



United States
**Office of
Personnel Management**

Philadelphia Oversight Division
William J. Green, Jr. Federal Building
600 Arch Street
Philadelphia, Pennsylvania 19106-1596

In Reply Refer To:

Your Reference:

OPM decision number: C-1811-12-06, 10/9/97

PH:OD:97-11

[Appellant's name]
[appellant's address]

Dear [Appellant's name]:

This is our decision on the position classification appeal filed with our office that we accepted under the authority contained in section 5112(b) of title 5, United States Code (U.S.C.).

This appellate decision constitutes a classification certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. It is the final administrative decision on the classification of this position, and it is not subject to further appeal. It is subject to review only at the discretion of the U.S. Office of Personnel Management's (OPM) Classification Appeals Office in Washington, DC, and only under the limited conditions and time limits specified in 5 Code of Federal Regulations (CFR) 511.605 and 511.613, and the Introduction to the Position Classification Standards Appendix 4. It must be implemented according to the provisions contained in 5 CFR 511.612.

POSITION INFORMATION

Appellant:	[Appellant's name]
Current Classification:	Criminal Investigator, GS-1811-12
Position Number:	AO1243
Requested Classification:	Criminal Investigator, GS-1811-13
OPM Decision:	Criminal Investigator, GS-1811-12
Organizational Information:	U.S. Department of the Treasury U.S. Customs Service Office of Investigations Office of Special Agent in Charge [location]

Analysis and Decision

In considering your appeal, we carefully reviewed all of the information submitted by you or on your behalf; information obtained from an on-site audit with you and interviews with your second level supervisor, [the second level supervisor's name], the Assistant SAC, and Group Supervisor [the group supervisor's name], on August 26, 1997; information obtained during telephone interviews with [deputy SAC's name], the Deputy SAC, and your former Group Supervisor [name of former group supervisor] on August 28, 1997; [personnelist's name] of the Classification and Staffing Program Branch, U.S. Customs Service, Washington, DC; and other pertinent classification information provided by your agency at our request.

It is our decision that your position is classified properly as Criminal Investigator, GS-1811-12. Accordingly, your appeal is denied.

In your appeal letter of February 27, 1997, you requested your position be upgraded because you have been consistently working at a higher grade level. You claimed your numerous cases involve prominent individuals engaged in complex criminal activities entailing international investigations of broad scope, resulting in numerous spinoff cases of significance and impact. You stated you have to obtain evidence from subjects while avoiding entrapment and without alerting them to your true intent, always mindful of premature disclosure, precedent court cases and jurisdictional issues in foreign countries. The cases involve sensitive issues including public safety, counterfeit aircraft parts, hazardous materials, bribery of public officials and national security interests. You claimed your cases may influence changes in regulations relating to government procurement procedures, and inspection of the contents of diplomatic pouches. You stated you have directed the activities of both Customs agents and agents of other agencies. The cases are complicated by the hiding of illegal activities within legitimate businesses, and the establishing of dummy corporations to avoid detection.

On April 22, 1997, you forwarded a letter showing your disagreement with the response in the appeal administrative report provided by Mr. Frederick Tingley, Chief, Classification and Compensation Policy Staff, U.S. Customs Service. You objected to being told by a Customs personnelist to drop one case from your appeal to OPM as it would be impossible to show that you spent more than 50 percent of your time on the four cases that you used as the basis of your appeal. The Introduction to the Position Classification Standards states that:

Some positions involve performing different kinds and levels of work which, when separately evaluated in terms of duties, responsibilities, and qualifications required, are at different grade levels. . . .

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In most instances, the highest level of work assigned to and performed by the employee for the majority of time [emphasis added] is grade-determining. When the highest level of work is a smaller portion of the job, it may be grade controlling only if:

- The work is officially assigned to the position on a regular and recurring basis;
- It is a significant and substantial part of the overall position (i.e., occupying at least 25 percent of the employee's time); and
- The higher level of knowledge and skills needed to perform the work would be required in recruiting for the position if it became vacant.

