



**Issue Date: 12 February 2015**

BALCA Case No.: 2015-PWD-00002  
ETA Case No: P-100-14062-669184

***In the Matter of:***

QUEST DIAGNOSTICS, INC.,  
*Employer.*

Center Director: William K. Rabung  
National Prevailing Wage Center

Appearances: William A. Stock, Esq.  
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For the Employer

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Office of the Solicitor  
Division of Employment and Training Legal Services  
For the Center Director, OFLC

Before: **Johnson, Rosen and Krantz**  
Administrative Law Judges

**DECISION AND ORDER OVERRULING 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, National Prevailing Wage Center’s (“NPWC”) prevailing wage determination for the position of Senior Quality Assurance Analyst in Lenexa, Kansas.

**BACKGROUND**

*Initial Prevailing Wage Determination*

On March 17, 2014, Quest Diagnostics, Inc. (“the Employer”) filed a request for a prevailing wage determination with the National Prevailing Wage Center of the Office of

Foreign Labor Certification. (AF 50-56).<sup>1</sup> The Employer requested a prevailing wage determination for the position of Senior Quality Assurance Analyst. (AF 51). In its request, the Employer suggested the Standard Occupational Classification (SOC) Code for the position should be 15-1199, corresponding to the SOC occupational title “Computer Occupations, All Other.” (AF 51). The Employer indicated that the position did not involve supervision of other employees. (AF 51). The Employer provided the following summary of the job duties for the position:

Responsible for evaluating and testing new or modified software programs developed in a .NET framework. Design, create and execute quality assurance/software testing strategies incorporating .NET experience, HP Quality Center experience and automation testing experience.

Guide the prescribed strategies including monitoring and coaching the efforts of assigned testers.

Examples of testing strategies will include but are not limited to .NET unit testing, functional testing, regression testing, end-to-end testing, integration testing, automated testing, performance and load testing.

Build and maintain automated and manual testing across all levels of software utilizing HP Quality Center. Develop programs and procedures to verify that software functions according to user requirements and to confirm establishment guidelines utilizing Visual Studio and/or HP UFT or HP QTP with an emphasis on expert level VB scripting.

Provide leadership within engineering teams to identify, reproduce and document software defects.

Handle implementation of new software releases to production environments. \*  
Note: The occupation Quality Assurance Analyst matches SOC 15-1199.01[.]

(AF 54.) The Employer indicated that the position required a Bachelors’ degree in “Comp. Sci. or closely related” and 72 months’ experience in Quality Assurance/Software Testing. (AF 52.) The Employer also listed the following special requirements:

six (6) years of progressively responsible post baccalaureate experience in Quality Assurance/Software testing, including: at least four (4) years of experience testing .NET including unit level testing within Visual Studio; at least one (1) year of experience in developing .NET; two (2) years of experience in test planning and automated testing and scripting using HP UFT (Unified Functional Testing) or HP QTP (Quick Test Professional) with emphasis on VB Scripting.

(AF 55.)

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<sup>1</sup> In this decision, “AF” is an abbreviation for “Appeal File.”

The OFLC issued a PWD for the Senior Quality Assurance Analyst position on May 2, 2014. The OFLC assigned the position the SOC occupation code 15-1132, corresponding to the occupation title “Software Developers, Applications.” The OFLC further determined that the OES (Occupational Employment Statistics) wage level for the position was level IV. Based on those determinations, the prevailing wage was determined to be \$99,403.00 per year. (AF 53.)

*Redetermination of Prevailing Wage*

On May 8, 2014, the Employer requested a redetermination of the PWD, and attached the O-NET Online Summary Report for “Software Quality Assurance Engineers and Testers,” SOC Code 15-1199.01. Employer asserted that that code exists as a job under “Computer Occupations, All Others,” and that because it is the exact position listed, should be used for the PWD. The Employer also attached results from a wage search of the OFLC Online Wage Library for the requested SOC Code. (AF 36-49).

