

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: AO1243

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

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

OPM Decision Number: C-1811-12-04

Approved by:

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

7/25/97
Date

Copy of decision sent to:

[appellant's name and address]

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

Director of Personnel Policy
U.S. Department of the Treasury
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INTRODUCTION

This position is assigned to the [appellant's activity in the 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

Approximately 30 criminal investigators are assigned to three groups within the [appellant's activity]. Two of the three groups are identified: (1) Special Operations, i.e., undercover; and (2) General Smuggling. The third group is in a transitional state. It was unnamed at the time of our audit, and its group supervisor position was vacant. The appellant is assigned to the General Smuggling group.

Organizationally, the RAC [Resident Agent-in-Charge] is a GS-1811-15, Supervisory Criminal Investigator; the three group supervisors are GS-1811-14's; and the remaining criminal investigators are either GS-1811-13 senior special agents or GS-1811-12 journeyman special agents. The groups also include positions of GS-132-12 Intelligence Research Specialists. As a GS-1811-12 special agent, the appellant is responsible for initiating, conducting, and coordinating complex investigations of possible violations of Customs and related laws and regulations and for directing the activities of other agents during investigations, when their assistance is provided. The appellant's investigative assignments include, but are not limited to, money laundering activities, wildlife trafficking, child pornography, narcotics trafficking, the fraudulent import and export of merchandise, and smuggling violations.

As a journeyman agent, the appellant serves as the case agent in many of his assignments. Case agents develop basic strategies, tactics, methods, and techniques for their investigations, i.e., they plan all aspects of assigned investigations including any raids or searches required. They are responsible for the proper processing of all seizures and arrests made in conjunction with an investigation. As a case agent, when the nature of the investigation requires resources to augment his activities, the appellant becomes the team leader with responsibility for directing and managing the investigation, identifying the resources required, acquiring and utilizing resources, and coordinating the investigation with field offices of the Customs Service as well as with other Federal, State, and local law enforcement agencies, e.g., the U.S. Department of Agriculture Fish and Wildlife Service.

As a journeyman agent, the appellant represents the Customs Service when he presents cases to the U.S. Attorney's office for prosecution. Case presentation involves identifying the provisions of law violated, providing proofs of evidence, and producing sources of proof, e.g., witnesses and other physical evidence to meet proof requirements.

Although the appellant performs his duties with extensive independence and relies on his own training and experience to make judgments and decisions on how to conduct investigations, his supervisor reviews all reports of investigation (ROI's). Group supervisors commonly perform 100 percent reviews to ensure that investigators do not violate laws in performing their investigatory duties and that their cases meet evidentiary requirements. Group supervisors do not "run" cases or perform surveillance for their investigators. However, they may accompany investigators on site to observe and give advice on handling situations. If a supervisor determines that a situation is improperly handled, the supervisor advises the agent to correct the mistake rather than personally assuming control of the situation.

The appellant does not dispute the accuracy of his position description. However, he asserts that his involvement in Operation Jungle Trade from around May 1995 to July 1997 is equivalent to GS-13 level work in degree of complexity and level of responsibility. The pivotal issue to be decided by this appeal is whether the appellant's involvement in Operation Jungle Trade combined with his other case assignments is sufficient in complexity and responsibility to support reclassification of his position to the GS-13 level.

SERIES AND TITLE DETERMINATION

The appellant does not dispute the series and title designation of his position. We agree that the position is properly assigned to the GS-1811 series and titled "Criminal Investigator."

GRADE DETERMINATION

The appropriate position classification standards for determining the proper grade level of the appellant's position are the GS-1810/1811, Grade-Level Guides for Classifying Investigator Positions, dated February 1972. To distinguish between grade levels, the GS-1810/1811 Guide uses two factors: Complexity of Assignments and Level of Responsibility.

According to occupational information in the standard, 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. Another commonality investigators share is that from time to time, regardless of grade level, they 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 standard 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.

Because of the nature of investigations, work that is performed over a substantial period of time that is representative and typical of the cases for which the investigator is primarily responsible must be reviewed to determine the proper classification. OPM determined in

previous decisions that substantially more than one year is a sufficient period of time to yield adequate information. In determining the proper classification of the appellant's position, we considered 10 representative cases which the appellant identified as his most important assignments during the past three years. Three of the 10 cases are part of Operation Jungle Trade. The following is a synopsis of the sample of cases submitted by the appellant as part of his appeal.