The awards you received for the cases forming the basis of your appeal state that you worked 1,700 hours on them from October 1, 1995, to September 30, 1996. These hours meet the 25 percent threshold and constitute the core of the representative cycle of investigative work that must be considered in classifying investigative positions.

Your submissions have raised several procedural issues that warrant clarification. All positions subject to the Classification Law contained in title 5, U.S.C., must be classified in conformance with published position classification standards (PCS's) of the OPM or, if there are no directly applicable PCS's, consistently with PCS's for related kinds of work. Thus, other methods or factors of evaluation, such as comparison to other positions occupied by other employees, are not authorized for use in determining the classification of a position because there is no assurance that the other positions have been classified correctly. The classification appeal process is a de novo review that includes an official determination as to the duties and responsibilities assigned to your position and performed by you, and constitutes the proper application of published PCS's to those duties and responsibilities. As a result, any previous actions taken by your agency regarding your position are not germane to our de novo review.

You certified to the accuracy of your position description (PD) of record, but disagree with the accuracy of the grade assigned. Our audit with you and interviews with others knowledgeable of your work confirmed that your PD of record contains the major duties and responsibilities that you perform and is hereby incorporated by reference into this decision. Our analysis of your position is based in large part on

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the information you provided during the audit and the additional information obtained from your supervisors, and our independent review and analysis of the entire appeal record.

The information that you submitted in support of your appeal included a description of four major cases in which you were the lead agency (case agent). We find that the performance award information that your supervisor provided in support of your appeal clarifies your contributions and responsibilities in these cases. It states that your efforts on three Strategic Investigations in fiscal year (FY) 1996 led to eight arrests and seven convictions:

These cases were multi-national in scope and involved working jointly with other agencies with USCS as lead agency. These cases involved over 1700 agent hours in FY96. His work on these cases was of substantial value to the Service and had extended application.

LANIER SHIPPING

An investigative lead was received from Her Majesty's Customs and Excise (United Kingdom) through the U.S. Customs Attache in London after a crate fell off a truck in London and contents did not match the bill of lading. The shipment contained Riot Shields that could deliver lethal electrical impulses up to 40,000 volts similar to a stun gun. The subjects of the investigation posed many obstacles in that they used legitimate firms to hide illegal activities and could not be compelled to testify in the United States. The case required the cooperation of the British authorities and also U.S. Customs Service representatives, the U.S. Attorney's Office, the U.S. Department of State, the U.S. Department of Commerce (DOC) and local law enforcement authorities in Texas, Massachusetts and New Jersey. DOC decided these items should not be used in a country that has a history of civil rights abuses. You developed a strategy to coordinate the efforts of various police and governmental investigators. You acted as an exporter in an undercover capacity to develop probable cause and uncover other violators. You developed sufficient evidence to arrest them and stop the illegal sips. Suspects were American business people and citizens of the United Kingdom, Belgium and Cuba. Search warrants were executed in Texas and New Jersey. The subjects falsified U.S. export documents and listed companies in Luxembourg and Brussels as end users, concealing the Ministry of Interior, Romania. They produced fraudulent documentation and destroyed supporting evidence.

You obtained permission for foreign travel from U.S. Customs Service headquarters and the U.S. Departments of Justice and State, and worked with Scotland Yard in England. The major breakthrough came when you interviewed an English freight

forwarder and compared the print from his typewriter with the print on bogus documents. He then implicated others. Two freight forwarders pleaded guilty to violating the Export Control Act and conspiracy. The exporter pleaded guilty to submitting a false statement to a government official after results of a polygraph showed he had lied. The manufacturer in Texas pleaded guilty to exporting these items without a license, and the exporter in Boston pleaded guilty to violating the Export Control Act.

You submitted a flow chart showing a total of five indictments, five arrests and five convictions for the subsidiaries involved in the Lanier case.

AERO EXPORT/IMPORT

A lead indicated that a foreign manufacturer was producing military aircraft parts portrayed as manufactured in the United States. To obtain incriminating evidence sufficient to obtain a judicial search warrant, you directed two other agents in searching the trash at night, of a New Jersey firm that was receiving the shipments. The search warrant led to many spinoff investigations with international implications.

