



**Issue Date: 21 December 2016**

**BALCA Case No.: 2016-PWD-00002**  
ETA Case No.: P-100-15160-801358

*In the Matter of:*

**LEE JOHNSON CAPITAL MANAGEMENT, LLC,**  
*Employer.*

Center Director: William K. Rabung  
National Prevailing Wage Center

Appearance: Martin Valko, Esquire  
Chavez & Valko, LLP  
Dallas, Texas  
*For the Employer*

Jeffrey L. Nesvet, Associate Solicitor  
Claire Kenny, Attorney  
Office of the Solicitor  
Division of Employment and Training Legal Services  
Washington, District of Columbia  
*For the Certifying Officer*

Before: Stephen R. Henley, *Chief Administrative Law Judge*, Larry S. Merck and  
Morris D. Davis, *Administrative Law Judges*

**DECISION AND ORDER OVERRULING AND REMANDING  
CENTER DIRECTOR'S PREVAILING WAGE DETERMINATION**

This matter arises from the Employer's appeal pursuant to 20 C.F.R. § 656.41 of the Employment and Training Administration, Office of Foreign Labor Certification's ("OFLC") prevailing wage determination ("PWD") for the position of Senior Quantitative Analyst.

## **BACKGROUND**

On June 9, 2015, the Employer submitted a PWD request, Form 9141, to the OFLC's National Prevailing Wage Center ("NPWC") for the position of Senior Quantitative Analyst. (AF 166-173).<sup>1</sup> On the Form 9141, Section A, the Employer indicated the request was made in connection with an application for permanent alien labor ("PERM") certification. (AF 166). In Section E, the Employer suggested that the SOC code was 13-2099, "Financial Specialists, All Other." (AF 167).

On August 12, 2015, the OFLC issued a PWD to the Employer, assigning SOC code 11-3031, "Financial Managers." (AF 169). The OFLC determined that the Occupational Employment Statistics ("OES") wage level for the position was level IV, and set the prevailing wage at \$149,906 per year.

On September 11, 2015, the Employer requested a redetermination of the PWD, arguing that the Certifying Officer ("CO") assigned an improper SOC code. (AF 108-113). The Employer included a job duty comparison between its position of Senior Quantitative Analyst; SOC code 13-2099.01, "Financial Quantitative Analysts;" SOC code 11-3031.01, "Treasurers and Controllers;" and SOC code 11-3031.02, "Financial Managers, Branch or Department."<sup>2</sup> *Id.*

The OFLC upheld its initial PWD. (AF 106). As a threshold matter, the OFLC determined that SOC code 13-2099, as an "All Other" SOC code, was not appropriate because it encompasses emerging occupations that require additional research and data. *Id.* The OFLC also determined that the Employer's job duties were "beyond the scope of the SOC definition and O\*NET defined tasks" for SOC code 13-2099.01 because the job duties included "managerial tasks." *Id.*

On December 11, 2015, the Employer requested review of the PWD by the Center Director ("CD"). (AF 98-105). The Employer argued that *Meltwater News, USI, Inc.*, 2014-PWD-00005 (July 16, 2014), required OFLC to "apply the occupational classification that most closely matches the job description and best reflects the duties of the position..." *Id.* The Employer further argued that SOC code 13-2099.01, "Financial Quantitative Analysts," best reflected the job duties of the Employer's Senior Quantitative Analyst position. *Id.* As support, the Employer also cited to *Quest Diagnostics, Inc.*, 2015-PWD-00002 (Feb. 2, 2015), arguing that OFLC abused its discretion because it should have "examined the detailed analysis provided by the employer that specified how the enumerated O\*NET job duties were best matched to the 13-2099.01 occupational classification/code despite the fact that it is an 'All Other' occupation." *Id.*

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<sup>1</sup> "AF" is an abbreviation for "Appeal File."

<sup>2</sup> The Employer compared both occupations associated with SOC Code 11-3031 because the PWD only assigns a six digit SOC Code, and not a full eight digit code.