On June 23, 2014, OFLC sent the Employer’s counsel a letter affirming its initial wage determination. The letter stated that the job duties of the Employer’s position were consistent with the O\*NET defined tasks for SOC Code 15-1132, Software Developers, Applications. Specifically, the letter stated that the tasks as defined by the Employer included:

Responsible for evaluating and testing new or modified software programs developed in a .NET framework; design, create and execute quality assurance/software testing strategies incorporating .NET experience, HP Quality Center experience and automation testing experience; guide the prescribed strategies including monitoring and coaching the efforts of assigned testers; examples of testing strategies will include but are not limited to .NET unit testing, functional testing, regression testing, end-to-end testing, integration testing, automated testing, performance and load testing; and build and maintain automated and manual testing across all levels of software utilizing HP Quality Center.”

(AF 34). The OFLC letter further stated that those duties were “consistent with” the O\*NET defined tasks for SOC Code 15-1132, which include:

develop, create, and modify general computer applications software or specialized utility programs; modify existing software to correct errors, allow it to adapt to new hardware, or to improve its performance; develop and direct software system testing and validation procedures, programming, and documentation; confer with systems analysts, engineers, programmers and others to design system and to obtain information or project limitations and capabilities, performance requirements and interfaces; analyze user needs and software requirements to determine feasibility of design within time and cost constraints; and consult with customers about software system design and maintenance.

(AF 34).

### *Review by the Center Director*

On July 22, 2014, the Employer submitted a request to the National Prevailing Wage Center for a review of the PWD by the Center Director. (AF 14-33.) The Employer included copies of the O\*NET OnLine summary reports for SOCs 15-1199.01 (Software Quality Assurance Engineers and Testers) and 15-1132 (Software Developers, Applications). Employer compared the duties of its Senior Quality Assurance Analyst position to the tasks listed for each of those two SOCs. Employer argued that only one of the tasks listed for SOC Code 15-1132 corresponds to a task for the Senior Quality Assurance Analyst position, while several of the tasks listed for SOC Code 15-1199.01 correspond to all tasks for the Senior Quality Assurance Analyst position. The Employer additionally argued that the overwhelming majority of the tasks listed for SOC Code 15-1132 do not correspond to any of the duties listed for its Senior Quality Assurance Analyst position, and that the duties of that position are “extremely similar” to the O\*NET job duties for the SOC Code 15-1199.01. (AF 16-19).

On September 17, 2014, the Center Director rejected the Employer’s arguments and affirmed the PWD based on the SOC Code of 15-1132, but modified the wage to \$103,958.00 to reflect updated wage information. (AF 4-13). The Center Director indicated that use of SOC Code 15-1199 (Computer Occupations, All Other) is not appropriate because that category includes a number of occupations that do not involve similarly employed workers, and use of that category would violate the regulatory requirement to base the prevailing wage on the wages of workers similarly employed in the area of intended employment. (AF 5). In addition, the Center Director stated that SOC Code 15-1132 contains substantially similar levels of skill to the Employer’s position. (AF 6).

### *Appeal to the Board of Alien Labor Certification Appeals*

On October 14, 2014, the Employer appealed the decision of the Center Director to the Board of Labor Alien Certification Appeals (“BALCA” or “the Board”) under 20 C.F.R. § 656.41. The Center Director forwarded the appeal file on November 6, 2014, and on November 12, 2014, the Associate Chief Judge for Immigration issued a Notice of Docketing and Order Setting Briefing Schedule, allowing the parties 30 days to submit their statement of position or legal brief in this matter. Both parties timely filed briefs in support of their respective positions.

#### Employer

The Employer argued that its position was more properly classified in SOC Code 15-1199 (“Computer Applications, All Other”) than 15-1132 (“Software Developers, Applications”). The Employer cited the Department of Labor’s *Prevailing Wage Determination Policy Guidance* (November 2009), requiring that in order to determine the proper prevailing wage, the analyst is to “review the requirements of the employer’s job offer and determine the appropriate occupational classification. The O\*NET description that corresponds to the employer’s job offer shall be used to identify the appropriate occupational classification.” The Employer argued that in light of this requirement, the DOL must look to the actual job duties listed by the employer on Form ETA-9141, and must use the most specific SOC available. The Employer further argued, citing *Meltwater News USI, Inc.*, 2014-PWD-00005 (BALCA Jul. 16,