One spinoff involved a false bill of lading for oxygen sensors, also known as blinkers, shipped to the Norwegian Air Force for sixty F-16 fighter jets, that country's primary air defense. These were manufactured by reverse engineering instead of from original plans, and were defective. The U. S. Attorney informed the Norwegian Air Force and all the jets were grounded based on the investigation, as the pilots had no way of determining if they were receiving adequate oxygen. The subject pleaded guilty to smuggling the sensors under a false export license that did not indicate the parts were for military use.

Another investigation involved the subject and a co-conspirator selling military jet liners for the J79 engine that powers a variety of aircraft. The parts were the "hot points" of the engine and required exact quality control production standards. The parts were defective and a flight hazard. They were falsely documented as manufactured by General Electric in the United States, whereas they were made in Taiwan and shipped directly to Jordan. This scheme involved a foreign manufacturer and an overseas freight forwarder. The defendants were charged with violating Customs fraud and smuggling statutes. This investigation is significantly sensitive as it involves our allies and poses flight safety risks. The appellant directed agents of the U.S. Department of Defense (DOD), Air Force Office of Special Investigations (AFOSI), and the Office of the Inspector General of the Federal Aviation Administration (FAA) in the conduct of this investigation.

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The primary subject also imported F-104 generators from Germany and falsely labeled and certified that the parts were FAA inspected, duty free civil aircraft parts, although they were actually subject to 3.10% duty. The primary subject had a purchase order for F-104 generators from an Alabama firm that was delivering them to a subcontractor for the Air Force's Foreign Military Sales Program. Fifty-two had already been delivered to foreign allies who were unable to install them. The buyer continued to sell the bogus parts to the Government. The scheme defrauded the Government of large sums of money and posed a safety risk for the pilots. In addition the subject bribed a defense firm employee for information on other bids to gain the contract. There is a spinoff investigation against the government subcontractor in Alabama for fraud, payoffs to employees of the Army Missile Command, and diversions of military weapons using blank end user certificates. The primary subject and employee of a subcontractor have been arrested and convicted. Search warrants and pen registers were used in these investigations.

Another spinoff resulted as the president of a domestic firm admitted to sending false Manufacturers Certificates of Conformance to the Korean Government. This investigation was politically sensitive since the material purchased did not conform to the orders for military equipment valued in excess of 1.5 million dollars and the seller was a firm owned by a U.S. Customs Service informant. The officers of the firm pleaded guilty and await sentencing.

Because of these cases, conclusions have been jointly drawn by the U.S. Customs Service and the U.S. Department of Defense (DOD) that current procurement regulations requiring that government contracts be awarded to the lowest bidder, are not always in the best interests of public safety or government efficiency and effectiveness. The lowest bidder is often someone who resorts to bribery for low bid information, or who resorts to illegal activities to submit a winning bid, thereby defeating a reliable company such as General Electric, whose bid is legitimately higher but unquestionably more reliable. The Inspector General's Office of DOD, with supporting information from the U.S. Customs Service and the U.S. Attorney is preparing a report for submission to Congress to change the procurement regulations.

MASBE

The Aero case resulted in a spinoff assigned a separate case number, but was developed during the investigation. The subject, a Taiwanese national, used a legitimate Connecticut based firm to procure radar equipment and rocket propellant mixers for the Chinese military. As the U.S. Government would not approve the export, he established dummy companies to transship equipment offshore to Iran and the Peoples Republic of China. He also used double invoices to avoid import duties

on legitimate shipments. He undervalued equipment and misclassified military aircraft as duty free civil aircraft parts. During the arrest of the firm president, paperwork was seized indicating attempts to procure material for construction of nuclear rods used in nuclear power plants and weapons systems. Another associate of the subject had shipped goods to China through a fictitious company. However, he was arrested on child pornography charges, and is still regarded as a potential source of information on co-conspirators. Evidence was uncovered showing that the subject was paying high ranking officials of a foreign government to insure they would use his firm for procurement needs. Other correspondence was discovered about avoiding the shipping costs of special packaging for flammable material shipped to foreign countries. The material was included in a diplomatic pouch, not subject to inspection, to avoid prohibitive special handling costs. In light of recent airline disasters the appellant is working with agents of the Federal Bureau of Investigation (FBI), DOD and AFOSI to test the current laws by intercepting one of these shipments. The initial subject has pleaded guilty to one smuggling count, but is still subject to investigation for espionage by the FBI for illegally exporting intellectual property rights and plans for a military aircraft. However, the subject, whom remanded to house arrest pending a court appearance, fled to Taiwan, and is currently out of reach.

