

OFFICE OF PERSONNEL MANAGEMENT
MERIT SYSTEMS OVERSIGHT AND EFFECTIVENESS
DALLAS OVERSIGHT DIVISION
CLASSIFICATION APPEAL DECISION

Under section 5112(b) of title 5, United States Code

Appellant: [appellant's name]

Position: Criminal Investigator, GS-1811-12
Position Number: A01243

Organization: [appellant's activity]
U.S. Customs Service
Department of the Treasury

Decision: Criminal Investigator, GS-1811-12

OPM Decision Number: C-1811-12-05

Approved by:

/s/ Bonnie J. Brandon
Bonnie J. Brandon
Classification Appeals Officer

8/11/97
Date

Copy of decision sent to:

[appellant's name and address]

Director of Personnel
U.S. Customs Service
2120 L Street, Room 6100
Gelman Building
Washington, DC 20037-0000

Director, Human Resources
U.S. Customs Service
1301 Constitution Avenue, Room 6100
Gelman Building
Washington, DC 20229

Director of Personnel Policy
U.S. Department of the Treasury
Room 4164-ANX
Washington, DC 20220

INTRODUCTION

This position is assigned to the [appellant's activity, U.S. Customs Service, Department of the Treasury]. The agency has classified the position as Criminal Investigator, GS-1811-12. The appellant believes the position should be reclassified to the GS-13 level.

This appeal is filed with the Office of Personnel Management (OPM) under the provisions of chapter 51, title 5 of the United States Code. This is the final administrative decision of the Government, subject to discretionary review only under the conditions and time limits specified in title 5 of the Code of Federal Regulations, sections 511.605 and 511.613, and appendix 4 in the Introduction to the Position Classification Standards.

POSITION INFORMATION

The appellant is assigned to a standard nationwide position description (PD) for Criminal Investigator, GS-1811-12. He serves as a journeyman investigator with responsibility for initiating, conducting, coordinating, and directing complex investigations that involve violations of laws enforced by the U.S. Customs Service. The appellant's supervisor has certified that the nationwide PD (number A01243) is a complete and accurate description of the appellant's currently assigned duties, but the appellant disagrees. Because the PD describes the appellant's duties in general terms, position information has been supplemented by specific information on actual investigations conducted by the appellant. The appellant and his supervisor provided information on three cases that are representative of the type of cases assigned to the appellant.

Organizationally, the [appellant's office] is headed by a Supervisory Criminal Investigator, GS-1811-14. The office includes four GS-12 Criminal Investigators and a GS-1802-6 Investigative Assistant.

SERIES AND TITLE DETERMINATION

The appellant does not question the series and title designation of his position. We agree that the position is properly assigned to the GS-1811 Criminal Investigation Series with "Criminal Investigator" as the appropriate title.

GRADE DETERMINATION

The GS-1811 Grade-Level Guide for Classifying Investigator Positions, dated February 1972, was used to make a grade level determination. The guide uses two factors to distinguish between grade levels: complexity of assignments and level of responsibility. The first factor is designed to measure the scope, complexity, and sensitivity of investigative assignments, including the following six elements: the level of difficulty in resolving conflicts in facts or evidence; the difficulty and complexity imposed by the subjects of the investigations; the nature of separate investigative matters that grow from the original assignments; the skill required to establish facts and evidence in assigned

cases; the sensitivity of assigned cases; and the jurisdictional problems involved in case assignments.

According to the guide, the classification of investigative positions should be based on assignments that are typical and representative of cases for which the investigator has primary responsibility over a period of time. At grades GS-11, GS-12, and GS-13, a position should substantially meet the characteristics illustrated in most or all of the six elements that describe the responsibility described at each grade level.

Occupational information in the guide indicates that, regardless of agency missions, investigators typically find facts by applying sound investigative processes and support those facts in reports that serve the needs of interested officials in the legislative, executive, or judicial branches of the Government. From time to time, regardless of grade level, investigators work on tasks associated with cases that are assigned to other investigators. Similarly, from time to time, an investigator may lead or coordinate the work of other investigators who are temporarily assigned to work on cases for which he or she has responsibility. The guide recognizes that these are temporary conditions which are a normal part of completing investigative assignments and that they have no particular impact on determining the grade level of an investigator's position.

In determining the proper classification of the appellant's position, we considered three representative cases which the appellant believes best represent the nature of his case assignments. A brief description of these investigations follows.