2014) that DOL must apply the most specific SOC even if the occupation falls within an “all other” designation or is identified as a new and emerging occupation. The Employer then compared the duties of the actual job against the duties for the occupations with SOC Code 15-1199.01 and SOC Code 15-1132, and argued that all of the duties of the Employer’s position fall within the duties of SOC Code 15-1199.01 while only two of the duties of the Employer’s position fall within the duties of SOC Code 15-1132. In addition, the Employer argued that nine duties listed in O\*NET for 15-1132 are not duties of the position for which it sought a prevailing wage determination. The Employer also argued that in a December 2013 stakeholder meeting, OFLC stated that the

employer “should enter the six- or eight-digit code for the SOC Code/O\*NET occupation which most accurately reflects the work performed. Questions B.2 and B.3 are evaluated for completeness or obvious inaccuracies. An employer who uses a selection that is obviously inaccurate will result in a denial. *Otherwise, if the occupation is sufficiently related it will be accepted.* OFLC recognizes that employers may vary on the classifications chosen for particular job titles.”

Based on this information, the Employer argued that deference should be given to the SOC Code selected by the employer. Finally, the Employer argued that at the same stakeholder meeting, OFLC stated that “when a specific job rolls up into ‘All Other,’ analysts are instructed to use this” and that because the job duties for “Software Quality Assurance Engineers and Testers” are nearly identical to those of its Senior Quality Assurance Analyst, the proper SOC Code is that for the former.

#### Center Director

The Center Director argued that it would be inconsistent with DOL’s regulations and guidance to select SOC Code 15-1199 because it is part of an “All Other” SOC series. According to the Center Director, the regulations require that the prevailing wage be calculated as the arithmetic mean of the wages of workers who are “similarly employed” in the area of intended employment, and the OES wage survey does not collect wage information for “new and emerging occupations.” Furthermore, the “All Other” category includes occupations with widely varying tasks, including 12 different occupations within SOC Code 11-1199. Thus, the Center Director says, the wage suggested by the Employer is not the median wage of workers employed as Software Quality Assurance Engineers, but is an estimate of the median wage earned by a large number of workers in a “loosely connected series of professions.” The Center Director suggests that he therefore reasonably rejected it because it lacks specific wage data.

The Center Director additionally argued that every SOC “All Other” code suffers from the same flaw: that the wage data for those codes is based on the earnings of a diverse group of workers, and not on the earnings of any particular occupation. He argued that because the regulations require the PWD to be based on the earnings of “similarly employed individuals,” it was reasonable to conclude that it is inappropriate to use an “All Other” SOC code for a prevailing wage determination. The Center Director asked that the Board overturn its holding in *Meltwater News* that it was an abuse of discretion to reject the use of “All Other” SOC codes in making prevailing wage determinations.

The Center Director argued that if the Board declines to overturn *Meltwater News*, he nevertheless properly selected SOC Code 15-1132 for the PWD because the duties of that classification most closely match the duties of the Employer's position. In particular, the technical and supervisory responsibilities of a Senior Quality Assurance Analyst closely parallel the duties of the Software Developer SOC code and are not adequately captured in the Software Quality Assurance Engineer SOC Code. The Center Director compared the responsibilities of both a Software Developer (SOC Code 15-1132) and Software Quality Assurance Engineer (SOC Code 15-1199.01) to the requirements of the Employer's position, and argued that the Employer's position is best described by the former.

## DISCUSSION

This proceeding arises out of the Employer's underlying request for permanent labor (PERM) certification. Under Section 212(a)(5)(A) of the Immigration and Nationality Act, an employer may not obtain PERM certification for a foreign worker unless the Department of Labor certifies that the hiring of the work will not adversely affect the wages and working conditions of U.S. workers comparably employed. *See* 8 U.S.C. § 1182(a)(5)(A). To comply with this statute, the Department of Labor requires that the wage offered to the foreign worker must equal or exceed the prevailing wage for the position. 20 C.F.R. § 656.10(c)(1). Accordingly, federal regulations require an employer filing for PERM certification to obtain a prevailing wage determination (PWD) from the Office of Foreign Labor Certification's National Prevailing Wage Center. 20 C.F.R. § 656.40(a).