You submitted flow charts that show there were eight indictments, six arrest and six convictions for the Aero Export\Import and Masbe cases and the numerous spinoffs.

BORDEN CHEMICAL

A subsidiary of this Fortune 500 company that produces a variety of products from dairy to plastic items, was manufacturing PVC pipe and shipping waste material containing mercuric chloride to South Africa for processing and removal of mercury and hazardous by products that were too costly to be removed in the United States. Borden showed payments to the South African firm Thor Chemical, for the final cleaned product to be shipped back to the United States. You initiated the investigation and worked with agents of the U.S. Environmental Protection Agency (EPA) and U.S. Department of Transportation, and also sources in Louisiana, the United Kingdom and Pretoria, South Africa. The investigation discovered that the material was being dumped down abandoned mine shafts in Africa causing birth defects and death to residents near the dumping sites. President Mandela ordered an investigation of Thor Chemical, an international firm with offices in Connecticut. It is supposed to be out of business but is still accepting shipments. It is alleged that high ranking officials of Louisiana have accepted bribes or will accept future political favors in return for a favorable state EPA determination. Borden is a worldwide firm, and one of its components is using legitimate business functions to conceal this

illegal activity. The case is ongoing, and you are going to Pretoria to collect evidence of continued dumping.

Series and Title Determination

Your agency has allocated your position to the Criminal Investigating Series, GS-1811 with which you have not disagreed. We concur with the allocation. Accordingly, your position is allocated properly as Criminal Investigator, GS-1811.

Grade Level Determination

The Grade-Level Guides for Classifying Investigator Positions (GLGIP), GS-1810-1811 uses two factors to distinguish between grade levels: Complexity of Assignments and Level of Responsibility. The GLGIP provides for the classification of positions based on assignments that are typical and representative of the cases for which the investigator has primary responsibility over a period of time, i.e., only the case agent position may be credited with performing the full grade level of the cases.

The standard recognizes that besides work individually assigned to an investigator, at any grade level, from time to time, they work on particular investigative tasks associated with cases 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 they have primary responsibility, e.g., when additional staff is needed to maintain surveillance in several places on a 24-hour basis, or when a large number of separate leads must be tracked down in as short amount of time; when an investigation is centered in one geographic area but involves issues that require inquiries in other geographic areas. These temporary conditions are a normal part of completing investigative assignments and have no particular impact with respect to determining the grade level worth of an investigator's position. Similarly, there is no particular relationship between the grade level of the investigator who has primary responsibility for a case and the grade levels of the positions of the other investigators who are temporarily called upon to help with particular investigative tasks. Thus, the grade level worth of your coordinative responsibilities is wholly dependent upon the grade level worth of the cases for which they are performed.

Complexity of Assignments

This factor measures the scope, complexity and sensitivity of investigative assignments in terms of six elements.

Element 1 - This element is concerned with the level of difficulty involved in resolving conflicting facts or evidence.

At the GS-12 grade level, cases typically involve several principals for whom suspicion is initially aroused by circumstantial evidence, e.g., word of mouth, tips, observations, rather than by directly verifiable evidence, e.g., paid bills, passports, licenses, testimony. Evidence is fragmentary or cold. Improper development of the case could cause significant repercussions, e.g., cause public embarrassment for the agency involved or the principals under investigation.

