This case comes before the Board on the appellant's petition for review of the Atlanta Regional Office's initial decision in his appeal. The presiding official sustained the agency's action removing him by application of reduction-in-force ("RIF") procedures from the position of Agricultural Commodity Grader, GS-9, with the agency's Federal Grain Inspection Service.

The presiding official found that the agency had properly conducted the RIF appealed in this case due to a reorganization, and that the appellant had failed to rebut this. Losure v. Interstate Commerce Commission, 2 MSPB 361 (1980); 5 C.F.R. Section 351.201(a). She found also that the appellant had not demonstrated how an alleged transfer of function in 1981 can be adjudicated under the RIF regulations governing the agency in 1982, and that, even

1/ Appellant Walter Seidel's appeal to the Atlanta Regional Office was consolidated with that of Joseph Destefani because the appeals presented similar issues and resulted from the same reduction-in-force action. 5 U.S.C. Section 7701(f)(1); 5 C.F.R. Section 1201.36. This decision involves the petition for review of Walter Seidel only.
assuming *arguendo* that a transfer of function occurred in 1981, the agency did not conduct a RIF in connection with it and the transfer of function had not adversely affected the appellant, apparently, since he had continued to perform the functions of his position for a year after its occurrence.

In his petition for review, the appellant contends that the presiding official erred in finding that he was not adversely affected by the alleged transfer of function, and that he was therefore unable to demonstrate how his subsequent separation resulted from an erroneous interpretation of the transfer of function regulations. He contends that he was separated as a direct result of the transfer of function between the agency's Savannah, Georgia, and Mobile, Alabama, offices in 1981, and that he therefore has standing to challenge the agency's application of this provision of the RIF regulations. We hereby GRANT the petition for review under 5 U.S.C. Section 7701(e) for the reasons set forth below.

A "function" is "all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how its is performed." 5 C.F.R. Section 351.203(c). A transfer of function takes place when the work of one or more employees is moved from one competitive area to another, or when the competitive area in which the function is performed is moved to another commuting area. Reorganizations which shift functions out of one competitive area and into another are transfers of function. *See* Federal Personnel Manual ("FPN"), Chapter 351, Subchapter 3; Attachment to FPM Letter 351-14(17).

Under 5 C.F.R. Section 351.302(c), an employee has no right to transfer with his or her function unless the alternative in the competitive area losing the function is separation (as in this case) or demotion. Moreover, there is no right of appeal to the Board from a transfer of function *per se*. Only an adverse action or RIF action

The record in this case does not establish the parameters of the reorganization which resulted in the 1982 RIF with sufficient clarity to ascertain whether the 1981 exchange between the Savannah and Mobile offices, which are in different competitive areas, was or was not a part of that reorganization, and hence whether the 1982 RIF constitutes a continuation of that action. The agency did not identify the 1981 exchange as a transfer of function associated with the reorganization. The Board notes, however, that transfers of function are not always easily identifiable. At times the application of the transfer of function definition may be in question. OPM recognizes this difficulty and offers assistance to agencies to ascertain the applicability of the transfer of function definition or procedures for organizational changes. FPM Chapter 351, Subchapter 3.3. Hence, whether or not the agency identified the 1981 exchange questioned by the appellant in this appeal as a transfer of function is not dispositive of whether in fact a transfer of function occurred, or whether it was part of the reorganization which resulted in the appellant's separation by RIF.

The presiding official erred in concluding that there was no connection between the agency action in 1981 and the appellant's separation by RIF procedures in 1982, after disallowing the appellant the opportunity to prove such a connection. As a result of this disallowance, there is insufficient evidence in the record to find no connection. The time which had elapsed between the two events is not dispositive of the issue and, although the fact that the appellant continued to perform the full range of the duties of his position after the exchange between Savannah and Atlanta would be probative, it cannot be presumed as it was by the presiding official but is subject to proof. Furthermore, this appeal was appellant's first opportunity to
present evidence contesting application of the transfer of function regulations. Brown, supra.

As noted in Losure, supra, at n. 6, the presiding official has the discretion in controlling the course of the hearing under 5 C.F.R. Section 1201.41(b), to require the appellant to identify the alleged impropriety in the agency's application of the RIF regulations with sufficient specificity to enable the agency to address the contested matters in its presentation of evidence. In the case at hand, however, the appellant was improperly denied the opportunity to identify the alleged impropriety in the application of the transfer of function portions of the RIF procedures, so that the agency could fully address the contested matters in its presentation of evidence.

Accordingly, the Board hereby VACATES the initial decision with respect to appellant Seidel, and REMANDS this case to the Regional Office for further adjudication consistent with this Opinion. 2/

FOR THE BOARD:

JUL 1984
(Date)

Washington, D. C.

2/ In light of the decision to remand the appellant's case, the Board need not decide at this time the appellant's challenge to the presiding official's finding that the appellant did not meet the experience requirements to qualify for a GS-4 Clerk Typist position, and so had no assignment rights to that position under 5 C.F.R. Section 351.703.