On May 31, 2016, the CD affirmed the original PWD. (AF 95-96). The CD determined:

Upon further review the employer's job duties are beyond the scope of the O\*NET defined tasks for the suggested SOC 13-2099 Financial Specialists, All Other as the employer's job duties include "managerial tasks such as leading best practice modeling techniques, ensures comprehensive documentation and monitors modeling projects; leading the design, testing, approval and implementation of current modeling projects; Guides efforts in developments of new models, analytic processes or system approaches."

Specifically, the employer's job duties include "Supervises the development and maintenance of complex modeling projects with programmer and interns; Works on various ad hoc quantitative modeling and programming assignments using Metastock, R, and SOL; Communicates with marketing team to align marketing and development efforts and to ensure consistency of approach; Key words for analysis and implementation: Asset allocation, CAPM, cash flow modeling, Portfolio optimization, stochastic processes, Value-at-Risk (VaR), fundamental analysis, other risk metrics, and forecasting modeling."

These duties are consistent with the O\*NET defined tasks for the SOC 11-3031-Financial Managers, Branch or Department which include "plan, direct, or coordinate the activities of workers in branches, offices, or departments of establishments, such as branch banks, brokerage firms, risk and insurance departments, or credit departments." As such, the assigned SOC 11-3031, Financial Managers, Branch or Department is appropriate with the wage level of IV.

(AF 95-96).

On June 29, 2016, the Employer requested review by the Board of Alien Labor Certification Appeals ("BALCA"), arguing that the OFLC and the CD "failed to consider all of the evidence, carefully review the job duties presented, and update the determination with the appropriate job classification." (AF 1-2). On July 28, 2016, the BALCA issued a Notice of Docketing and Order Setting Briefing Schedule. Both the Employer and the CD timely filed legal briefs.<sup>3</sup>

## **DISCUSSION**

### *Standard of Review*

The BALCA applies an abuse of discretion standard to appeals of PWDs. *See Gen. Anesthesia Specialists P'ship Med. Grp. (GASP)*, 2013-PWD-00005, slip op. at 6 (Jan. 28, 2014); *Emory Univ.*, 2011-PWD-00001, slip op. at 6-7 (Feb. 27, 2012). Accordingly, we will uphold the CD's PWD in this case unless it is inconsistent with the applicable regulations or does

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<sup>3</sup> The Employer filed its brief with its request for review by BALCA, and filed a substantially similar brief in response to the Notice of Docketing. *See* (AF 7-17).

not constitute a reasonable exercise of discretion.

The BALCA's review is limited to consideration of the record upon which the determination was made, the Employer's request for review, and the statements of position or legal briefs submitted by the parties. 20 C.F.R. §§ 656.27(c), 656.41(d).

### Regulations and Guidance

Prior to submitting a PERM application, an employer must request a PWD from the NPWC. 20 C.F.R. § 656.40(a). The NPWC determines the appropriate prevailing wage for job opportunities not covered by a collective bargaining agreement as follows:

[T]he prevailing wage for labor certification purposes shall be the arithmetic mean...of the wages of workers similarly employed in the area of intended employment. The wage component of the DOL Occupational Employment Statistics Survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey under paragraph (g) of this section.

20 C.F.R. § 656.40(b)(2).

The Employment and Training Administration ("ETA") outlined a step-by-step, standardized approach for determining the appropriate occupational classification under the SOC/O\*NET in its PWD Policy Guidance, Nonagricultural Immigration Programs (Rev. Nov. 2009) ("PWD Guidance").<sup>4</sup> In discussing how the occupational code is assigned, the PWD Guidance directs that the O\*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification.

The PWD Guidance explains that a job's SOC code is identified by selecting the O\*NET job description that best corresponds to the employer's job offer. *Id.* at 4.; *Gen. Anesthesia Specialists*, slip op. at 6. The PWD Guidance further provides: "[i]f the employer's job opportunity has worker requirements described in a combination of O\*NET occupations, the NPWC [National Prevailing Wage Center] should default directly to the relevant O\*NET/SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer/pilot, the NPWC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination." PWD Guidance at 4.

