

**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

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**Appellant:** [appellant's name]

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

**Organization:** Office of Special Agent in Charge  
Office of Enforcement  
U. S. Customs Service  
Department of the Treasury  
[location/address]

**Decision:** Criminal Investigator, GS-1811-12  
(Appeal denied)

**OPM Decision Number:** C-1811-12-01

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**Approved by:**

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

8/28/96  
Date

**Copy of decision sent to:**

[appellant's name and address]

[name]

Director, Human Resources

U. S. Customs Service

1301 Constitution Avenue, NW

Washington, D. C. 20229

## **INTRODUCTION**

The appealed position is located in the Office of the Special Agent in Charge, Office of Enforcement, U. S. Customs Service [location/address]. The current classification is Criminal Investigator, GS-1811-12. The appellant contends that the position should be classified at GS-13.

This decision is the final administrative decision of the Government, subject to discretionary review only under the conditions and time limits specified in sections 511.605 and 511.613 of title 5, Code of Federal Regulations.

## **POSITION INFORMATION**

The appellant is assigned to a standard agency-wide position description for Criminal Investigator, GS-1811-12. He performs as a journeyman-level Special Agent with responsibility for initiating, conducting, and coordinating complex investigations that involve violations of laws enforced by the U.S. Customs Service.

## **SERIES AND TITLE DETERMINATION**

The appellant does not question the series and title of his position. We find the appellant's position is properly allocated to the GS-1811 Criminal Investigation Series with Criminal Investigator as the appropriate title.

## **GRADE LEVEL DETERMINATION**

The Grade-level Guide for Classifying Investigator Positions, GS-1811, dated February 1972, was used to make a grade level determination. The standard 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 such elements as the level of difficulty involved in resolving conflicting facts or evidence, the difficulty and complexity imposed by the subjects of 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 assignments, and the jurisdictional problems involved in case assignments. The second factor, level of responsibility, measures the kind and extent of supervision that is given and the degree of resourcefulness required in finding and verifying information pertinent to cases assigned.

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-12 and GS-13, a position should substantially meet the characteristics illustrated in most or all of the six elements

that describe the complexity of assignments, as well as meet the level of responsibility described at each grade level.

The following three cases were used to evaluate the duties and responsibilities of the appellant. These cases were submitted by the appellant as being representative of the most complex cases he has investigated since 1989. Information gathered regarding these cases was obtained from written documents and oral statements provided by the appellant and from oral statements provided by the appellant's supervisor.

**[name]:** This case was initiated and investigated by the appellant during the month of March 1990 based on a request from the [location] Radar Network and the U. S. Customs [location] Air Branch. The case involved [name], a pilot and Canadian National, who was smuggling large quantities of marijuana into the United States from Mexico by airplane and then into Canada for distribution. The investigation resulted in the arrest and ultimate deportation of the [name] to Canada for trial and sentencing. The case resulted in one indictment, one arrest, and the seizure of one aircraft. The arrest and deportation of [name] ended the appellant's investigation of this case. Through the appellant's interrogation of [name] about the organization for which he worked, a smuggling operation involved in activities in northern [state name], [state name], and Canada was identified. This information was forwarded to the [city] and [city] Customs Offices of Investigation for use in further investigation of the subject organization in their jurisdictions and for sharing with Canadian officials. The appellant was not involved in these investigations.

**[name]:** This investigation was initiated by the appellant in 1994 based on information provided by a confidential source. This source was developed by the appellant during his assignment to address the problem with port runners at border check points between [city], Mexico, and [city/state name]. The investigation involved the [name] organization that smuggled marijuana and cocaine across the [city in Mexico]/[U.S. City] border into the United States on a contract basis for various organizations. The organizations for which the [name] organization worked were based in Mexico and had distribution points in the United States. The subjects of the investigation delivered the narcotics to representatives of the organizations for which they were smuggling. The [name] organization was not involved in the distribution process. The [name] organization used an automobile repair business as a front for its illegal narcotics transport business. Although Customs initiated this investigation, the Drug Enforcement Administration (DEA) became the lead agency in the case. Ultimately, the investigation required coordination between the DEA; the U.S. Customs Service; the Immigration and Naturalization Service (I&NS); the U. S. Marshals Service; the Bureau of Alcohol, Tobacco and Firearms; the [name] County Sheriff's Office; and the [name] County Metro Narcotics Task Force. Telephone wire intercepts were used in the investigation, based on affidavits completed and submitted by DEA investigators. Pen registers and court order seals on intercepts were also used. The investigation resulted in 23 Federal and 9