Representative Sample of Cases

<u>Date Assigned</u>	<u>Case Title</u>	<u>Case Topic</u>
09-12-94	[case 1]	Marine Smuggling
04-09-95	[case 2]	Fraud
05-01-95	[case 3]	Drug Smuggling
08-14-95	[case 4]	Marijuana Smuggling
11-28-95	[case 5]	Fraud
04-25-97	[case 6]	Illegal Weapons Exports
06-17-97	[case 7]	Pill Smuggling
09-22-95	[case 8]*	Psittacine Bird Smuggling
05-06-96	[case 9]*	Psittacine Bird Smuggling
06-07-96	[case 10]*	Psittacine Smuggling/Sales

*Operation Jungle Trade cases

[Case 1]

This case involved the seizure of a "go-fast" vessel off the coast of Key West, Florida, that was suspected of being used to smuggle illegal aliens into the United States from Cuba. The appellant was one of two Customs agents who accompanied U.S. Border Patrol anti-smuggling agents in the arrest and seizure of the occupants and the vessel. The U.S. Border Patrol was responsible for pursuing prosecution.

[Case 2]

The appellant was assigned to investigate allegations about the slaughter, preservation, and shipment of stolen cats from Mexico to biological supply companies in the United States for distribution to schools as dissection samples. His investigation involved contacting Customs inspectors about shipments of experimental animals, identifying companies involved in animal importation, performing records checks of principal exporting and importing companies, interviewing the customs contractor/broker, examining shipment manifests, and physically examining sample cargo. This was a short-term investigation in which no violations of United States law were found. The case was closed.

[Case 3]

The appellant received a tip from an informant about a suspicious package being shipped by commercial mail service from Brownsville to a small town in Georgia. The appellant notified the Georgia Bureau of Investigation (GBI). Its agents seized the package (which contained four pounds of marijuana) and conducted a controlled delivery which resulted in two arrests. Over a five-month period, the appellant, as part of a joint investigation with the GBI and the SAC-Atlanta, uncovered a marijuana smuggling network with principals located in Texas and Georgia. The appellant's involvement ended with indictments pending from the Atlanta Assistant U.S. Attorney's Office.

[Case 4]

This case involved providing assistance to the SAC-Atlanta to relocate the family of a cooperating defendant arrested in Georgia for possession of 170 pounds of marijuana and determining the whereabouts of three individuals in anticipation of serving arrest warrants for their involvement in the illegal distribution of marijuana. The appellant, along with other Customs agents, relocated the defendant's family, conducted surveillance, located the suspects, executed arrest warrants, conducted premise searches, and interviewed those taken into custody. The three suspects were placed in the county jail. The case went to trial in Atlanta in January 1996.

[Case 5]

This case originated from a RAC/Laredo duty call about a cargo container suspected of containing smuggled currency en route from the United States to Mexico, crossing at Brownsville. The company and its owners were targets of an Organized Crime Task Force investigation and were suspected of money laundering activities. The appellant arranged for a Customs Contraband Enforcement Team to examine the contents of the truck trailer. Upon examination, the team found serious discrepancies between the manifest and the actual cargo. However, they did not locate any hidden currency. The appellant stopped a crossing at the Brownsville Port of Entry, but the owners were able to re-route the shipment to another point and successfully cross into Mexico. The case was closed within one month with a recommendation from the appellant to subject all future [company] shipments to a 100 percent secondary investigation.

[Case 6]

This case originated when an informant advised the [appellant's RAC] that [person 6] and an unidentified Kingsville, Texas, police officer were involved in the sale and smuggling of weapons and war materials, e.g, assault rifles, semi-automatic handguns, and grenades, from the United States to Mexico. [Person 6] is described as an ex-Mexican Customs officer and is alleged to be a relative of a high profile Mexican drug trafficker recently sentenced in Federal court to several life sentences for running the Gulf Cartel. There may be a drug

trafficking connection to this case in that [person 6's] son was arrested for cocaine delivery in June 1995, along with the son of an alleged large-scale cocaine smuggler located in the Brownsville area. A suspected middleman for narcotics transactions has been observed also visiting [person 6]. The investigation is on-going and the Bureau of Alcohol, Tobacco, and Firearms and U.S. Attorney's office are participating in the investigation. Surveillance activities and meetings with the informant have been conducted jointly with the appellant's supervisor.

