

Out-of-Scope Appeal Procedures

A Guide for Out-of-Scope Employees

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AUTHORITY AND PROCEDURES

The following outline of roles, policies and procedures are for the purpose of ensuring the integrity of the job evaluation plan, and clarity in roles, authorities and responsibilities of persons attending appeal hearings.

Preamble

1. *The Public Service Act* provides the Public Service Commission (commission) with the authority to develop, implement and maintain job evaluation plans.
2. The Act obligates the Chair of the Public Service Commission, or delegate (hereafter called a classification consultant), to ascertain the assigned duties and responsibilities of jobs and allocate all jobs to the job evaluation plan. Where no job descriptions have been submitted, the classification consultant has the authority to obtain the information and allocate jobs to the job evaluation plan.
3. The classification consultants are charged with the responsibility to ensure equitable judgments in the application of the plan, to the best of their ability.
4. The classification consultant is required to provide the appellant with the written rationale supporting the rating decisions.

Right to Appeal

- *The Public Service Act*, Section 18.1, provides permanent employees the right to appeal the classification decision resulting from an allocation of their position to a particular classification. Order in Council appointees do not have appeal rights.
- Section 9(3) of *The Public Service Regulations* requires that appeals be made within 15 days (calendar) after receipt of written notification of the classification decision.
- Upon appeal, the appellant is to provide written rationale as to why the job should be rated higher relative to a particular level definition within a factor or a benchmark grouping. This shall be reviewed by the classification consultant prior to the hearing. If this review results in a rating change, or not, the appellant will be notified and asked if they wish to continue with the appeal.
- The appellant will have 30 calendar days from the date their appeal is acknowledged to submit their written appeal rationale to the appeals coordinator. Should written rationale not be received by the deadline, the appeal shall be considered withdrawn.

Purpose of the Appeal Hearing

To adjudicate evidence as to whether appealed factor ratings are appropriate, relative to the full intent of the factor degree definitions and benchmarks.

Composition of Panel

Section 9(2) of *The Public Service Regulations* provides that out-of-scope employees may appeal a classification decision to the commission. The Public Service Commissioners will hear appeals pursuant to Section 9(4), which provides that the commission may hear the appeal. The commission has the ability to delegate the hearing to a classification appeal tribunal in accordance with subsection 18(3) of the Act.

Role of the Panel

1. To uphold the integrity of the job evaluation plan through the adjudication of disputes regarding the assignment of factor ratings in accordance with the primary responsibilities of the job assignment. In this regard, members of the panel do not represent, nor advocate, for employees, management or the commission.
2. To assess job content presented to determine if it meets the requirements in the notes to raters, factor guidelines, the full intent of the degree definition within the factor, and/or benchmark comparators.
3. Where necessary, to ensure that evidence presented is verified as assigned duties and responsibilities of the job assignment.

Role of the Appellant

1. To prepare written rationale as to why the job should be rated higher. This may be in the form of additional or counter argument to the rationale previously provided by the consultant. Effective rationale is typically one or two pages in length, but should not extend beyond a maximum of 10 pages.
2. To provide an electronic copy of their rationale to the appeals coordinator no later than 30 days from when the appeal is acknowledged. Failure to do so will result in the appeal being withdrawn. Extensions to the deadline will only be granted upon request for valid or unforeseen reasons as determined by the Total Rewards Branch.
3. To contact his/her own witness(es) to invite them to the hearing and to advise the appeals coordinator if a witness(es) will be attending the hearing.
4. Where an appellant fails to attend the scheduled hearing, the panel will attempt to contact the appellant to determine whether or not he intends to appear.
 - If the panel reaches the appellant, and the appellant indicates he does not intend to appear, he will be advised that the hearing will proceed in his absence and a decision will be rendered.
 - If the panel cannot reach the appellant, the panel will proceed to hold the hearing, deliberate and render a decision.
 - If the appellant requests an adjournment, either upon being contacted or prior to the decision being released, the panel will exercise its discretion as to whether or not to grant the adjournment, documenting the decisions regarding why an adjournment was or was not granted.