In cases involving disputes over which SOC code applies, the Board has considered the job duties that O\*NET lists for each code and compared them to the job duties the Employer listed on its prevailing wage form. *See, e.g., Gen. Anesthesia Specialists*.

Additionally, the OES Survey provides four levels of wages for each O\*NET/SOC occupation that are commensurate with the amount of experience, education, and level of supervision required. PWD Guidance at 6. When determining a prevailing wage, the NPWC selects one of the wage levels based on a comparison of the employer's job requirements to the general requirements for similar occupations. *Id.* The points are then totaled on a

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<sup>4</sup> Available at [www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

worksheet to arrive at the appropriate wage level. *Id.* Levels III and IV are explained as follows:

**Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. Words such as 'lead' (lead analyst), 'senior' (senior programmer), 'head' (head nurse), 'chief' (crew chief), or 'journeyman' (journeyman plumber) would be indicators that a Level III wage should be considered.

**Level IV** (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

PWD Guidance at 7.

Even though the PWD Guidance uses a standardized approach for determining the wage level, the guidance notes that the process should not be implemented in an automated fashion. *Id.* at 13. The NPWC may exercise judgment when making prevailing wage determinations to reach a wage level commensurate with the complexity of tasks, independent judgment required, and amount of close supervision received as described in the employer's job opportunity. *Id.*

#### *Analysis of the Facts*

The main issue in this case is whether the CD abused his discretion in determining that the SOC code for Financial Managers was more appropriate than the Employer's suggested SOC code for Financial Quantitative Analysts. Pursuant to *Quest Diagnostics, Inc., supra*, the CD must choose the job classification that is most similar to the employer's duties. It is an abuse of discretion to assign a SOC code with job duties that only "superficially" correspond to an employer's job duties when a SOC code with more substantive overlap is available. *Meltwater News US1, Inc., supra*. In evaluating this issue, we will consider the duties described by the Employer in its PWD request, the tasks identified under the Financial Quantitative Analysts SOC

code, and the tasks identified under the Financial Managers, Branch or Department, SOC code.

*Employer's Job Description and Responsibilities*

On the initial PWD request, the Employer provided both a job description and a list of responsibilities associated with the position of Senior Quantitative Analyst. (AF 170). The job description was as follows:

The role of the senior quantitative trading analyst is to independently build, analyze and implement complex financial trading modeling. This requires deep understanding of: the mathematical models used, the different classes of financial assets traded, the economic/financial factors affecting the market, and the associated risks. In addition to theoretical analysis, it is required that model/product are validated in a managed programming language or/and technical analysis modeling tool. This position also requires the ability to identify analytic solutions that best support client financial needs. In addition, this role entails overseeing the ongoing development of the company's multi-trading strategy.

The Employer also listed the following job duties performed by the Senior Quantitative Analyst:

1. Responsible for conducting quantitative analytics and complex modeling projects
2. Leads best practice modeling techniques, ensures comprehensive documentation and monitors modeling projects
3. Leads the design, testing, approval and implementation of current modeling projects
4. Guides efforts in developments of new models, analytic processes or system approaches
5. Develops and implements a multi-trading strategy by using back testing methodology, regression analysis, and optimization techniques
6. Constructs advanced trading algorithms or the application of the multi-trading strategy
7. Functions as a subject matter expert to provide quantitative expertise to other analysts, advisors and programmer for implementation, revision or updates
8. Creates documentation of relevant analysis for use in presentations to clients and prospects
9. Applies his/her technical expertise to influence strategic direction and to develop tactical plans
10. Works with investment advisors to develop trading strategies and assist periodically reviewing trading activities
11. Conducts quantitative portfolio analytics in coordination with risk management techniques
12. Supervises the development and maintenance of complex modeling projects with programmer and interns
13. Works on various ad hoc quantitative modeling and programming assignments using Metastock, R, and SQL
14. Communicates with marketing team to align marketing and development efforts and to ensure consistency of approach

- 15. Key words for analysis and implementation
- 16. Asset allocation, CAPM, cash flow modeling, Portfolio optimization, stochastic processes, Value-at-Risk (VaR), fundamental analysis, other risk metrics, and forecasting modeling

(AF 170).

