

U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and ELSA Programs



Washington Oversight Division
1900 E Street, N.W.
Washington, DC 20415

Classification Appeal Decision
Under Section 5112 of Title 5, United States Code

Appellant: [name]

Agency classification: Criminal Investigator
GS-1811-12

Organization: [city] Field Office
Resident Agent in Charge
U.S. Customs Service
Department of the Treasury
[city and State]

OPM decision: Criminal Investigator
GS-1811-12

OPM decision number: C-1811-12-09

Richard Quasney
Classification Appeals Officer

5/14/98 _____ Date

As provided in section 511.612 of title 5, U.S. Code of Federal Regulations, this decision constitutes a classification certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under the conditions and time limits specified in title 5, U.S. Code of Federal Regulations, sections 511.605, 511.613, and 511.614, as cited in the Introduction to the Position Classification Standards, appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[appellant]

[Bureau personnel officer]

[Department personnel officer]

Introduction

On August 29, 1997, the Washington Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a position classification appeal from [appellant], who is employed as a Criminal Investigator, GS-1811-12, in the [city] Field Office of the U.S. Customs Service, Department of the Treasury, in [city and State]. [Appellant] requested that his position be classified as Criminal Investigator, GS-1811-13. This appeal was accepted and decided under the provisions of section 5112 of title 5, United States Code.

An on-site position audit was conducted by a Washington Oversight Division representative on February 4, 1998, supplemented by a follow-up telephone interview with the appellant on March 20, 1998, and telephone interviews with the appellant's first-line supervisor, [name], and second-line supervisor, (Resident Agent in Charge), [name], on May 5, 1998. This appeal was decided by considering the audit findings and all information of record furnished by the appellant and his agency, including his official position description, [number], classified by the servicing personnel office at the Customs Service as Criminal Investigator, GS-1811-12, on July 22, 1993.

General issues

In his appeal letter, the appellant cited his accomplishments over the past nine years with the Customs Service in connection with his request for a higher grade. However, 5 U.S. Code 5112 indicates that we can consider only current duties and responsibilities in classifying positions. OPM guidelines and previous decisions indicate that this has been generally interpreted as referring to those duties that have occurred in about the past year. However, because criminal investigations may extend over a long period of time, in this case the OPM review covered approximately the past two years, corresponding to the time the appellant has been assigned to the [group name].

The appellant also cited several ancillary duties assigned to his position that are outside the parameters of actual investigative work and that constitute a relatively minor portion of his time. These include serving as the fitness coordinator for the office (i.e., evaluating employee blood screenings, administering yearly fitness exams, assisting employees in developing workout schedules), and as security officer (checking office alarms and periodically changing locks). However, only duties that occupy at least 25 percent of an employee's time can be considered in determining the grade of a position (Introduction to the Position Classification Standards, page 23). In this case, although these assignments may be labor intensive for short periods of time, neither approaches 25 percent of the appellant's total time, and the duties associated with each assignment are relatively low-graded and would not otherwise affect the grade of the position. The appellant also serves as field training officer for one junior investigator in the group, which involves providing guidance on investigations and introductions to contacts, and general on-the-job training and advice. This assignment likewise does not meet the 25 percent threshold, nor would it otherwise enhance the grade of the position as it represents neither supervision nor team leadership.

Position Information

The appellant is responsible for initiating, conducting, and coordinating criminal investigations concerning violations of the laws enforced by the U.S. Customs Service. Within this context, the appellant has been assigned to the [group name] since January 1996. This group has primary jurisdiction within the Customs Service for investigating trans-national violations of U.S. export laws.

During the OPM review, the appellant presented four cases as representing his most complex and time-consuming assignments. He reported these four cases as expending a total of 383 8-hour days over the past two years. Using a base of 252 workdays in a year, the four cases represent approximately 75 percent of the appellant's workload for that time period and are addressed in more detail below. Another 81 8-hour days were spent on a Secret Service detail in connection with the 1996 Presidential campaign, constituting approximately 15 percent of the total time. This assignment was not considered because temporary or one-time duties performed in a detail capacity that are not otherwise a regular and recurring part of the job do not affect the grade level of a position (Introduction to the Position Classification Standards, page 16). Other assignments given the appellant combine for the remaining 10 percent. These assignments include cases that were initiated but shortly thereafter dropped, or assisting other investigators in arrests. They were not considered because they are of lesser complexity and duration than the aforementioned cases and thus would not contribute to the overall grade value of the appellant's position. The four cases constituting the basis for this evaluation are as follows:

[sensitive information pertaining to ongoing investigations]

Series determination

The appellant's position is properly assigned to the Criminal Investigating Series, GS-1811, which covers positions that involve planning and conducting investigations relating to alleged or suspected violations of criminal laws. Neither the agency nor the appellant disagrees.