Operation Stingray. This case involves an undercover narcotics smuggling investigation which was initiated by the appellant while he was assigned to the office of the SAC [in a city]. This case concerned a large-scale narcotics smuggling organization operating on the West Coast of the United States; the organization had direct ties to the Cali Cartel in Mexico. The suspects were considered dangerous to the undercover operatives. The suspects often used counter surveillance techniques and utilized false identification and front companies to cover illegal activities. The case resulted in seizure of approximately 6,000 pounds of cocaine, the largest maritime cocaine seizure on the West Coast and the largest cocaine seizure in the Northern District of California. Controlled deliveries of cocaine resulted in the arrests of four major cocaine traffickers and the seizure of three vehicles. The appellant worked closely with British authorities to obtain search authority from the Governor General of the Turks and Caicos Islands for the vessel which was registered in the Islands. Overall, this case resulted in four arrests, five indictments, and two convictions and the seizure of \$145,500 in trafficker-directed funds, three vehicles, two vessels, one trailer, and approximately 6,000 pounds of cocaine. Following the arrests, the investigation received extensive coverage in local and national media (e.g., San Francisco newspapers, the *Journal of Commerce*, and CNN). The appellant served as the case agent leading the Organized Crime Drug Enforcement Task Force for this investigation. Although most of the work on this case occurred from 1992 to 1995, the

appellant is still the case agent with continuing involvement in the operation since there are two suspects scheduled for trial in December 1997.

Project Tholian Web

This case is a child pornography Internet investigation that was initiated by the SAC [in a city], involving suspects in the Amarillo, Texas, area. The initial suspect is a former local school board member who had two prior convictions for rape, one involving an eight-year-old girl and one involving a 15-year-old girl. During the course of the investigation, this suspect implicated two other local school authorities (a teacher and the business administrator). Although the second and third suspects attempted to destroy computer evidence, the appellant was able to have it reconstructed through efforts of a computer expert. This investigation resulted in three arrests, three indictments, and seizure of three computer systems. The case received local newspaper and television coverage. This case is closed; two suspects pled guilty, and the other is appealing his conviction.

Thaddeus Allen Duke, et al. This child pornography Internet investigation was initiated by the Federal Bureau of Investigation (FBI). Based on a tip from the FBI, the appellant obtained additional information and subsequently wrote the operational plan for this case. Further investigation led to the arrest, indictment, and conviction of one of the founders of an international child pornography ring and seizure of three computer systems. This individual was an officer in the ring. His arrest and conviction received some media attention in the Amarillo area. The appellant believes there are more than 100 suspects worldwide who are involved in this particular pornography ring and is continuing to develop evidence in a spin-off case.

Complexity of Assignments

Element 1 - Difficulty in resolving conflicts in facts or evidence

The GS-13 level is distinguished from the GS-12 level primarily in the extreme complexity and scope of assignments. Typically, GS-13 level assignments involve investigations of legal or illegal organizations that are very complex in structure, with large numbers of primary and subsidiary activities, e.g., investigations which have major interregional dimensions or have organized crime principals who are officially recognized as national threats. GS-13 investigators deal with prominent suspects engaged in complex, serious activities in which evidence must be pieced together to recognize the suspects' pattern of operation. At the GS-12 level, difficulties occur primarily from having to obtain and work with fragmentary evidence that is circumstantial, at least initially, rather than directly verifiable.

None of the cases submitted as representative of the appellant's assignments meet the intent of the complexity and scope at the GS-13 level. Although the appellant is the case

agent for Operation Stingray, the case did not involve a **large number of primary and subsidiary activities**. Even though the Cali Cartel is involved in several different businesses, the major activity investigated in this case is the trafficking of cocaine. Further, this case did not reveal that the organization and suspects were national threats to the welfare and security of the country as envisioned by the GS-13 level criteria. This case is comparable to the illustrative GS-12 assignments where an international business is suspected of intermingling illegal activities with legitimate business activities. Neither of the other two cases involved complex structures where there were large number numbers of primary and subsidiary activities or where the principals involved were recognized by law enforcement as national threats to the peace and stability of the nation. Indicative of GS-13 level of difficulty would be investigative assignments that target large-scale international terrorist or other complex, integrated organizations. The Duke spin-off case may develop into such an assignment; however, the case is still in initial stages of investigation, and the projected complexity and scope of the appellant's assignments may not be considered in determining the appropriate grade of a position because that level of difficulty may not materialize.