The Employer also included a breakdown of the supervisory duties for the position. The Senior Quantitative Analyst has peer-level supervision over one Programmer, and subordinate-level supervision over one Product Marketing Analyst and two Market Research Interns. (AF 170-171).

Financial Quantitative Analysts, SOC Code 13-2099

According to the O\*NET, the primary role of Financial Quantitative Analysts is to “[d]evelop quantitative financial products used to inform individuals or financial institutions engaged in saving, lending, investing, borrowing, or managing risk. Investigate methods for financial analysis to create mathematical models used to develop improved analytical tools or advanced financial investment instruments.” The O\*NET lists 21 tasks associated with SOC Code 13-2099.01. We have compared those tasks listed on the O\*NET with the tasks required by the Employer:

Tasks of Senior Quantitative Analyst	Corresponding Tasks of Financial Quantitative Analysts, SOC Code 13-2099.01
Responsible for conducting quantitative analytics and complex modeling projects	(13) Devise or apply independent models or tools to help verify results of analytical systems
Leads best practice modeling techniques, ensures comprehensive documentation and monitors modeling projects	(8) Define or recommend model specifications or data collection methods (13) Devise or apply independent models or tools to help verify results of analytical systems (16) Maintain or modify all financial analytic models in use (17) Prepare requirements documentation for use by software developers
Leads the design, testing, approval and implementation of current modeling projects	(4) Collaborate in the development or testing of new analytical software to ensure compliance with user requirements, specifications, or scope (5) Collaborate with product development teams to research, model, validate, or implement quantitative structured solutions for new or expanded markets
Guides efforts in developments of new models, analytic processes or system approaches	(20) Research new financial products or analytics to determine their usefulness

Develops and implements a multi-trading strategy by using back testing methodology, regression analysis, and optimization techniques	(21) Research or develop analytical tools to address issues such as portfolio construction or optimization, performance measurement, attribution, profit and loss measurement, or pricing models
Constructs advanced trading algorithms or the application of the multi-trading strategy	(9) Develop core analytical capabilities or model libraries, using advanced statistical, quantitative, or econometric techniques
Functions as a subject matter expert to provide quantitative expertise to other analysts, advisors and programmer for implementation, revision or updates	(6) Confer with other financial engineers or analysts on trading strategies, market dynamics, or trading system performance to inform development of quantitative techniques (17) Prepare requirements documentation for use by software developers (19) Provide application or analytical support to researchers or traders on issues such as valuations or data
Creates documentation of relevant analysis for use in presentations to clients and prospects	(18) Produce written summary reports of financial research results
Applies his/her technical expertise to influence strategic direction and to develop tactical plans	(15) Interpret results of financial analysis procedures
Works with investment advisors to develop trading strategies and assist periodically reviewing trading activities	(6) Confer with other financial engineers or analysts on trading strategies, market dynamics, or trading system performance to inform development of quantitative techniques (7) Consult traders or other financial industry personnel to determine the need for new or improved analytical applications (14) Identify, track, or maintain metrics for trading system operations
Conducts quantitative portfolio analytics in coordination with risk management techniques	(2) Apply mathematical or statistical techniques to address practical issues in finance, such as derivative valuation, securities trading, risk management, or financial market regulation
Supervises the development and maintenance of complex modeling projects with programmer and interns	(16) Maintain or modify all financial analytic models in use
Works on various ad hoc quantitative modeling and programming assignments using Metastock, R, and SQL	(9) Develop core analytical capabilities or model libraries, using advanced statistical, quantitative, or econometric techniques
Communicates with marketing team to align marketing and development efforts and to ensure consistency of approach	(5) Collaborate with product development teams to research, model, validate, or implement quantitative structured solutions for new or expanded markets

	(7) Consult traders or other financial industry personnel to determine the need for new or improved analytical applications
Key words for analysis and implementation	None
Asset allocation, CAPM, cash flow modeling, Portfolio optimization, stochastic processes, Value-at-Risk (VaR), fundamental analysis, other risk metrics, and forecasting modeling	(1) Analyze pricing or risks of carbon trading products (2) Apply mathematical or statistical techniques to address practical issues in finance, such as derivative valuation, securities trading, risk management, or financial market regulation (11) Develop solutions to help clients hedge carbon exposure or risk

All of the Employer’s tasks for a Senior Quantitative Analyst, except one, fit within the tasks provided on O\*NET for a Financial Quantitative Analyst. We also note that the role of a Financial Quantitative Analyst involves developing financial products and creating mathematical models for use in developing financial tools. This aligns with the Employer’s Senior Quantitative Analyst role, which involves developing financial trading models through the use of mathematical models and developing the platform for the company’s trading strategy.