The PERM regulations explain how the prevailing wage is determined. For job opportunities not covered by a collective bargaining agreement, "the prevailing wage for certification purposes shall be the arithmetic mean ... of the wages of workers similarly employed in the area of intended employment." 20 C.F.R. § 656.40(b)(2). To determine this arithmetic mean, the Department of Labor's Occupational Employment Statistics (OES) Survey is applied.<sup>2</sup> *Id.* The OES Survey provides wage data for jobs based on geographic location and type of occupation. Occupations are categorized by Standard Occupational Classification (SOC) codes, which are set forth in the Department of Labor's online database of occupational information, O\*NET. Therefore, to find the prevailing wage for a particular position, the O\*NET/SOC for the position must first be determined, then the corresponding wage information for the appropriate code must be located in the OES Survey. In this case, the Employer argues that the Center Director of the National Prevailing Wage Center applied an inappropriate O\*NET/SOC .

### *Standard of Review*

The Board applies an abuse of discretion standard to the Center Director's decision on an employer's appeal of a prevailing wage determination. *Gen. Anesthesia Specialists Partnership Med. Group (GASP)*, 2013-PWD-00005, slip op. at 6 (Jan. 28, 2014); *Emory University*, 2011-

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<sup>2</sup> Data for the OES Survey is collected by the Bureau of Labor Statistics, an arm of the Department of Labor. As an alternative to using OES Survey data, the employer may submit its own valid survey or other wage data for consideration. 20 C.F.R. § 656.40(b)(3), (g). The Employer has not submitted such evidence in this case.

PWD-00001 and -00002, slip op. at 6-7 (Feb. 27, 2012) (adopting *RP Consultants, Inc. d/b/a Net Matrix Solutions*, 2009-JSW-00001 (June 30, 2010) for PERM prevailing wage cases). Accordingly, we will uphold the Center Director’s decision in this case unless it is inconsistent with the applicable regulations or does not constitute a reasonable exercise of his discretion. See *RP Consultants*, slip op. at 10.

### *Standard for Determining Applicable O\*NET/SOC*

The Department of Labor has issued a PWD guidance document detailing the standardized, step-by-step process for determining prevailing wage. EMPLOYMENT & TRAINING ADMIN., Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs (revised Nov. 2009). The guidance document explains that a job’s O\*NET/SOC is identified by selecting the O\*NET job description that best corresponds to the employer’s job offer. *Id.* at 4; *Gen. Anesthesia Specialists Partnership Med. Group (GASP)*, 2013-PWD-00005, slip op. at 6 (Jan. 28, 2014). The guidance document further provides: “If the employer’s job opportunity has worker requirements described in a combination of O\*NET occupations, the NPWHC [National Prevailing Wage and Helpdesk 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 NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.” *Prevailing Wage Determination Policy Guidance* at 4.

In cases involving disputes over which O\*NET/SOC applies, the Board of Alien Labor Certification Appeals has considered the job duties 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, supra*; *Emory University*, 2011-PWD-00001 & -00002 (Feb. 27, 2012).

### *Analysis of the Facts*

As an initial matter, we reject the Center Director’s argument that it is categorically inappropriate to assign an “All Other” SOC to this or any position. We agree with the reasoning of the panel in *Meltwater News*, and hold that it is an abuse of discretion to refuse to consider such an SOC if it is the most appropriate classification of a position. Thus, we turn to the issue whether the Center Director abused his discretion or failed to follow the applicable regulations when he assigned SOC Code 15-1132 to the Employer’s position. In evaluating that issue, we will consider the duties described by the Employer, the tasks identified under the Software Developer SOC (15-1132), and the tasks identified under the Software Quality Assurance Engineers and Testers SOC (15-1199.01) as suggested by the Employer.

#### A. Duties of Employer’s Position – Senior Quality Assurance Analyst

On the prevailing wage request form, the Employer described the job duties of the Senior Quality Assurance Analyst position as follows:

1. Responsible for evaluating and testing new or modified software programs developed in a .NET framework.

2. Design, create and execute quality assurance/software testing strategies incorporating .NET experience, HP Quality Center experience and automation testing experience.
3. Guide the prescribed strategies including monitoring and coaching the efforts of assigned testers.
4. Examples of testing strategies will include but are not limited to .NET unit testing, functional testing, regression testing, end-to-end testing, integration testing, automated testing, performance and load testing.
5. Build and maintain automated and manual testing across all levels of software utilizing HP Quality Center. Develop programs and procedures to verify that software functions according to user requirements and to confirm establishment guidelines utilizing Visual Studio and/or HP UFT or HP QTP with an emphasis on expert level VB scripting.
6. Provide leadership within engineering teams to identify, reproduce and document software defects.
7. Handle implementation of new software releases to production environments.