Element 2 - Difficulty and complexity imposed by subjects of investigations

At the GS-12 level, subjects are typically suspected or known racketeers or smugglers; figures with financial interests overlapping into several legal and illegal interests, e.g., financial interests in a legitimate concern that are diverted and used to finance illegal activities; or organization heads who carry out fraudulent business activities with the assistance of several accomplices under the cover of legitimacy. In contrast, at the GS-13 level, investigation subjects typically involve individuals of national scope who are involved in a range and variety of interrelated activities that consist of widespread networks of distribution and outlets.

The cases the appellant provided as illustrative of his assignments include subjects of investigations who meet the definition of this element at the GS-12 level. None of the subjects of the appellant's investigations were foreign agents who were planning acts extremely harmful to the national security.

Element 3 - Number of separate investigative matters from original assignments

This element deals with the nature of separate investigative matters that grow from the original assignment. At the GS-12 level, investigations begin with the pusher or passer of drugs, fraudulent documents, etc., and proceed through the intermediate distributor, and eventually involve the manufacturers, backers, organizers, or importers. At the GS-13 level, many separate investigative matters of great scope and complexity grow from the original assignment as typified by an investigation into highly organized criminal activities that are interwoven with legitimate business activities. For example, seemingly respectable construction firms have ostensible legal contracts with States, and there is suspicion of

bribery of State officials or fraud. The investigation begins with criminal activities and crosses over to the legitimate businesses, and finally casts suspicion on respected legitimate political, business, or professional leaders. Cases at the GS-13 level often unfold into large-scale raids and seizures throughout several States.

The investigative subjects in Operation Stingray were involved in activities which were interwoven with legitimate businesses, e.g., registered sea vessels, a travel agency. As case agent, the appellant coordinated the activities of the other law enforcement agents assigned to this case. Their activities, however, were limited to the investigation and apprehension of the smugglers; seizure of vehicles, vessels, and trafficker-directed funds; and the controlled delivery of cocaine. The investigation did not carry over into the suspects' legitimate businesses, and the seizure activity did not extend throughout several States as is typical at the GS-13 level. Therefore, the complexity of the organization investigated, the tie-in to legitimate business activities, and the scope of the raid and seizure activities led by the appellant for Operation Stingray do not meet the GS-13 level criteria described for this element. Neither of the appellant's other two cases involved large-scale raids and seizures through several States, as described at the GS-13 level.

Element 4 - Skill required to establish the interrelationship of facts and evidence

Grade GS-13 is distinguished from GS-12 primarily in that there is **exceptional** difficulty encountered at the GS-13 level in establishing the interrelationships of fact or evidence. At the GS-13 level, the subjects use fictitious names or are otherwise clearly separated from each other and from the illegal activities under investigation. Subjects deal exclusively through subsidiaries or holding companies that engage in diversified mixtures of legal and illegal activities throughout wide sections of the country. The work requires the investigator to subdivide the case into segments that are fully equivalent to the GS-12 level of difficulty.

As case agent for Operation Stingray, the appellant coordinated the work of the other agents and the various segments of this case. No spin-off cases resulted from this investigation. In order to link the principals of the organization under investigation, the appellant employed a variety of surveillance and undercover activities. This case also required the use of special efforts to conceal the identity of the undercover agents in order to protect their lives and welfare. The appellant's involvement is equivalent to GS-13 level. The appellant's other two cases do not exceed the GS-12 level.

Element 5 - Sensitivity of assigned cases

At the GS-12 level, the subject is so prominent that, after the first witness is interviewed, subsequent witnesses are evasive because of reluctance to or fear of becoming involved in giving information that may evolve into an important Federal case. The subject and his or her peers are very often the subject of major news media where publicity may cast

suspicion on the reputation of the subject, prejudice the investigator's case in court, or complicate subsequent administrative decisions.

Investigative assignments at the GS-13 level typically involve matters of extreme sensitivity. They are equivalent to one or more of the following illustrations: (1) If the investigation came to light prematurely, there would be sustained major news coverage and the lives of victims could be endangered; (2) Suspects' financial involvements extend to enterprises that have a significant impact on the national economy; and (3) Suspects are principals in enterprises that reach into State and Federal affairs.