[Case 7]

This case involves the seizure of prohibited/restricted Mexican pharmaceuticals during a border crossing in Brownsville. The appellant seized the physical evidence after it was uncovered by customs inspectors, interviewed the subjects, and prepared and presented the criminal complaint. The U.S. Attorney authorized Federal prosecution.

Operation Jungle Trade

Jungle Trade is a certified undercover operation initiated and run by the [appellant's RAC] to investigate exotic animal/Psittacine (parrot) smuggling and sales throughout the United States. The operation commenced in May 1995 even though it functioned prior to this date under separate case numbers and guidelines. Jungle Trade uses undercover agents and confidential informants to establish and maintain contact with wildlife (especially Psittacine birds) smugglers and to operate a proprietary business that gives the appearance of being an intermediary between illicit foreign sources and distributors in the United States.

Since the operation began, there have been 24 arrests, nine indictments, and seven convictions. A total of 540 endangered Psittacine birds, with a domestic value of a quarter of a million dollars, have been seized. Many of the animals are priceless due to their rarity in the wild. Fifteen controlled purchases of Psittacine birds along the Southwest border and 10 controlled deliveries of the birds throughout the United States have taken place throughout the course of Operation Jungle Trade. The operation has involved 42 Customs and U.S. Fish and Wildlife offices, several Customs attachés in foreign countries, and multiple domestic and foreign law enforcement agencies. Jungle Trade is also contributing to the protection of the United States poultry industry. Newcastle disease and psittacosis present serious threats to domestic poultry and are carried by illegally smuggled birds. Jungle Trade is a type of case that has generated intense media coverage and societal awareness.

The principal agents responsible for orchestrating Jungle Trade, with its more than 40 spin-off investigations, are its GS-13 project manager and the appellant. As the case agent for Operation Jungle Trade, the appellant is principally involved in its overall implementation and administration. He shares many administrative responsibilities with the project manager, e.g., handling calls from informants and distributors seeking contraband birds, coordinating actions with the U.S. Fish and Wildlife Service, and housing and caring for the birds. To enhance penetration and infiltration of the network of Mexican and domestic wildlife traffickers, the

project manager, another senior agent, and the appellant (accompanied by the operation's two principal confidential informants), attend trade (bird) shows throughout the United States to establish and maintain an identity as Psittacine bird suppliers. Some retailers are suspected of purchasing illegal birds and "laundering" them through their own legitimate aviaries.

The project manager devotes about 75 percent of his time to Jungle Trade activities, which include handling the financial aspects of the business, preparing monthly case reports, conducting briefings, and responding to inquiries from Customs headquarters, as well as determining overall investigative strategies and conducting several spin-off investigations as the individual case agent. About 60 percent of the appellant's time is spent on Jungle Trade activities. As its case agent, he is responsible for organizing evidence obtained from spin-off cases since most seizures and arrests are expected to occur at the conclusion of the operation (within six months). He handles the upkeep of all input into the database and will prepare the criminal syllabus for the operation when it goes to trial. He also works with an analyst to prepare charts depicting the link-line between smugglers and distributors and visually tracking the sequences of transactions. As the primary undercover agent, the appellant has performed the most dangerous and difficult part of the operation, crossing the border to negotiate purchases of Psittacine birds from illicit sources.

At its conclusion, Jungle Trade will be prosecuted as one large case. The project manager will serve as the U.S. Attorney's technical representative and the appellant is expected to provide the bulk of testimony as the primary undercover and evidence collection agent.

The appellant is listed as the case agent for only three Jungle Trade spin-off cases in which significant individual (appellant) and total case hours have been charged: [cases 8, 9, and 10].

[Case 8]

[Person 8] and his [brother] head a large scale bird supply and smuggling operation located in Nuevo Laredo, Mexico. The appellant was the principal undercover agent responsible for orchestrating and carrying out six controlled purchases of Psittacine birds from them from September 1995 to May 1996. Direct contact with [person 8 and his brother] ended in May 1996 when the appellant informed [person 8] "not to hold any more birds for me." This case was extensively coordinated with the U.S. Fish and Wildlife Service and the RAC-Laredo, but it represents the most extensive work the appellant directly performed on a single spin-off case.