Financial Managers, Branch or Department, SOC Code 11-3031.02

According to the O\*NET, the primary role of Financial Managers, Branch or Department, is to “[d]irect and coordinate financial activities of workers in a branch, office, or department of an establishment, such as branch bank, brokerage firm, risk and insurance department, or credit department.” The O\*NET provides a list of sample job titles for SOC code 11-3031.02, including: “Assistant Manager, Assistant Vice President (AVP), Banking Center Manager (BCM), Banking Officer, Branch Manager, Credit Administration Manager, Financial Center Manager, Regional Manager, Service Center Manager, [and] Vice President.” The O\*NET lists 21 tasks associated with SOC Code 11-3031.02. We have compared those tasks listed on the O\*NET with the tasks required by the Employer:

Tasks of Senior Quantitative Analyst	Corresponding Tasks of Financial Managers, SOC Code 11-3031.02
Responsible for conducting quantitative analytics and complex modeling projects	None
Leads best practice modeling techniques, ensures comprehensive documentation and monitors modeling projects	(1) Plan, direct, or coordinate the activities of workers in branches, offices, or departments of establishments, such as branch banks, brokerage firms, risk and insurance departments, or credit departments

Leads the design, testing, approval and implementation of current modeling projects	(1) Plan, direct, or coordinate the activities of workers in branches, offices, or departments of establishments, such as branch banks, brokerage firms, risk and insurance departments, or credit departments
Guides efforts in developments of new models, analytic processes or system approaches	(1) Plan, direct, or coordinate the activities of workers in branches, offices, or departments of establishments, such as branch banks, brokerage firms, risk and insurance departments, or credit departments
Develops and implements a multi-trading strategy by using back testing methodology, regression analysis, and optimization techniques	None
Constructs advanced trading algorithms or the application of the multi-trading strategy	None
Functions as a subject matter expert to provide quantitative expertise to other analysts, advisors and programmer for implementation, revision or updates	None
Creates documentation of relevant analysis for use in presentations to clients and prospects	(11) Develop or analyze information to assess the current or future financial status of firms
Applies his/her technical expertise to influence strategic direction and to develop tactical plans	(13) Evaluate financial reporting systems, accounting or collection procedures, or investment activities and make recommendations for changes to procedures, operating systems, budgets, or other financial control functions
Works with investment advisors to develop trading strategies and assist periodically reviewing trading activities	None
Conducts quantitative portfolio analytics in coordination with risk management techniques	None
Supervises the development and maintenance of complex modeling projects with programmer and interns	(1) <sup>5</sup> Plan, direct, or coordinate the activities of workers in branches, offices, or departments of establishments, such as branch banks, brokerage firms, risk and insurance departments, or credit departments
Works on various ad hoc quantitative modeling and programming assignments using Metastock, R, and SQL	None. I agree with the Employer that this duty is not managerial in nature.

<sup>5</sup> The Employer concedes that this is the only duty that “could be considered...remotely managerial.” Emp. Brf. at 9. Also, while the term “supervises” may indicate that the Employer’s job duty aligns with the “plan, direct, or coordinate” task of a Financial Manager, there are no Financial Manager tasks that appear to align with “the development and maintenance of complex modeling projects....”