State indictments, 51 seizures (including 4 tons of cocaine and 2 tons of marijuana), and 37 arrests. The major aspects of the case have been completed, but some fugitives remain at large. No other investigations have grown from this case. However, the [name] organization was one of the contract crossing organizations used by an individual considered by the Department of Justice (DOJ) as being the number one drug lord in Mexico whose organization is involved in extensive drug activities in the United States. Based on the information developed during the [name] case, the DOJ for the first time has substantial hard data to use in developing a historical research case against this Mexican drug lord. In addition, Customs has information on new contract crossing organizations that are being formed by previous members of the [name] organization.

**[name]:** This case was investigated by the appellant over a five-year period. It was initiated based on information provided by a [name] County, [state name], deputy who had made a seizure at a border check point. The deputy placed the appellant in contact with a confidential source who gave him information regarding the [name] organization. A historical research case was mounted initially by the appellant in order to get the information needed to establish a profile on the organization's operations. The case involved a well-established, family run organization which was responsible for the smuggling and distribution of large quantities of marijuana in the [city and state names], area. The organization owned and operated an automobile repair shop in [city] through which automobiles were bought for use in transporting narcotics. The marijuana smuggled into the United States from Mexico passed through [another city name] in route to [first city's name], but was rarely, if ever, warehoused in the [second city's name] area. The investigation involved coordination and liaison with State, county, and local law enforcement officials in [state name], the West [state name] Multi-County Narcotics Task Force, the I&NS, DEA, and Customs. The appellant was the primary case agent with responsibility for coordinating the investigative efforts of all the agencies involved. The investigation resulted in 33 State and 11 Federal indictments, 33 vehicle seizures, 31 marijuana seizures totaling 4750 pounds, and 52 arrests. No other investigations have stemmed from the investigation of the [name] organization.

### **Factor 1- Complexity of Assignments**

Element one: This element considers the level of difficulty involved in resolving conflicting facts or evidence.

At the GS-12 level, evidence is difficult to work with because it is fragmentary or cold and circumstantial rather than directly verifiable. Improper development and conduct of the investigation could cause significant repercussions by embarrassing the principals or the agency. At the GS-13 level, assignments involve investigations of legal or illegal organizations that are very complex in structure with a large number of primary and subsidiary activities, e.g., several principals of organized crime that are officially recognized in law enforcement as national threats to the peace and stability of the

nation. There are typically indications of actual or potential threats or challenges to major segments of the national welfare or security. At this level the investigator must piece together evidence that comes from other investigators stationed throughout several States. From this evidence, the investigator instructs separate investigators or units of investigators working on segments of the case, being aware of the implications of precedent court decisions in several judicial and law enforcement jurisdictions.