In contrast, GS-13 grade level cases are of extreme complexity and scope. For example, the assignments involve investigations of legal or illegal organizations that are very complex in structure with a large number of primary and secondary activities, e.g., several principals of organized crime or subversive groups that are officially recognized in law enforcement as national threats to the peace and stability of the nation. Investigations are of major interregional dimensions or are nationwide in origin or coverage with occasional international implications. There are typically actual or potential threats or challenges to major segments of the national welfare or security, e.g., threats to the fabric of society caused by the previously described large scale drug or other illegal items distribution conspiracies; the potential threat of large scale terrorist or other multi-cell integrated organizations. The results, effects, or consequences of the investigation, to a major degree, constitute deterrents to crimes or violations, and may often influence changes in laws or future court actions.

The GS-13 investigator typically must piece together evidence that comes from other investigators stationed throughout several States or the nation. From this evidence, the investigator must recognize the suspect's pattern of operation to anticipate or even influence events as they unfold by instructing separate investigators or units of investigators working on segments of the case. This complicates the case because the investigator must at the same time avoid entrapment of the suspects, who are prominent and numerous and engage in more complex and serious activities. Similarly, the GS-13 investigator must be more aware of the implications of precedent court decisions over a broader area, i.e., in more judicial and law enforcement jurisdictions.

We find that the cases forming the core of your appeal rationale reflect limited GS-13 level aspects in that the organizations involved, though not multi-level, have established complex company networks that extend interregionally and occasionally internationally. Although they are relatively small organizations, masterminded by a single company head who is importing or exporting or subcontracting riot shields, weapons or aircraft parts as in the Lanier, Aero and Masbe cases, there is a network

of subsidiary or dummy companies established to transship, conceal accurate identification and billing, or true identity of foreign end users of military equipment. Resolving conflicting facts or evidence is very difficult, as in two sets of books, and false labeling, i.e., manufactured by General Electric or inspected by FAA, and tracing the ultimate illegal destination and true end user when material is routed through various countries, e.g., Luxembourg, Brussels, Belgium and Paris, France.

Since the subjects are generally business people, mingling both legal and illegal enterprises, they are not known principles of organized crime or subversive groups that constitute a threat to society in general. However, they were a very real threat to the pilots of the Norwegian Air Force and the pilots of the Jordanian Air Force, where defective airplane parts caused a crash. The subject of the Masbe case, a Taiwanese national, was suspected of being a spy and a threat to national security, as some missile technology and material used in nuclear reactors found its way to Iran and China. The DOD, AFOSI and the FBI worked on the case under your direction, and the CIA independently corroborated the information. Unfortunately, the subject fled the country while under house arrest for Customs fraud charges. You pieced together evidence from many sources throughout the nation and abroad to eliminate the impact of delivery and use of defective aircraft parts, or weaponry reaching illegal destinations.

These complexities notwithstanding the scope and complexity of these cases fail to meet the GS-13 grade level fully. Although of significance to the military functions of the foreign countries involved, they do not affect major segments of the national welfare as found at the GS-13 level, e.g., a widespread conspiracy in which many faulty and fraudulent parts are being distributed to multiple governments as part of a major integrated scheme. The cases forming the basis of your appeal do not evidence the scope and magnitude envisioned at the GS-13 level. Although these cases required the piecing together of evidence from a variety of sources, and the cooperation of other agencies and governments, the record does not show the integrated network of investigative support, the anticipation or even influencing of events, or the prominence and larger number of suspects typical of GS-13 level cases. Therefore, because this element fails to meet the GS-13 level fully, it must be credited at the GS-12 level.

Element 2 - This element is concerned with the difficulty and complexity imposed by the subjects of the investigation.

At the GS-12 grade level, difficulties or complexities imposed by the prominence or characteristics of the subjects investigated include: (1) a suspected or known racketeer, gambler, smuggler, etc., who is known through their associates, behavior or background as a prominent figure in organized crime or subversion; (2) the

principal or financial backer in an organization consisting of separate manufacturers, distributors, and transporters of illegal goods, drugs, alcohol, counterfeit money, fraudulent documents, explosives or weapons (normally the separate parties do not know each other or the overall backer); (3) a figure with financial interests overlapping several activities both legal and illegal, e.g., funds from a legal concern are diverted and used to finance illegal activity; and/or (4) the head of an organization involved in legitimate business who is suspected of fraudulent use of invoices, operating fraudulent marriage rings, etc., which are carried out under the cover of the legitimate organization, and the suspected violation requires assistance from several accomplices, e.g., attorneys or accountants who are themselves in positions of public trust.