5. If a group appeal, the group will identify a spokesperson to the appeals coordinator prior to the hearing, and this person shall serve as the contact person for the group. Only a single spokesperson shall present the appeal.

Appellant Representation

From time-to-time an appellant may be unable to present their own case. In such situations, the appellant may have another person present the appeal rationale. In order to ensure there is no conflict of interest, representatives may not be:

- a member of an appeal tribunal;
- an employee of the Public Service Commission (except where the appeal is another employee of the Public Service Commission); and/ or,
- a subordinate employee to the appellant.

Role of the Classification Consultant

1. To provide the appeals coordinator information related to the appeal, including rationale, organizational chart and signed job description.
2. Upon the appeal being scheduled and receiving all required information, the classification consultant shall provide the appeals coordinator an electronic copy of their appeal brief a minimum of 15 calendar days in advance of the hearing.

Witness' Function

1. Appellants and the human resource consultant may request the appeals coordinator to schedule the presence of a witness(es). The appellant's supervisor is always expected to attend as a witness, regardless of scheduling their presence.
2. Witness(es) must have first hand knowledge of the position being appealed. There is an expectation that the panel will determine how such witness(es) came to have first-hand knowledge.
3. Witnesses when asked, will answer questions for clarification of job content or authority, subject to the panel's discretion. Responses are to be addressed to the panel.

Observers

Appeals are open to the public.

1. Observers are not appellants at the specific hearing.
2. Observers cannot participate in any way, in any discussion.

Role of Panel Chair

The Chair of the Appeal Panel:

1. Shall ensure the hearing is run in an expeditious manner and has the authority to move the hearing along in the event that information is repetitious, or not relevant to the factor under appeal. The Chair must focus the presentation on information relevant to the factor under appeal and may limit the length of question and answer period on the factor and request that the panel take breaks after a certain length of time.
2. Shall ensure that the question period does not become a debate. This is to be question and response, both without interruption.
3. Has authority to, and shall excuse any person whose behaviour is considered inappropriate.
4. May stop the proceedings in the event that an appeal hearing is running longer than scheduled to advise the appellants waiting for the next scheduled hearing how long the wait might be.

Role of Appeals Coordinator

1. As soon as the appeal is received, the appeals coordinator notifies the classification consultant and provides the factors that are being appealed and any rationale the appellant provided to date. The appeals coordinator requests information related to the appeal (rationale, organizational chart, signed job description) from the classification consultant.
2. The appeals coordinator acknowledges receipt of the appeal and informs the appellant of the requirement to submit written rationale within 30 calendar days.
3. When the appellant submits written appeal rationale, the appeals coordinator will inform the Secretary to the Public Service Commissioners who will then arrange a date for the hearing.
4. The appeals coordinator will send a copy of the appellant's rationale to the classification consultant.
5. Once the appeal has been scheduled with the commissioners, the appeals coordinator notifies the appellant(s), the classification consultant and the appellant's supervisor regarding the date, time and place of the hearing, a minimum of 30 calendar days in advance. The appeals coordinator shall attempt to schedule in such a way so as to ensure the appellant's manager is in attendance.
6. Ten working days in advance of the hearing, the appeals coordinator shall provide the parties with electronic copies of the job description, organizational charts, the appellant's appeal rationale, and the classification consultant's rationale and appeal brief.
7. The Secretary to the Public Service Commissioners, if in attendance during or after a hearing, shall not in any way participate in any discussion, nor be requested to provide opinion or interpretation. Only the panel shall be present during deliberations.

Rules of Evidence

The basis for the evaluation of the position are the duties and responsibilities, as evidenced by:

- the duties and responsibilities in the job description form, signed by the executive manager;
- examples of work in the job description form; and,
- rationale presented by the appellant and consultant as to how the job responsibilities meet the intent of factor definitions or scope of responsibilities indicated in benchmark descriptors – this could include additional documents that are supportive of the rationale submitted.