Title determination

The authorized title for nonsupervisory positions in this series is Criminal Investigator.

Standard determination

Positions classified to the GS-1811 series are evaluated by application of the grade-level criteria provided in the Grade-Level Guides for Classifying Investigator Positions, GS-1810/1811, dated February 1972.

Grade determination

Grade-level criteria in this guide are expressed in terms of two factors, Complexity of Assignments and Level of Responsibility.

Complexity of Assignments

The GS-12 level is characterized by the following elements:

- (1) the difficulty of obtaining, working with, and discretely handling fragmentary facts or circumstantial evidence, such as tips or word of mouth;
- (2) the difficulty or complexity imposed by the prominence or other characteristics of the subjects investigated, such as a prominent figure in organized crime or the principal in a large-scale organization;
- (3) the substantial number of separate investigative matters that grow from the original assignments, e.g., an investigation that begins with the passer of illegal goods and proceeds through the intermediate distributor and eventually the manufacturer, supplier, or importer;
- (4) the high degree of skill required to establish the interrelationships of fact and evidence, such as the use of surveillance, toll-call checks, or scientific evidence;
- (5) the high degree of sensitivity that assigned cases involve, either because of media coverage or the reluctance of witnesses to become involved ;
- (6) the significant jurisdictional problems characteristic of assigned cases, such as where the violations are of concern to several local, county, State, or Federal agencies, or where raids or surveillances involving the use of local law enforcement agencies are used.

The GS-13 level is distinguished from GS-12 in terms of the following elements:

- (1) the extreme complexity and scope of assigned cases as illustrated by one or more of the following paragraphs:

The organizations investigated are very complex in structure with a large number of primary and subsidiary activities, e.g., several principals of organized crime or subversive groups officially recognized in law enforcement as national threats; the investigations are interregional or nationwide in coverage with occasional international implications; there are typically actual or potential threats to major segments of the national welfare or security; and the investigations may constitute deterrents to crime or violations and may often influence changes in laws or future court actions; or

The investigator must piece together evidence from investigators stationed throughout several States or the nation and instruct separate investigators working on segments of the case; the suspects are prominent and numerous and are engaged in more complex and serious activities.

(2) the interrelated activities that the subjects under investigation are involved in, such as:

The organization investigated has an extremely complex structure with diversified interests, e.g., the manufacture, distribution, and sale of legal or illegal goods in a national market involving a complex network of widespread distribution and sales outlets.

(3) the wide number of separate investigative matters that grow from the original assignments, for example:

The subjects are highly organized crime groups whose activities cross over to legitimate businesses or involve bribery of public officials; or

The cases result in large-scale raids and seizures throughout several States, with the investigator leading and coordinating these activities.

(4) the extreme difficulty encountered in establishing the interrelationships of fact or evidence, as in the following situation:

The subjects may use fictitious names or are otherwise clearly separated from each other and from the illegal activities, or may deal exclusively through subsidiaries and holding companies engaged in diverse legal and illegal activities throughout several States.

(5) the extreme sensitivity of the assigned cases, such as in the following examples:

The investigation would receive sustained and widespread coverage in the news media because of the prominence of the suspects if revealed, and could endanger lives if prematurely publicized;

The suspects' financial involvements extend to enterprises that have a significant impact on the national economy, e.g., the transportation or banking industries; or

The illegal activities reach into State and Federal affairs, e.g., through attempted bribery, collusion, or extortion of public officials.

(6) the extremely difficult planning and coordination problems and extensive and critical jurisdictional problems involved in completing investigations, for example:

Contacts in other jurisdictions may be involved in wide-scale criminal conspiracies, leading them to be used in double or triple capacities.

For classification to a given grade level, the guide instructs that a position should substantially meet most or all of these characteristics.