Communicates with marketing team to align marketing and development efforts and to ensure consistency of approach	None. I agree with the Employer that this duty is not managerial in nature.
Key words for analysis and implementation	None
Asset allocation, CAPM, cash flow modeling, Portfolio optimization, stochastic processes, Value-at-Risk (VaR), fundamental analysis, other risk metrics, and forecasting modeling	None

Of the Employer’s sixteen job duties for the Senior Quantitative Analyst position, only six overlap with the Financial Managers, Branch or Department, tasks. Four of the Employer’s duties correspond to only one of the Financial Managers’ tasks: “Plan, direct, or coordinate the activities of workers in branches, office, or departments....”

The CD argues that the assignment of SOC code 11-3031, Financial Managers, was not an abuse of discretion because “it is appropriate to assign the SOC of a higher-paying occupation when the employer’s job opportunity includes supervisory or broader organizational duties that exceed the scope of the suggested occupational classification and instead pertain to the higher-paying occupation.” CD Brf. at 6. Further, the CD submits that he was not required to assign the SOC code for the occupation that had the greatest number of duties in common with the Employer’s duties, but rather, it was appropriate to “take note of important duties that exceed the scope of the suggested SOC even if those duties do not constitute a numerical majority among those listed by the employer.” CD Brief at 7-8.

In support of this position, the CD cites to *Forestall Co.*, 2016-PWD-00001 (Apr. 29, 2016). The CD contends that the facts of the instant case are similar to those in *Forestall* because the Employer used verbs in its job duties that indicate the position is a “leadership and management role.” CD Brief at 8. Because the O\*NET description for Financial Quantitative Analysts is “conspicuously devoid of language indicating a leadership role,” the CD argues the “managerial duties clearly exceed the scope of the Financial Quantitative Analysts occupation.” *Id.* The CD argues that SOC code 11-3032.02, Financial Managers, Branch or Department, encompasses the Employer’s managerial responsibilities; one of the tasks of a Financial Manager is to “[p]lan, direct, or coordinate the activities of workers in branches, offices, or departments of establishments, such as branch banks, brokerage firms, risk and insurance departments, or credit departments.” CD Brief at 10.

The facts in *Forestall Co.* are distinguishable from the facts in this case. In *Forestall Co.*, the Employer conflated tasks with work activities and, consequently, included tasks of a supervisory SOC code. Slip op. at 10. The employer’s suggested SOC code for a “Landscaping and Groundskeeping Worker” had a corresponding supervisory SOC code for “First-Line Supervisor of Landscaping, Lawn Service, and Groundskeeping Worker.” *Id.* at 11. Here, we are not presented with two SOC codes that perform similar tasks, but with one encompassing supervisory duties over the other. Instead, we are presented with two SOC codes for occupations that include significantly different duties. The tasks listed for Financial Managers do not include any suggestion that persons in that occupation perform tasks related to the development of complex financial models. Furthermore, there is no “First-Line Supervisor” for Financial

Quantitative Analysts, and we are not presented with facts that could lead us to conclude that the work activities of the Employer's SOC code are conflated with the tasks of another SOC code.

The Employer argues that the CD abused his discretion by assigning a SOC code "that is loosely related, at best, to the job duties of the occupation, when it is evident that the suggested classification and code is the most suitable based on a careful comparison of the position's job duties." Emp. Brf. at 3. Further, the Employer maintains that the Senior Quantitative Analyst does not direct and coordinate workers, but rather, develops financial trading models and oversees the development of a multi-trading strategy based on several financial factors. Emp. Brf. at 4. The Employer also claims that "[b]asing the assignment of the job classification on three out of fourteen listed job duties is a clear abuse of discretion..." and its position is not a combination of occupations and is not comparable to SOC code 11-3031.02, Financial Managers.

We agree and conclude that the CD assigned a SOC code to the Employer's position that was only loosely related rather than assigning the most suitable SOC code. Of the four duties that we determined, and the CD argues, fit within the task of planning, directing and coordinating, each of them directly relate to the creation of financial and mathematical models, which is consistent with the primary role of the Financial Quantitative Analyst, SOC code 13-2099.01. For example, the Employer provides that the Senior Quantitative Analyst "[l]eads best practice *modeling techniques*, ensures comprehensive documentation and monitors *modeling projects*;" "[l]eads the design, testing, approval and implementation of current *modeling projects*;" "[g]uides efforts in *developments of new models*, analytic processes or system approaches;" and "[s]upervises the development and maintenance of *complex modeling projects* with programmer and interns." (Emphasis added).

