into consideration the type and extent of the violation and the previous record of the violators. In this determination, the incumbent must apply the principles of law enforcement, psychology and sociology as it pertains to criminal behavior . . . ." This level of complexity is far above the complexity level encountered by a CDL examiner and the appellants have failed to show through any evidence that VIN inspections are more akin to level 5 complexity.

Moreover, as the respondent correctly notes, there has been no suggestion by the appellants that the classification reviewer conducted his Step II review improperly. The classifier followed the BFM to the letter. Neither his conclusion nor his methodology have been shown to be in error and the hearing officer must conclude that the complexity factor for a CDL examiner is properly factored at level 4.

## SCOPE AND EFFECT OF ACTIONS AND DECISIONS

Scope and effect measures "the role of the position in attaining the overall objectives of the work unit and producing the results or services of the work unit and/or agency program." Classification manual, Vol. 3, p. IIIF-1. Positions measured at Level 3 scope and effect include positions whose actions "directly affect the operation of the regular or routine services of an agency program or programs to individuals or client groups." Classification manual, Vol. 3, p. IIIF-2. Positions measured at level 5 scope and effect are those positions whose actions "directly affect the administration of large, consequential projects, or services provided to the citizens of the state. Actions involve establishing criteria, formulating projects and assessing program effectiveness."

The single argument advanced by the appellants is that the scope and effect factor of the CDL examiner position should be factored at level 5. The appellants do not seek to have the scope and effect factored at level 4 (apparently because the appellants recognize that a finding that scope and effect should be factored at level 4 will not help them achieve their ultimate goal of having the position move up to grade 13).

A review of the benchmark positions convinces the hearing officer that the comparison to the eligibility examiner and licensing, certification, and permitting specialist, each of which has a scope and effect factor of level 3, is appropriate in this case. As described in the benchmark position description, the actions of the eligibility examiner "affect the standardized social service programs provided to clients through varied activities in making eligibility determinations and occasional investigations. The purpose of the work is to obtain information used in the eligibility determination process for economic assistance programs." Like the eligibility examiner, the CDL examiner directly affects services provided to commercial driver's license applicants and to persons seeking title to vehicles needing stage III inspections.

The benchmark position description of licensing specialist describes the scope and effect of that position as directly affecting "the operation of a standardized service to assure the public of qualified practicing professionals in the dental and architectural fields" and further states that level four "is inappropriate because services are not tailored to the individual professional and because the incumbent does not have a direct provider role with a direct and immediate effect on the health and safety of individuals."<sup>121</sup> Like the licensing specialist, the CDL examiner directly affects the operation of a standardized service (VIN inspection and CDL examinations) to assure the public of safe operation of vehicles and legitimately titled vehicles but does not tailor the requirements for issuance of driver's licenses or titles to the individual.

In contrast, comparison to level 5 scope and effect is clearly inappropriate. The only level 5 benchmark comparison made by any party to this matter is the Department's reference to engineer manager, a level 5 scope and effect position. The scope and effect for that position indicates in pertinent part that the position is assigned "overall responsibility for the criteria which affects all roadways in the State. The position is responsible for assessing program effectiveness and speaks for the Department and can commit the department to a course of action pertaining to highway materials." The differences between this position and the CDL examiner are almost too obvious to need explanation. The CDL examiner does nothing that even approaches the broad and far reaching decision-making ability possessed by the engineer manager.

As was true with respect to the analysis of the complexity factor, the appellants have presented no benchmark comparisons, much less any benchmark comparisons that would persuade the hearing officer that a CDL examiner position should be factored at level 5 for scope and effect. Nor have the appellants presented any evidence to show that the classifier failed to follow BFM protocol. For these reasons, the hearing officer concludes that the scope and effect for a CDL examiner is properly factored at level 3.

## **V. CONCLUSIONS OF LAW**

1. The Board of Personnel Appeals has jurisdiction in this matter pursuant to Mont. Code Ann. § 2-18-1011.
2. The CDL examiners' positions are properly factored at level 4 for complexity.
3. The CDL examiners' positions are properly factored at level 3 for scope and effect.
4. The CDL examiners have failed to show that the Department of Administration's application of the bench mark factoring methodology was improper with respect to the complexity and scope and effect factors.

**VI. RECOMMENDED ORDER**

Based on the foregoing, the hearing officer recommends that Classification Appeal No. 1-2003 be DISMISSED.

DATED this 31st day of October, 2003.

BOARD OF PERSONNEL APPEALS

By: /s/ GREGORY L. HANCHETT

GREGORY L. HANCHETT

Hearing Officer

NOTICE: Pursuant to Admin. R. Mont. 24.26.215, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than November 24, 2003. This time period includes the 20 days provided for in Admin. R. Mont. 24.26.215, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals  
Department of Labor and Industry  
P.O. Box 6518  
Helena, MT 59624-6518

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<sup>[1]</sup>Because this is so, I frequently refer to Claytor throughout the decision without mentioning the other three CDL examiners. My findings, however, are intended to apply to all four CDL examiner positions.

<sup>[2]</sup>While the hearing officer recognizes that the appellants have not asserted an argument that level 4 is the appropriate level for the scope and effect factor, inclusion of this portion of the scope and effect language is helpful because it shows that the comparable position does not even reach level 4, let alone level 5.