[AF 54.]

B. The Duties of a Senior Quality Assurance Analyst Are Not Similar to a Software Developer, Applications, SOC Code 15-1132

According to O\*NET, the primary role of “Software Developers, Applications” is to:

Develop, create, and modify general computer applications software or specialized utility programs. Analyze user needs and develop software solutions. Design software or customize software for client use with the aim of optimizing operational efficiency. May analyze and design databases within an application area, working individually or coordinating database development as part of a team. May supervise computer programmers.<sup>3</sup>

O\*NET lists the following 11 core job duties, in descending order of importance, for Software Developers, Applications:

1. Modify existing software to correct errors, allow it to adapt to new hardware, or to improve its performance.
2. Develop and direct software system testing and validation procedures, programming, and documentation.
3. Confer with systems analysts, engineers, programmers and others to design system and to obtain information on project limitations and capabilities, performance requirements and interfaces.
4. Analyze user needs and software requirements to determine feasibility of design within time and cost constraints.
5. Design, develop and modify software systems, using scientific analysis and mathematical models to predict and measure outcome and consequences of design.

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<sup>3</sup> See <http://www.onetonline.org/link/summary/15-1132.00>, last accessed on January 23, 2015.



6. Store, retrieve, and manipulate data for analysis of system capabilities and requirements.
7. Consult with customers about software system design and maintenance.
8. Supervise the work of programmers, technologists and technicians and other engineering and scientific personnel.
9. Coordinate software system installation and monitor equipment functioning to ensure specifications are met.
10. Obtain and evaluate information on factors such as reporting formats required, costs, and security needs to determine hardware configuration.
11. Determine system performance standards.<sup>4</sup>

The position described by the Employer does not comport with the role or duties of a Software Developer, Applications as described in O\*NET. O\*NET describes the role in terms of developing software *ab initio*, while the Employer's Senior Quality Assurance Analysts role is, in general terms, to test the software developed by others. Further, of the 11 job duties defined by O\*NET for a Software Developer, Applications, only one, listed as #2 above ("Develop and direct software system testing and validation procedures, programming, and documentation") is consistent with the duties described by the Employer for its Senior Quality Assurance Analyst. That position does not perform any of the other 10 duties listed for a Software Developer, Applications.

C. The Duties of the Senior Quality Assurance Analyst Position Are Similar to a Software Quality Assurance Engineer and Tester, SOC Code 15-1199.01

According to O\*NET, the primary role of an employee in this SOC is to "[d]evelop and execute software test plans in order to identify software problems and their causes."<sup>5</sup> O\*NET identifies the following job titles as falling within SOC Code 15-1199.01: Quality Assurance Analyst (QA Analyst), Quality Assurance Director (QA Director), Software Quality Assurance Engineer (SQA Engineer), Software Quality Engineer, Product Assurance Engineer, Software Test Engineer.<sup>6</sup> O\*NET identifies the following 27 core job duties, in descending order of importance, for this position:

1. Design test plans, scenarios, scripts, or procedures.
2. Test system modifications to prepare for implementation.
3. Develop testing programs that address areas such as database impacts, software scenarios, regression testing, negative testing, error or bug retests, or usability.
4. Document software defects, using a bug tracking system, and report defects to software developers.
5. Identify, analyze, and document problems with program function, output, online screen, or content.
6. Monitor bug resolution efforts and track successes.
7. Create or maintain databases of known test defects.
8. Plan test schedules or strategies in accordance with project scope or delivery dates.

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<sup>4</sup> See <http://www.onetonline.org/link/details/15-1132.00>, last accessed on January 23, 2015.

<sup>5</sup> See <http://www.onetonline.org/link/summary/15-1199.01>, last accessed on January 23, 2015.