The appellant became involved in the cases cited above based on information provided by confidential informants in two cases [names of second and third cases] and by another government organization in the third [name]. The [name of first case] case basically required the investigation of a lone suspect employed by a criminal organization to smuggle narcotics from Mexico to Canada across the borders of the United States, specifically through [city]. The case required about a week of investigative work from inception to closure in the [city] area. The subject in this case was forthcoming with information regarding his role in the organization for which he worked and with information pertaining to the organization. This information was forwarded to Customs offices in two other States for their use in investigating the organization by which the subject was employed. The organization had no distribution and sales points in the [city] area. Therefore, the investigation in this case ended with the deportation of the suspect. The information on which the investigations in the [names of second and third cases] cases was based was circumstantial and required significant efforts to develop evidence that would lead to the identification and investigation of the heads of the organizations. The leaders of both organizations were separated from the actual smuggling and trafficking of narcotics by a number of drivers and middlemen. This evidence was developed jointly by the appellant and the investigators from other law enforcement jurisdictions. In developing these two cases, the appellant relied on information obtained through confidential informants; undercover operations; controlled deliveries; stationary, mobile, and air surveillance; defendant interviews; and electronic and photographic surveillance equipment. In the [name] case, telephone wire intercepts and pen registers were also used. In both cases, the investigation had to be handled in a discreet manner to protect the confidential information sources who, in some cases, continued to work inside the organizations. This is typical of the GS-12 level where initial evidence is circumstantial and requires the employment of sophisticated investigative techniques to develop hard evidence of the relationship between the smugglers and the principals of the organizations.

The organizations investigated by the appellant are not typical of those described at the GS-13 level. The structure of neither the [name] nor the [name] organization was complex. Both were involved in only one major activity, the trafficking of narcotics-- Gutierrez in the smuggling and distribution of marijuana and [name] in the smuggling of marijuana and cocaine. The organizations and the suspects were not officially recognized as national threats to the peace and stability of the nation. The

investigations did not involve major interregional dimensions and were not nationwide in coverage or origin. The appellant did not have investigators stationed throughout several States with the responsibility of providing him with case evidence. The GS-13 level is not met on this element.

This element is evaluated at the GS-12 level.

Element two: This element covers the difficulty and complexity imposed by the subjects of investigations.

At the GS-12 level, subjects typically are (1) suspected or known smugglers, racketeers, etc., who are known as prominent figures in organized crime or subversion; (2) principals or financial backers in an organization consisting of separate manufacturers, distributors, and transporters of illegal goods, drugs, or counterfeit money; (3) figures with financial interests overlapping several activities that are both legal and illegal; or (4) heads of organizations involved in legitimate businesses who are suspected of fraudulent activities.

At the GS-13 level, subjects are suspected of being foreign agents who, with several associates, are planning acts extremely harmful to national security. Also, organizations under investigation have 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.

The [names of second and third cases] organizations were involved in organized criminal activities, namely the trafficking of narcotics across the U. S./Mexican border. The [name] organization was recognized in [city] law enforcement circles as being the premier contract crossing organization in the [city] area. This organization had no operations located elsewhere in the country. The [name] organization was recognized as a major distributor and seller of marijuana in the [city] area. Its distribution and sales activities were also localized and did not extend beyond the [city] area. The difficulty and complexity imposed by the subjects of these investigations meet the GS-12 level criteria of the standard. Neither of these organizations nor their leaders is analogous to the descriptions at the GS-13 level of the standard.

This element is evaluated at the GS-12 level.

Element three: 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 to involve large-scale raids and seizures throughout several States, requiring the investigator to lead and coordinate several units of investigators from his own and other agencies in tracing leads and gathering information.

The cases cited by the appellant began with an initial subject and led to further interrogation and documentary search in order to reach others involved in the suspected illegal activity. For example, in the [name] case, information provided by informants led to the drivers who did the actual border crossings and on through various layers to the highest levels of the organizations where the smuggling and distribution operations were planned. The [name] case required a historical search to establish information on the organization's pattern of activities over time in order to build a conspiracy case. These two cases are typical of GS-12 level cases where the investigation begins with circumstantial evidence that leads to lower echelon suspects and eventually to the piecing together of fragmentary evidence, through the use of various investigative techniques, which leads to the backers of the organization.