The three cases outlined earlier are evaluated below, corresponding to the above GS-13 level criteria.

[case name]

This case does not meet the GS-13 level for the following reasons:

(1) The organization investigated is not of the same degree of complexity and scope as described at that level. The single suspect involved in the investigation owned and operated two self-contained businesses, [company name], in [country], and [company name] in [country], although [company name] was discontinued while the investigation was in progress. This is not comparable to a “large number of primary and subsidiary activities, e.g., several principals of organized crime.” Although the case has limited international implications in that the suspect was a [country] citizen residing in [city], the violation investigated does not represent a potential threat to major segments of the national welfare or security, particularly considering that the items illegally exported were commercial aircraft parts with no military application. The investigation was not of a magnitude to constitute a significant deterrent to others, nor is there any suggestion that it may influence changes in laws or future court actions.

The appellant received some limited assistance from other Customs investigators stationed in [other cities and countries], primarily in the form of coordinating appointments and setting up contacts. This provision of routine technical assistance by other field offices, often as a matter of geographic convenience, is not tantamount to “piecing together evidence from investigators stationed throughout several States or the nation.” More substantive assistance was provided by an agent at the Customs Attache Office in [city], who served as the contact with [country] authorities, interviewed one of the witnesses, and was present at the conduct of the search warrant. However, the intent of the standard at this level, where the “suspects are prominent and numerous,” is that the investigation be of such scope that it requires that a number of investigators be assigned to the various segments of the case. In the [company name] case, there was one suspect under investigation, whose business and residence were co-located in [city]. The appellant served as case agent and primary investigator. Requesting assistance from other field offices when investigations cross jurisdictional lines is a common practice and not in itself indicative of the scope of a case. The [company name] case was not of such magnitude to require the efforts of a team of investigators stationed at numerous geographic locations, with the appellant directing or coordinating their activities, e.g., in the capacity of team leader.

(2) The organization investigated was of limited complexity and diversity in the sense intended by the standard. The suspect procured aircraft parts from U.S. suppliers and shipped them overseas for ultimate delivery to Iran Air. The only employees of the company were a few family members and a secretary in [city], plus three other employees in [country], some of whom may also have been family members. The [name] company in [country], which facilitated the trans-shipment of merchandise to Iran, was discontinued during the course of the investigation. This is not comparable to a large organization engaged in “the manufacture, distribution, and sale of legal or illegal goods in a national market involving a complex network of widespread distribution and sales outlets,” in that there was only one primary supplier and basically one customer.

(3) There have been no separate investigative matters deriving from this original assignment. Further, there was only one actual raid carried out as a result of the investigation, of the suspect’s residence/business location in [country]. In contrast, the GS-13 level envisions “large-scale raids and seizures throughout several States” that would be required in investigating organizations of the greater scale and complexity otherwise expected at that level.

(4) The suspect concealed his ownership of the [name] company in [country], and occasionally used letterhead from another company, [name], that he had set up for his son. However, the relationship of the suspect to these other companies had already been established when the appellant was assigned the case, and thus did not represent an element of “exceptional difficulty” in the appellant’s investigation. Although the suspect occasionally signed correspondence in the name of another individual associated with his company, this information was readily confirmed by a company employee and did not appreciably complicate the investigation or make it difficult to establish the suspect’s involvement in the company’s activities.

(5) There is no indication that this case involved “extreme sensitivity” equivalent to that described at the GS-13 level. The investigation and subsequent indictment were the subject of short articles in the Washington Times and [city newspaper name]. This cannot be considered “sustained and widespread coverage in the major news media because of the prominence of the suspects.” The suspect was basically a small, independent operator whose activities were limited to the sale of aircraft repair parts to Iran Air. Although the effect of the curtailment of his operation on Iran Air cannot be definitively established, the volume of sales (approximately \$3 million over a three year period) represents a fairly substantial amount. However, Iran Air has many identified suppliers, and consequently there is no indication that the loss of this source has had a national-level impact on the Iranian transportation industry.

(6) The appellant had to coordinate activities with [country] law enforcement authorities, especially the timing of their search of the suspect’s business. This one action is not equivalent to the “extremely difficult planning and coordination problems” or the “extensive jurisdictional problems” described at the GS-13 level.