In contrast, at the GS-13 level, subjects are involved in the range and variety of such interrelated activities as: (1) a suspected foreign agent who, with several associates, is planning acts extremely harmful to national security, e.g., theft of national defense documents for benefit of a foreign government, or compromise of persons who have access to highly classified information concerning national defense; and/or (2) the organization under investigation 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.

The organizations investigated under Lanier and Aero led to multiple arrests and convictions of people from separate corporations suspected of fraudulent use of invoices and mingling legal and illegal operations as described at the GS-12 grade level. The Borden case involves a Borden subsidiary engaged in both legal and illegal activities as at the GS-12 level. The record does not support the conclusion that Borden involvement extended beyond employees in the subsidiary component. Involvement of government officials in Louisiana remains unproven. The Masbe case was the only case that involved a suspected foreign agent as described at the GS-13 level, but the suspect fled the country without confirmation of the allegations. Therefore your role in dealing with the difficulty and complexity imposed by the subjects of the investigation may only be credited at the GS-12 level under established classification principles and practices that are articulated in the application instructions of the GLGIP. Accordingly, this element is credited at the GS-12 level.

Element 3 - This element is concerned with the nature of separate investigative matters that grow from the original assignment.

At the GS-12 level, a substantial number of separate investigative matters typically grow from the original assignment. For example, an investigation beginning with the

pusher or passer of stolen or illegal goods, e.g., drugs, counterfeit money, or fraudulent documents, is expanded by piecing together bits of evidence from interviews, surveillance, documentary examinations, informants, etc., proceeds through the intermediate distributor, and eventually involves the manufacturer, backer, organizer, importer, etc.

In contrast, at the GS-13 level, suspected violators are highly organized crime groups whose criminal activities are interwoven with legitimate business activities. For example, seemingly legitimate construction firms may have ostensibly legal contracts with States, and there is suspicion of bribery of State officials or fraud. The investigator develops leads from known criminal activities; finds that these leads cross to legitimate businesses, and that suspicion is finally cast on seemingly respected legitimate political, business or professional leaders. Cases at the GS-13 level also often unfold to involve large-scale raids and seizures throughout several states, which normally requires the GS-13 investigator to lead and coordinate several units of investigators from his own and other agencies in tracing leads and gathering information.

The organizations investigated under Lanier, Aero and Masbe are a substantial match for the example at the GS-12 level of the guide. They involved piecing together bits of evidence from interviews, surveillance, garbage runs, documentary examinations, undercover posing, etc., eventually involving all the participants in the network. However, they do not meet the criteria at the GS-13 level that describes large-scale raids and seizures throughout several states. There are aspects of the GS-13 level in coordinating units of law enforcement personnel from several agencies in tracing leads and gathering information, e.g., searches and seizures by two Texas Customs offices and related investigations by other Federal agencies, i.e., FBI, DOD, AFSOI, FAA, U.S. Department of Transportation, the U.S. Internal Revenue Service, EPA, and the Office of the Inspector General of Scotland Yard and Her Majesty's Customs and Excise. However, this required your direction of these agents in piecing together the required evidence for the nexus of the cases, not conducting simultaneous large-scale raids as in the scope described in the guide. The suspicion of bribery in Louisiana involving the governor and state EPA officials in the Borden case was not pursued or proven. Therefore, since the scope of the investigations does not fully meet the intent of the guide at the GS-13 level, they may only be credited at the GS-12 level under established classification principles and practices in instructions of the GLGIP. Accordingly, this element is credited at the GS-12 level.

Element 4 - This element is concerned with the difficulty involved in establishing the relationship of facts or evidence.