The complexity of the organizations investigated, the tie-in to legitimate business activities, and the scope of the raid and seizure activities led by the appellant do not meet the GS-13 level criteria described for this element. Two of the criminal organizations investigated by the appellant each used an automobile repair business as the front for its criminal activities. However, their business activities had no proven tie-in with legitimate business activities of prominent political, business, or professional leaders. Likewise, the appellant's cases did not involve large-scale raids and seizures throughout several States which involved him in leading and coordinating the work of investigators from Customs and other law enforcement agencies, as described at the GS-13 level. The [name] investigation involved a large arrest operation in the [city] area which resulted in the simultaneous execution of 17 Federal arrest warrants and 20 Federal search warrants by 154 Federal, State, and local agents and officers in a single day. Twenty-two additional residences were searched by consent of the owners or occupants. In this operation, the appellant was not the lead agent for the case but was responsible for a team of eight officers and served two search warrants and conducted five consent searches. He was responsible for coordinating all of the subsequent search and arrest warrant operations. The appellant had the lead responsibility in the [name] case which required the coordination of investigators and the conduct of raids at locations in and around the [city] area. Although the raids resulted in large numbers of



arrests, the raid and seizure activity did not extend throughout several States as is typical at the GS-13 level.

This element is evaluated at the GS-12 level.

Element four: This element deals with the degree of difficulty involved in establishing the relationships of fact and evidence.

At the GS-12 level, the subject suspected of engaging in major and complex criminal activities is separated from the overt violation by a middleman or organization, requiring the investigator to use techniques such as surveillance, radio communication, and toll-call checks to establish a direct link between the suspect and other violators. Investigators at this level are required to verify and evaluate information with extreme care and may pit one violator or witness against another or extensively check the word of one against another. They must be careful to avoid invasion of privacy or entrapment because of the prominence of the subject or the importance of the case.

At the GS-13 level, the interrelationship of fact and evidence is extremely difficult to establish because subjects use fictitious names or are otherwise clearly separated from each other and from the illegal activities under investigation. The subjects deal exclusively through subsidiaries and holding companies that engage in diversified mixtures of legal and illegal activities throughout wide sections of the country. The GS-13 investigator coordinates the work of other investigators or teams of investigators that involves segments of the case that fully equate to cases at the GS-12 level of difficulty.

The two major investigative cases submitted by the appellant meet the GS-12 level criteria for establishing the relationships of facts and evidence. The smuggling and distribution of marijuana was the primary business of the [name] organization. The [name] organization was involved primarily in the smuggling of marijuana and cocaine. In both cases, the leaders of the organizations were separated from the day-to-day smuggling and distribution processes by large numbers of drivers and other individuals who dealt directly with the border crossing operations and other aspects of the organizations' operations. In order to link the principals of the organizations, a variety of surveillance and undercover activities were employed. Both investigations required the use of investigative techniques such as air, mobile, and stationary surveillance, cooperating defendants, confidential sources, and electronic and photographic surveillance equipment to establish evidence in the case. The [name] investigation required the cultivation of confidential sources within the family of the leaders of the organization. This required the use of special efforts to conceal the individual's identity in order to protect that person's life and welfare and to preserve this very important confidential source of information. The [name] investigation included the use of 12 telephone wire intercepts, the affidavits for which were prepared by the DEA lead case agent. According to his supervisor, the appellant was involved by the DEA agent in

drafting the affidavits for training purposes. On court approval of the telephone wire intercepts, the appellant was responsible for a large portion of the surveillance operations supporting the intercepts.

The investigative assignments do not meet the GS-13 level illustrations. There is no evidence that the subjects involved in the case examples deal exclusively through subsidiaries and holding companies that engage in diversified mixtures of legal and illegal activities throughout wide geographic areas. The subjects of the appellant's investigations were involved in straightforward, localized automobile repair businesses which served as fronts for their narcotics smuggling operations. These businesses had no apparent links to any other business operations. The suspects were not of the prominence defined at the GS-13 level.

This element is evaluated at the GS-12 level.

Element five: This element covers the degree of sensitivity involved with investigative assignments.

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 explode into an important Federal case. The subject and his 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.