The appellant reported serving as undercover agent for this assignment. This consisted of one meeting with the suspect in a [city], hotel room. This is not even equivalent to GS-12 level

undercover work, which involves penetration of close-knit groups over extended periods of time, and does not involve the GS-13 characteristic of extreme danger. Because there was only one meeting with the suspect, intended primarily to keep him occupied while the search warrant was served, the appellant did not have to develop an extensive personal history that could withstand scrutiny over time, nor did the appellant indicate that there was any appreciable element of risk in this meeting with the suspect.

[case name]

This case likewise does not meet the GS-13 level for the following reasons:

(1) The organization investigated does not exhibit the elements of complexity and scope required at that level. The company, [name], is owned and operated by the single suspect under investigation. The business' primary activity is the procurement and export of military equipment, although the suspect is also engaged to a lesser extent in the purchase and resale of [other items] under the same company name. The company has four employees. This is not equivalent to an organization "very complex in structure with a large number of primary and subsidiary activities, such as several principals of organized crime." The investigation is neither interregional nor nationwide in coverage as all of the suspect's activities that are currently under scrutiny are being carried out in the [State] area, i.e., the suspect is attempting to procure missile parts locally and the freight forwarder he uses is located in [city and State.] There is no evidence that this suspect represents a potential threat to the national welfare or security, nor does the investigation involve any unusual elements or legal questions that might influence changes in laws or court actions.

The appellant has requested assistance from the Customs offices in [two other countries] in identifying telephone subscribers to whom the suspect has placed calls. Requests of this nature are routine and are not equivalent to GS-13 criteria where investigators must piece together evidence from other investigators, geographically dispersed, who are working on different aspects of the case, and where the suspects are prominent and numerous and are engaged in complex activities. By contrast, this case involves a single suspect involved in the relatively straightforward procurement of military items.

(2) The organization investigated is of limited complexity and diversity without the "interrelated activities" expected at the GS-13 level. The company has only a few employees and one apparent business location. The suspected violation is relatively uncomplicated, i.e., the attempted purchase and export of controlled military items. An organization of this small scale would not exhibit the diversified interests and activities typical of those investigated at the GS-13 level.

(3) There have been no separate investigative matters deriving from this assignment as of yet, nor have there been any raids or seizures.

(4) There has been a notable lack of subterfuge on this suspect's part, i.e., no aliases or subsidiaries used to conceal his involvement in the company's activities. Thus, there has been no "extreme difficulty" in establishing interrelationships of fact and evidence.

(5) There is not yet any indication that this case will involve the "extreme sensitivity" expected at the GS-13 level, either in terms of the prominence of the suspect or the magnitude of the financial activities. This suspect is also a small, independent operator whose volume of business is not expected to be very large, considering that the appellant reported that the suspect was having difficulty finding suppliers. Regardless, since there is not even any information suggesting the monetary value of any prior transactions carried out by the suspect, no assumptions can be made as to the potential impact of his transactions.

(6) As noted above, the appellant's contacts with Customs agents in other jurisdictions have involved routine requests for information and have thus not presented any "extensive and critical jurisdictional problems" as expected at the GS-13 level.

[case name]

This case does not meet the GS-13 level for these reasons:

(1) The elements of complexity and scope addressed at the GS-13 level are not present. There is one suspect under investigation, owner of the [country] companies [names], co-located under the same roof. The suspect also co-owns and operates a [country] subsidiary, [name], which facilitates the diversion of military equipment to the Far East. This again does not constitute a large number of primary and subsidiary activities, as there are only one primary and one subsidiary company involved in the investigation. As addressed above, the facts that the suspect resides overseas and the items are being shipped trans-nationally are not sufficient in themselves to lend "international scope" to the investigation in the sense intended at the GS-13 level, in that the case does not have the associated element of magnitude requiring the coordination of separate investigations carried out as a team effort. There is no indication of threats to major segments of the national welfare or security, nor of potential influence on law or future court actions.

(2) [Company name] is, like the other operations discussed above, a relatively small operation involved in the purchase of military components in the U.S. and their subsequent diversion overseas, rather than an extremely complex organization with such diversified interests as manufacture, distribution, and sale in a national market with a widespread network of distribution and sales outlets. Further, when the appellant was assigned the case, investigation of the suspect's business operations overseas had been essentially completed. The appellant personally investigated only the suspect's U.S. suppliers, obtaining the export documents as part of the shipment trail. Thus, regardless of the ultimate size of the suspect's illegal operations, the appellant cannot be credited with having completed or overseen the entire investigation, and the GS-13 level under this element is consequently not met.