At the GS-12 level, investigations involve subjects who are suspected of major and complex criminal activity who are separated from the overt violation by a intermediary or organization, requiring the use of such techniques as surveillance, radio communication, toll-call checks, and scientific identification and matching of various specimens to establish a direct link between the suspect and other violators. At this grade level, the developing of defensible testimony is dependent upon such techniques as pitting one violator, criminal or witness against another, extensively checking the word of one against another, and the exercise of great care in establishing facts and evidence because of the prominence of the subject or the importance of the case.

In contrast, at the GS-13 level, the interrelationship between fact and evidence is extremely difficult to establish. For example, subjects use fictitious names or other otherwise clearly separated from each other and from the illegal activities under investigation. They deal exclusively through subsidiaries and holding companies that engage in diversified mixtures of legal and illegal activities throughout wide sections of the country, e.g., businesses throughout wide sections of the country run by Organized Crime families with subsidiaries engaged in a mixture of legal and illegal activities (e.g., legitimate enterprises that are multi-site in scope that obtain business through fraud or bribery). The work of other investigators or teams of investigators coordinated at the GS-13 grade level involve segments of cases that fully equate to cases themselves that are evaluable at the GS-12 level.

The cases that form the basis of your appeal, entail the investigation of businesses engaged in a diversified mixture of legal and illegal activities. They approach the complex construct of activities carried out in several areas of the country as found at the GS-13 level. Action was taken in a number of state jurisdictions in addition to London, where the appellant worked with Scotland Yard under the Mutual Assistance Treaty (Lanier), and with the foreign office in Pretoria (Borden). The use and management of investigative resources in other jurisdictions as discussed at the GS-13 level, e.g., Alabama, Connecticut, Texas, Massachusetts and New Jersey (Aero), and also foreign agencies in the United Kingdom (Lanier) and South Africa (Borden), show this aspect also approaches the GS-13 grade level. As discussed previously in this decision, however, the scope and scale of the organizational structures involved in these cases fails to meet the full intent of the GS-13 level.

The record also does not support the conclusion that the work of other investigators coordinated by you involve segments of cases that fully equate to the GS-12 level, as discussed at the GS-13 level. Therefore, we find that your role in these

investigations fails to meet the GS-13 level criteria of the GLGIP fully. Accordingly, this element is credited at the GS-12 level.

Element 5 - This element concerns the degree of sensitivity that the assigned cases involve.

At the GS-12 level, cases involve subjects so prominent that after the first witness is interviewed, word of the interview precedes the investigator so that subsequent witnesses are evasive because of reluctance to or fear of becoming involved in giving information which witnesses view as exploding into an important Federal case. The subject and their peers are very often the subject of major news media and, therefore, any investigation is likely to result in publicity and would to some degree cast suspicion on the reputation of the subject, or prejudice the investigator's case in court, or implicate subsequent administrative decisions.

In contrast, at the GS-13 level: (1) investigations 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 which could, for example, severely hamper the speed of the investigator's progress and endanger lives of victims, e.g., investigation of a major member of an Organized Crime family that must be tightly controlled to prevent the elimination of witnesses, the protection of victims willing to testify, etc.; (2) have suspects whose financial involvements extending to enterprises that have a significant impact on the national economy, e.g., the transportation or banking industry; and/or (3) have suspects who are principals in financial or other enterprises that reach into State and Local affairs, e.g., through attempted bribery, fraud, collusion or extortion of public officials.

The information that you provided shows significant news coverage, although much of it was local; i.e., New Jersey and Massachusetts newspapers. However, the news releases issued by the U. S. Attorney in New Jersey credit Customs as the lead agency among several others that were responsible for multiple arrests and convictions. The perpetrators were not prominent people as they prefer to keep a low profile on the illegal aspects of their operations. You made the point that there were important people involved such as the military attache to the Jordanian mission in Washington, DC, because of the faulty aircraft parts, but he was not a prominent subject of the investigation that would produce the media with the kind of notoriety described in the standard. The fatal air crash in Jordan was not linked to the subject by the media, and thus far, the implications of the dumping of hazardous waste in South Africa have not made the headlines. This element may only be credited at the GS-12 level under established classification principles and practices in the application instructions of the GLGIP. Accordingly, this element is credited at the

GS-12 level. Your comments on impact were addressed in element one and again in level of responsibility.