The subjects of the investigations conducted by the appellant are not of the prominence or subject to the kind of media publicity described at the GS-12 level of the standard. However, some of the subjects have an alleged tie-in with a notorious drug lord in Mexico, against whose drug empire the Department of Justice is attempting to build a historical research case. The notoriety and alleged viciousness of this drug lord are of such that there are particular sensitivities associated with building and retaining the confidence and protecting the identity of confidential sources and potential witnesses so as not to jeopardize their contributions to the success of the investigations. This is sufficiently analogous to the examples at the GS-12 but does not meet the level of sensitivity described at the GS-13 level.

Investigative assignments at the GS-13 level typically involve matters of extreme sensitivity. Examples of work that meets this level include: (1) investigations that would receive sustained and widespread coverage in the major news media because of the prominence of the suspects or victims of the crime or threat if the investigation became public knowledge prematurely; (2) investigations in which the suspects' financial involvements extend to enterprises that have a significant impact on the national economy; and (3) investigations in which the suspects are principals in financial or other

enterprises that reach into State and Federal affairs, e.g., through attempted bribery, fraud, collusion, or extortion of public officials.

The appellant's investigative assignments do not involve matters of extreme sensitivity equivalent to the examples cited above. The subjects of his investigations are not of the level of prominence that would lead to the kind of media attention described at the GS-13 level. The financial enterprises of the subjects in the [names of second and third cases] cases are primarily single location automobile repair businesses which are not equivalent to the two latter examples illustrating GS-13 level sensitivity.

This element is evaluated at the GS-12 level.

Element six: This element considers the degree of jurisdictional problems involved in case assignments.

At the GS-12 level, subjects are engaged in activities, e.g., drug use, traffic and smuggling, that are the concern of several local, county, State, and Federal agencies. These cases involve a web of relationships that requires an extensive knowledge of the laws, rules, policies, and practices of each of the jurisdictions because, for example, the investigator often plans and times raids and surveillance that involve use of local law enforcement agencies.

At the GS-13 level, cases involve extremely difficult planning and coordination problems because of extensive jurisdictional problems. For example, evidence may warn the GS-13 investigators that their contacts in other jurisdictions are themselves involved in wide-scale criminal conspiracies, which require the investigator to use such suspects in double or triple capacities, e.g., in getting and exchanging information without permitting such suspects to realize how they are being used.

The jurisdictional problems involved in the appellant's case assignments meet the GS- 12 level criteria. The appellant worked with law enforcement officials in the I&NS; DEA; the Bureau of Alcohol, Tobacco and Firearms; State and various county and local jurisdictions; the [name] County Metro Narcotics Task Force; and the West [state name] Multi-County Narcotics Task Force to investigate organized marijuana and cocaine smuggling operations. The level of the appellant's responsibilities varied in the [names of second and third cases] cases. He was the lead case agent in the [name] case, and was the Customs lead case agent in the [name] case for which DEA had the lead responsibility. However, in both he was responsible for working directly with various law enforcement agencies. Cooperation among these different agencies and offices is fundamental to the success of any investigation. Although no major jurisdictional problems were encountered in these investigations, the appellant was required to have an extensive knowledge of the rules, policies, and practices of all the agencies represented in the investigations in order to work effectively with them. The appellant

worked closely with agents in both cases in planning, coordinating, and implementing the investigations. This included planning the evidence gathering processes and planning and executing arrest, search, and seizure warrants. The appellant also worked closely with the U. S. Attorney's Office in preparing for trial. In both cases, he wrote the criminal syllabus and was appointed as the case agent for the trial.

There were no jurisdictional problems involved in the appellant's case assignments that entail complexities equivalent to those described for GS-13 level assignments.

This element is evaluated at the GS-12 level.

#### Undercover, Surveillance, and Protection Work

At the GS-12 level, undercover work involves an elaborate cover story that allows the investigator to work his way into closely-knit groups over extended periods of time. Surveillance work entails observing a subject and his associates over a period of time to link all the persons involved in suspected illegal activities. The investigator plans and directs surveillance work that involves several investigators in separate places engaged in round-the-clock observation of various groups of suspects. The investigator makes such decisions as which suspects to follow when groups divide, which house or apartment of several to observe, and when to call off the surveillance.