If new job responsibilities are presented at an appeal hearing, the appeal panel will render a decision based on the original responsibilities. It is not the role of the panel to render a decision on responsibilities not previously assessed. (It should be noted that appellants may provide new examples to illustrate responsibilities already on the job description form).

Words copied from a factor definition must be substantiated with examples and are not accepted outright. Similarly, if the appeal presentation includes examples copied from benchmarks they must be verified in advance of the hearing by the manager. The appeal panel may also ask questions to clarify how the examples relate to the job assignment.

Procedures in the Appeal Hearing

1. Preliminary

- The chairperson will call appellants, consultants, witnesses and observers, into the hearing room.
- The chairperson ensures that everyone is introduced, including observers and witnesses.

2. Procedures

- There shall be no discussion by appeal panel members with either party (the appellant, witnesses or classification consultant) prior to the appeal hearing.
- Once the appeal hearing is in progress, there shall be no use of cell phones or any other communication devices by anyone attending the appeal.
- The appellant and consultant shall appear at the hearing concurrently.
- An appellant, in absentia, may be represented by a nominee designated in advance by the appellant.
- The appellant shall present first without interruption. This presentation is essentially a rebuttal to the rationale received by the appellant from the commission prior to the hearing.
- At this time the appellant may question their witness, if applicable. The witness may only respond to matters of job content or authority of which they have first-hand knowledge.
- The consultant will have an opportunity to counter this presentation without interruption.

- After presentation by both parties, a question period to clarify evidence will be allowed. Questions may be asked by any member of the panel, the appellant, or the consultant, as directed by and through the chairperson.
- This will be followed by a summation, without interruption, from the classification consultant and then by the appellant. No new information is to be presented at this time.
- For group appeals, appellants who are not the spokesperson are to be given the opportunity to provide additional comments at the end of the presentation. The Chair may allow a fifteen (15) minute break, to allow the group input to the summation.
- Before excusing participants, witnesses and observers, panel members shall refrain from making statements, comments, or stating personal opinions as to what the level jobs should be evaluated as, nor enter into any debate about the meaning, or interpretation of the factor. Appeal panels may seek interpretation advice only from a classification consultant at the Public Service Commission. Any such interpretations, arising from an appeal hearing, shall be provided to the appellant and classification consultant.

3. Deliberations

- The chairperson will excuse the consultant and appellant, witnesses and observers after presentation on all appealed factors.
- The panel shall determine the appropriate rating and notify the secretary, providing rationale on the form provided.
- The panel shall provide written rationale for any decision it makes, inclusive of examples if necessary, which show how the work is consistent with the meaning and intent of the level definitions within the factors, factor definitions, notes to raters and/or benchmarks.
- In comparing duties and responsibilities to benchmarks, the panel shall consider the full content of the description for that factor. Comparative analysis should be provided in relation to the benchmarks in the classification plan. However, equity considerations should not be discounted provided there is adequate content presented to ensure understanding of the other jobs.
- Moral or monetary issues are not to be considered.
- No results are to be released by the panel members, except to the secretary, and panel members are not to discuss their decision with appellants at any future date.
- Only the appealed factors are subject to review.
- The panel shall consider only the duties and responsibilities of the position as of the effective date determined, and shall not take into consideration subsequent changes that have taken place.
- A factor rating cannot be adjusted if the duties or responsibilities have been credited in another factor. This represents bias due to double crediting.

Release of Decisions

1. No decision shall be released, except to the secretary, either verbally, or in writing.
2. The secretary shall provide the written decision to the appellant(s), classification consultant, appeal coordinator, the human resource business partner, and the appellant's supervisor.
3. Decisions of the panel are final and binding unless there is a change in job content. Such decisions are also final and binding on subsequent incumbents, where there has been no change of duties and responsibilities.

Records

The commission shall keep a register of all appeals, showing name of appellant, agency, branch, occupation, date filed, date heard, panel and committee decisions.