(3) The appellant reported that one of [company's] suppliers is now being investigated as a result of this case. This, however, is not equivalent to the "wide number of separate investigative matters" normally expected at the GS-13 level. Further, there have not yet been any raids or seizures conducted as a result of this investigation.

(4) The primary suspect in this case conceals his connection to the illegal activities under investigation. However, his involvement in the operation was established by the Customs Attache Office in the [country] before the appellant was assigned the case, precluding that the appellant be credited with "establishing the interrelationships of fact and evidence," as required at that level.

(5) There is no suggestion that the suspect's financial involvements are of the magnitude normally expected at the GS-13 level, nor would this case be expected to attract "sustained and widespread media coverage."

(6) There is no indication of "extensive and critical jurisdictional problems" as expected at that level. The mere fact that an investigation crosses jurisdictional lines is not sufficient to satisfy this criteria., as evidenced by the example provided at the GS-13 level where contacts in other jurisdictions are being used in double or triple capacities. In the [company name] case, the lines of jurisdictional responsibility were clearly drawn, with the [country] office establishing the trans-shipment of goods and the appellant investigating the export of the items from the U.S.

None of the above cases comes close to substantially meeting the GS-13 characteristics cited earlier. They are generally consistent with the GS-12 level in terms of such elements as: the cases are often initiated through tips or observation; the investigation must establish the complete shipment trail from procurement through the various export channels; the violation may be established only through careful tracking of export documentation and telephone calls; witnesses are often reluctant to cooperate either because of employment or business concerns; and investigations usually involve coordinating activities with foreign law enforcement authorities. These considerations establish that the position substantially meets most of the GS-12 characteristics cited earlier.

Level of Responsibility

The GS-12 investigator receives or generates his own case assignments, receiving few instructions on technical aspects of the work but rather general policy guidance (e.g., jurisdictional understandings, new court decisions, or authorization to follow a case into another district or region.) The GS-12 investigator plans his case independently, working out arrangements with other jurisdictions except in policy areas. Completed work is reviewed for accomplishment of overall objectives and adherence to policy.

The GS-13 investigator receives assignments through program discussions (e.g., conferences or written directives) that indicate broad objectives or areas of emphasis. After making a preliminary study of the assignment, the GS-13 investigator outlines the objectives and boundaries, identifies the resources needed, and plans for coordination with other jurisdictions. The GS-13 investigator

receives more generalized instructions than the GS-12 investigator, and review of work is typically in the form of discussions at certain critical points. The recommendations made by the GS-13 investigator for extension, modification, or adoption of new lines of inquiry are normally accepted by his superiors, although the cases are typically so important and sensitive that his plans must be cleared by the very highest levels in his agency. This is similar to the way the GS-12 investigator works, but since cases at the GS-13 level are so much more complex, critical, and sensitive than those at GS-12, unexpected problems indicating new lines of inquiry are much more common at the GS-13 level. Methods, techniques, and approaches to problems devised by the GS-13 investigator often set patterns for subsequent investigations in similar areas and often are adopted for use by lower-graded investigators. Investigations at the GS-13 level are planned and executed for the greatest possible deterrent impact. An extremely high degree of originality and initiative is required of the GS-13 investigator because the investigations involve inquiry into activities occurring throughout a wide area; suspected violators typically retain the best legal or accounting advice available; and investigations assigned often establish important precedents. For example, the assignment may be the first case to be investigated under a new provision of law, and the outcome may affect pending cases or influence the decision on such cases in the future.

Thus, regardless of the degree of independence with which an investigator operates, GS-13 level of responsibility is predicated on the performance of the more difficult and complex assignments otherwise associated with that level. For example, the investigations are so important and sensitive, or are of such broad scope, that the plans must be cleared by top agency management. Since the appellant's assigned cases are not of this degree of sensitivity or magnitude, the corresponding level of responsibility at GS-13 is not met.

Summary

Since the appellant's position is best evaluated at the GS-12 level with respect to both classification factors, it must be graded at GS-12 overall.

Decision

The appealed position is properly classified as Criminal Investigator, GS-1811-12.