Only Operation Stingray approaches the GS-13 level. Several precautions had to be taken during this investigation since at least one of the suspects had bragged about killing people and stated he would kill agents if anything went wrong with the cocaine transaction. The investigation had to be conducted in a careful manner that protected agents, witnesses, and cooperating individuals. Premature public knowledge of the subjects under investigation could have resulted in sustained, widespread news coverage. Although this case has some of the international aspects characteristic of high-level narcotics trade, it does not meet the full intent of the GS-13 criteria in that there are no indications of **unusually** sensitive international relations implications. There is no indication that the suspects in this case or the other two representative cases have financial involvements which extend to enterprises that have a significant impact on a major segment of the economy. Further, none of the cases crossed over to legitimate businesses that have cast suspicion of bribery or fraud involving respected political, business, or professional leaders or government officials. The appellant's representative cases do not involve matters of extreme sensitivity equivalent to the GS-13 illustrative assignments.

Element 6 - Jurisdictional problems involved

Investigations at the GS-13 level involve extremely difficult planning and coordination problems because of extensive jurisdictional problems involving other Federal, State, county, and local agencies. The GS-13 level is differentiated from the GS-12 level in that (1) certain contacts in other jurisdictions may be involved in the criminal activity and (2) the investigator serves as a key person on undercover assignments having most or all of the dangerous elements. Discovery of such a key figure while on undercover assignment could not only result in injury or death but also cut off information linking the evidence in the investigation. This could jeopardize or destroy a critical case that has been developing for an extended period of time involving a network of agents and informers.

From a jurisdictional standpoint, the appellant's involvement in Operation Stingray is similar to the GS-13 level. He operated as the lead case agent and the key undercover agent with the suppliers of the smuggled cocaine. Some of his undercover work took place in Mexico where he had little or no protection from detection and harm. The appellant also had to make arrangements with the British Government to board and search a vessel

registered in an area under its jurisdiction. Although the other two cases involved law enforcement officials from other Federal, State, or local agencies, there is no indication of difficult jurisdictional problems with which the appellant had to deal. The other two cases do not exceed the GS-12 level.

Summary

While some GS-13 aspects are present in the appellant's work represented by the cases submitted for review, the preponderance of the assignment characteristics are evaluated at the GS-12 level. Therefore, our overall finding for complexity of assignments is GS-12.

Level of Responsibility

This factor measures the kind and extent of supervision that is given and the degree of resourcefulness that is required in finding and verifying information pertinent to cases assigned. Responsibility patterns range from training situations in which the investigator receives detailed, step-by-step supervision on assignments that require limited probing for information to situations in which the investigator independently develops complex cases requiring highly sophisticated inquiries into matters that tend to break new ground in the investigative field.

GS-13 level investigators receive assignments through program discussions in terms of general objectives. Review of work at the GS-13 level is in the form of discussions at certain critical points. An extremely high degree of originality and initiative is required because investigations often involve cases that establish important precedents; inquiries into activities occurring in a wide area; and suspected violators who retain the best legal and accounting advice available. Unexpected problems indicating new lines of inquiry are much more common of GS-13 level investigations than at the GS-12 level, because cases are so much more complex, critical, and sensitive. At the GS-12 level, investigators receive or generate their own case assignments. The investigator receives few instructions on the technical aspects of the work but is mostly given policy guidance. Completed work is reviewed for accomplishment of overall objectives and adherence to policy.

The level of responsibility demonstrated by the appellant meets, and in some respects, exceeds the GS-12 level. It is clear in reviewing the appellant's work in the three representative cases that he demonstrated a great deal of initiative in developing, conducting, and coordinating his own investigations and in developing case leads for other investigators. However, the appellant's cases are not so sensitive and important that his operational plans need to be cleared with the very highest officials in the agency as at the GS-13 level. The level of responsibility exercised by the appellant is most like that described at the GS-12 level. He receives his assignments with few instructions on technical aspects of the work. His work is reviewed for compliance with overall objectives

and policies and adherence to applicable laws, regulations, and precedents. Although the appellant demonstrates a high degree of initiative and exceeds his supervisor's expectations for GS-12 investigative responsibility, the cases assigned do not typically generate responsibilities equivalent to the full intent of the GS-13 criteria.

DECISION

The appellant's position is properly classified as Criminal Investigator, GS-1811-12.