<sup>6</sup> *Id.*

9. Participate in product design reviews to provide input on functional requirements, product designs, schedules, or potential problems.
10. Review software documentation to ensure technical accuracy, compliance, or completeness, or to mitigate risks.
11. Document test procedures to ensure replicability and compliance with standards.
12. Develop or specify standards, methods, or procedures to determine product quality or release readiness.
13. Update automated test scripts to ensure currency.
14. Investigate customer problems referred by technical support.
15. Install, maintain, or use software testing programs.
16. Provide feedback and recommendations to developers on software usability and functionality.
17. Monitor program performance to ensure efficient and problem-free operations.
18. Conduct software compatibility tests with programs, hardware, operating systems, or network environments.
19. Install and configure recreations of software production environments to allow testing of software performance.
20. Collaborate with field staff or customers to evaluate or diagnose problems and recommend possible solutions.
21. Identify program deviance from standards, and suggest modifications to ensure compliance.
22. Design or develop automated testing tools.
23. Coordinate user or third party testing.
24. Perform initial debugging procedures by reviewing configuration files, logs, or code pieces to determine breakdown source.
25. Visit beta testing sites to evaluate software performance.
26. Evaluate or recommend software for testing or bug tracking.
27. Conduct historical analyses of test results.<sup>7</sup>

Each of the duties described by the Employer for its Senior Quality Assurance Analyst fits squarely within at least one of the duties listed on O\*NET for Software Quality Engineers and Testers, SOC Code 15-1199.01, as demonstrated by the examples in the following table. The examples are not exhaustive.

<b>Senior Quality Assurance Analyst (Employer's Position)</b>	<b>Software Quality Engineers and Testers, SOC Code 15-1199.01</b>
Responsible for evaluating and testing new or modified software programs developed in a .NET framework.	Design test plans, scenarios, scripts, or procedures. Test system modifications to prepare for implementation. Develop testing programs that address areas such as database impacts, software scenarios, regression testing, negative testing, error or

<sup>7</sup> See <http://www.onetonline.org/link/details/15-1199.01>, last accessed on January 23, 2015.

	<p>bug retests, or usability.</p> <p>Update automated test scripts to ensure currency.</p> <p>Install, maintain, or use software testing programs.</p>
<p>Design, create and execute quality assurance/software testing strategies incorporating .NET experience, HP Quality Center experience and automation testing experience.</p>	<p>Design test plans, scenarios, scripts, or procedures.</p> <p>Test system modifications to prepare for implementation.</p> <p>Develop testing programs that address areas such as database impacts, software scenarios, regression testing, negative testing, error or bug retests, or usability.</p> <p>Update automated test scripts to ensure currency.</p> <p>Install, maintain, or use software testing programs.</p>
<p>Guide the prescribed strategies including monitoring and coaching the efforts of assigned testers.</p>	<p>Design test plans, scenarios, scripts, or procedures.</p>
<p>Testing strategies will include but are not limited to .NET unit testing, functional testing, regression testing, end-to-end testing, integration testing, automated testing, performance and load testing.</p>	<p>Develop testing programs that address areas such as database impacts, software scenarios, regression testing, negative testing, error or bug retests, or usability.</p>
<p>Build and maintain automated and manual testing across all levels of software utilizing HP Quality Center. Develop programs and procedures to verify that software functions according to user requirements and to confirm establishment guidelines utilizing Visual Studio and/or HP UFT or HP QTP with an emphasis on expert level VB scripting.</p>	<p>Develop testing programs that address areas such as database impacts, software scenarios, regression testing, negative testing, error or bug retests, or usability.</p>
<p>Provide leadership within engineering teams to identify, reproduce and document software defects.</p>	<p>Monitor bug resolution efforts and track successes.</p>
<p>Handle implementation of new software releases to production environments.</p>	<p>Test system modifications to prepare for implementation.</p>

## CONCLUSION

SOC Code 15-1199.01 is the most specific SOC available in this case. The evidence does not show that a more specific SOC code is available. The Center Director failed to identify a SOC category with job duties that overlapped the duties of a Senior Quality Assurance Analyst, as described on the Employer's prevailing wage application. Instead, the Center Director

assigned the Senior Quality Assurance Analyst position to the SOC/O\*NET category “Software Developers, Applications,” SOC 15-1132. For the reasons discussed above, however, the job duties of the Employer’s position are not similar to those of a Software Developer, Applications, and SOC 15-1132 is inappropriate here. After considering all the evidence before us, we find that the Center Director abused his discretion by failing to assign the most specific occupational title applicable to the Senior Quality Assurance Analyst, which is that of a Software Quality Assurance Engineer and Tester, SOC 15-1199.01.

**ORDER**

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

**SO ORDERED.**

For the Panel:

PAUL C. JOHNSON, JR.  
District Chief Administrative Law Judge

**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.