At the GS-13 level, the investigator serves as a key person or coordinator in undercover, surveillance, and protection work that involves extremely complex, delicate, or dangerous elements.

Although the appellant may perform undercover or protection work periodically, none of the representative cases he submitted required either undercover or protection work. The appellant was involved in surveillance activities during the investigations of the [names of second and third cases] cases. In both, stationary, mobile, and air surveillance activities were involved, and electronic and photographic surveillance equipment was used. The appellant had overall responsibility for coordinating these activities in the [name] case and participated in coordinating and implementing these activities in the [name] case. The DEA was the lead agency in the latter case. Telephone wire intercepts were used in the [name] case. The DEA was responsible for operations related to these intercepts; however, the appellant ran a large portion of the surveillance operations supporting the intercepts. Information gained through the intercepts was used by the appellant in directing and coordinating round-the-clock surveillance activities performed by several investigators at ports of entry and other physical locations. The purposes of these activities were not only to link the various principals to the illegal narcotics activities but also to identify their business locations and to establish patterns of operations in order to plan the most appropriate times to execute search, seizure, and arrest warrants. This involved making decisions on when and

where to send investigators, determining when teams were necessary, when and if to separate them, and who and what to observe. In some instances, the appellant was personally involved in the surveillance activities. This is comparable to the GS-12 level of surveillance. It does not meet the GS-13 level, which requires the surveillance activity to be extremely complex, delicate or dangerous.

The seven elements discussed under Factor 1 were all found to be at the GS-12 level. Therefore, this factor is evaluated at the GS-12 level.

## **Factor 2 - Level of Responsibility**

This factor measures the kind and extent of supervision that is given to investigators and the degree of resourcefulness required in finding and verifying information pertinent to cases assigned.

At the GS-12 level, investigators receive or generate their own case assignments. The investigator receives few instructions on technical aspects of the work, but is given mostly policy guidance. Completed work is reviewed for accomplishment of overall objectives and adherence to policy. The investigator is responsible for independently planning cases and working out arrangements with other Federal, State, and local jurisdictions, except in policy areas.

At the GS-13 level, investigators receive assignments through program discussions, conferences, or written directives that outline broad objectives, e.g., to stop the smuggling of a particular commodity at a given port. The GS-13 investigator outlines the objectives and boundaries of the assignment, plans the resources needed, and includes plans for assuring coordination with other jurisdictions. Instructions are more generalized than at the GS-12 level, and review of work is typically in the form of discussions at certain critical points in the investigation. Recommendations are normally accepted, although the cases are typically so important that plans must be cleared by the very highest officials in the agency. Methods, techniques, and approaches to problems devised by the GS-13 investigator often set patterns for subsequent investigations in similar areas and are often adopted for use by investigators at lower grades. The GS-13 investigator is responsible for devising breakthroughs in investigative approaches, techniques, and policies, as well as for completing assigned cases.

The appellant works under the general supervision of a group supervisor. His case assignments are both assigned and self-generated, as at the GS-12 level. The appellant is given few technical instructions and some guidance in working his cases. He follows agency policies and directions, and uses laws, regulations, and court rulings as guidelines in accomplishing his work. His group supervisor is available to give guidance on investigative matters when necessary, but in most instances he is expected to perform with extreme independence and, as such, independently develop his own cases and

coordinate investigative activities with other law enforcement agencies. The appellant's completed work is reviewed primarily for overall adequacy in meeting predetermined standards. This level of responsibility is equivalent to that expected of a GS-12 investigator.

As both factors were credited at the GS-12 level, we find the appellant's position correctly graded at the GS-12 level.

## **DECISION**

The appealed position is correctly graded at the GS-12 level and properly classified as Criminal Investigator, GS-1811-12.