[Case 9]

[Case 9] was conducted as a joint investigation with the U.S. Fish and Wildlife Service. Fish and Wildlife agents performed the majority of the investigative work. The appellant primarily

performed surveillance and obtained subscriber and toll information. In August 1996, a grand jury returned a nine-count indictment which resulted in a 27-month jail term for [person 9].

[Case 10]

This case originated from a U.S. Fish and Wildlife Service request for Operation Jungle Trade to target individuals suspected of buying and reselling contraband Psittacines at bird shows in Oklahoma City, Oklahoma, and Galveston, Texas. Two [appellant's activity] senior agents performed most of the undercover work on this spin-off case which involved making trips to bird shows (e.g., in Oklahoma City, Dallas, San Antonio) for the purpose of making controlled sales of Jungle Trade birds to suspected distributors of contraband birds. The appellant's primary involvement has been conducting toll checks, requesting pen registers, preparing summonses, performing telephone inquiries, and writing ROI's. This spin-off case is still active.

Complexity of Assignments

This factor measures the scope, complexity, and sensitivity of investigative assignments. Six elements are used to distinguish between grade levels. To be classified at a particular grade level, a position should substantially meet the characteristics illustrated in most or all of these elements. These elements include:

1. difficulty in resolving conflicts in facts or evidence;
2. difficulty and complexity imposed by the subjects of the investigations;
3. number of separate investigative matters that grow from the original assignments;
4. degree of skill required to establish the interrelationship of facts and evidence;
5. sensitivity of assigned cases; and
6. jurisdictional problems involved.

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 rise to a GS-13 level of difficulty. Although the appellant is the case agent for Operation Jungle Trade, he is not principally responsible for conducting investigations into very complex organizations with large numbers of subsidiaries, nor are the suspects of his investigations prominent and officially recognized as national threats.

Element 2 - Difficulty and complexity imposed by subjects of investigations

At the GS-12 level, investigation 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.

None of the cases the appellant provided as illustrative of his assignments include subjects of investigations who meet the definition of this element at the GS-13 level.

Element 3 - Number of separate investigative matters from original assignments

The GS-13 level is differentiated from the GS-12 level in that GS-13 cases often unfold into large-scale raids and seizures throughout several States. Since Jungle Trade has not yet concluded, only a few seizures have been carried out. No large-scale raids have yet occurred. The operation manager is chiefly responsible for the leadership and coordination of units of investigators in [the appellant's activity], as well as in other SAC's, RAC's, and other agencies. The appellant mostly provides administrative assistance, rather than shouldering primary responsibility for the operation. He tracks the spin-off case database, helps manage the undercover Psittacine bird business, and organizes information for the criminal syllabus in preparation for the prosecution phase of the operation. Information obtained from the appellant shows that several agents have individual case agent responsibility for significant spin-off Jungle Trade cases. None of the other cases the appellant submitted as representative of his assignments meet the degree of complexity envisioned at the GS-13 level.

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

Illustrative of GS-13 level assignments is the fact that 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. Another characteristic of GS-13 level investigators is the work they coordinate involves segments of cases fully equivalent to cases at the GS-12 level of difficulty. The appellant assists senior agents and the project manager in the coordination of Jungle Trade cases; thus, his involvement is not equivalent to GS-13 level work. None of the representative cases submitted by the appellant equate to the GS-13 level of difficulty.

Element 5 - Sensitivity of assigned cases

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. Neither Jungle Trade nor any of the cases submitted by the appellant as representative of his assignments meet the GS-13 level of this element.

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 together. 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 Jungle Trade is equivalent to the GS-13 level of difficulty. He operates as the key undercover agent with the suppliers of contraband Psittacine birds. Most of his undercover work takes place in Mexico where he has little or no protection from detection and harm. Even though the appellant's other cases are not equivalent to the GS-13 level of difficulty, his vital undercover role in Jungle Trade is sufficient to support a finding of GS-13 level work.

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 that is representative of the appellant's assignments is most like that described at the GS-12 level. His work is reviewed for compliance with overall objectives and policies and adherence to applicable laws, regulations, and precedents. His assignments do not require an extremely high degree of originality and initiative nor have the appellant's investigations involved cases that establish important precedents. The level of responsibility attributable to the appellant's assignments meets the GS-12 level.

Summary

Only one of the six elements is evaluated at the GS-13 level. The appellant's involvement in Operation Jungle Trade combined with his other case assignments is not sufficient in complexity and level of responsibility to support reclassification of his position to the GS-13 level.

DECISION

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