The relationship between the task of planning, directing, and coordinating, and the Employer's job duties for the Senior Quantitative Analyst position, is superficial. It is reasonable for a "senior" level Financial Quantitative Analyst to have some supervisory duties as they relate to position's primary role. Such supervisory duties are accounted for in the PWD by assigning Level III or Level IV OES wage levels, as appropriate. We note specifically that the PWD Guidance describes a Level III wage as one that should be considered where job titles include qualifiers, such as "senior." PWD Guidance at 7. In this case, there is no dispute regarding the assignment of a Level IV wage, which appears to account for the "senior" level duties of the Employer's position.

The CD also contends that "overseeing the ongoing development of the company's multi-trading strategy," which is a part of the Employer's job description, is the same as "directing the company's trading activities." CD Brf. at 10. We disagree. The "development" of a strategy does not suggest that the Senior Quantitative Analyst is "directing... trading activities." Instead, the Employer's duties include developing a multi-trading strategy "by using back testing methodology, regression analysis, and optimization techniques" and "construct[ing] advanced trading algorithms for the application of the multi-trading strategy." The duties also require "work[ing] with investment advisors to develop trading strategies and assist periodically reviewing trading activities." A plain reading of the Employer's duties is that the Senior Quantitative Analyst is responsible for developing a strategy, together with investment advisors,

and developing a financial model or product capable of implementing that strategy. These duties closely relate to tasks 6, 7, 14, 15, 20, and 21 listed on the O\*NET for Financial Quantitative Analysts.

Further, the description provided on O\*NET for Financial Managers, Branch or Department, clearly describes a high-level management occupation that oversees a “branch, office, or department.” The sample jobs listed include high-level management titles, such as Branch Manager, Regional Manager, and Vice President, all of which suggest several subordinates and implies significant independent authority. In this case, the Senior Quantitative Analyst reports to the Employer’s Vice President. Furthermore, the incumbent would only specifically supervise three subordinates, including one Product Market Associate and two interns, as well as one peer, a Programmer. It is difficult to draw a parallel between the level of authority inferred from O\*NET for a Financial Manager and the Employer’s position. *See CSID*, 2015-PWD-00009 (Nov. 18, 2015) (finding a SOC code was much boarder in scope and had a higher level of responsibility as evidenced by the job duties and the sample job titles listed on O\*NET).

We find that the Employer’s duties for the position of Senior Quantitative Analyst are most similar to the tasks provided in SOC code 13-2099.01, Financial Quantitative Analysts. The supervisory duties associated with the role are far narrower than the supervisory duties associated with SOC code 11-3031.02, Financial Managers, Branch or Department. These tasks are closely related to tasks listed for SOC code 13-2099.01, Financial Quantitative Analysts, but the Employer’s role requires them to be performed at a “senior” level. The supervisory nature of the tasks could have been accounted for by the assignment of OES wage Level III or IV, but did not require the assignment of SOC code 11-3031, specifically 11-3031.02, which only superficially relates to the Employer’s job duties and was beyond the scope of the Employer’s position. Therefore, we find that the CD abused his discretion by failing to assign the SOC code that best corresponds to the Employer’s position.

## **ORDER**

**IT IS HEREBY ORDERED** that the Center Director’s prevailing wage determination is **OVERRULED**, and this matter is **REMANDED** to the Center Director for further processing consistent with this order.

Entered at the direction of the panel by:

Todd R. Smyth  
Secretary to the Board of Alien Labor  
Certification Appeals

**NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW:** This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for en banc review by the Board. Such review is not favored and ordinarily will not be granted except (1) when en banc consideration is necessary to secure or maintain uniformity of the Board's decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk  
Office of Administrative Law Judges  
Board of Alien Labor Certification Appeals  
800 K Street, NW  
Suite 400N  
Washington, DC 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting en banc review with supporting authority, if any, and shall not exceed ten double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed ten double-spaced pages. Upon the granting of a petition the Board may order briefs.