Element 6 - This element is concerned with the jurisdictional problems involved in case assignments.

At the GS-12 level, jurisdictional problems involve subjects engaged in activities that are the concern of several local, county, State and Federal agencies, e.g., drug use, traffic and smuggling; forgery; and alleged subversion. The cases involve a web of relationships that require a more extensive knowledge of the laws, rules and policies of these various jurisdictions because the investigator often plans and times raids and surveillance that involve use of local law enforcement agencies.

In contrast, at the GS-13 level, cases involve extremely difficult planning and coordination problems because of extensive jurisdictional problems. For example, evidence may warn the investigator 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.

As discussed previously, our fact-finding revealed that you coordinated the investigations in several states and foreign countries, involving agents of different Federal agencies and foreign offices. However, the GS-12 level of the guide describes a similar web of relationships requiring an extensive knowledge of each of these jurisdictions. At the GS-13 level, undercover and surveillance work involves serving as a key person or coordinator in assignments with complex, dangerous or delicate elements, e.g., penetration of closely knit groups on assignments of GS-13 level complexity, where discovery on assignment would not only result in great injury or death to the investigator, but would cut off information linking the evidence together and thus jeopardize or destroy a critical case that the Federal government had been developing for months or years, involving a network of State, local, and other Federal agents and informers. The strategic and fraudulent white collar crimes that you have investigated have consequences to public safety and involve enforcement of the laws of many Federal agencies such as the DOC and the State Department, but they do not pose the dangers to the investigators described in this element of the guide. Accordingly, this element is credited at the GS-12 level.

Based on the above analysis, with six elements credited at the GS-12 level, the work that you perform is credited at the GS-12 grade level for this factor.

Level of Responsibility

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

At the GS-12 level, investigators receive or generate their own assignments. They receive few instructions on the technical aspects of the work, but are given mostly policy guidance, e.g., information on understandings of jurisdictional problems being worked out among agencies, or the fact that this is one of the first of a particular type of case since a new court decision, or authorization to follow a case into another district or region, if necessary. The GS-12 investigator is responsible for planning cases independently, and working out arrangements with other jurisdictions except in policy areas. For example, in setting up a joint raid involving Federal and local law enforcement, the investigator is responsible for planning and timing, but in coordinating the commitment of resources and staff they must work through superiors.

In contrast, at the GS-13 level, investigators receive assignments through program discussions, e.g., conferences or written directives that outline broad objectives, e.g., to stop 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, e.g., suggestions on the commitment of resources in other domestic or foreign offices that are normally approved. Recommendations for extension, modification, or adoption of new lines of inquiry are normally accepted, although the sensitivity and importance of the cases must be cleared by the very highest individuals in the agency. GS-13 investigators devise methods, techniques and approaches to problems that often set patterns for subsequent investigations in similar areas and are often adopted for use by investigators at lower grades. GS-13 investigators are responsible for devising breakthroughs in investigative approaches, techniques, and policies. Investigations are planned and executed for the greatest possible deterrent impact. An extremely high degree of initiative and originality is required at the GS-13 level because of the various locations throughout a wide area under investigations, and suspected violators typically retain the best legal or accounting advice available; and investigations often establish important precedents, e.g., the first case of a particular type investigated under a new provision of law, the outcome of which may affect pending cases or influence the decision on such cases in the future.

We find that you operate with the freedom from supervision described at the GS-12 level. In addition, your recommendations for extension, modification, or adoption of new lines of inquiry are normally accepted as at the GS-13 level. Your accounting background is regarded as enhancing your perceptions in discovering documentary fraud that lead to new avenues of inquiry resulting in spinoff cases. For example, your independent investigations regarding the shipment of 2,500 barrels of hazardous material to South Africa, when the plant supposedly was closed, led to your receiving permission to travel to the site to pursue the investigation to achieve the greatest possible deterrent impact. Your persistence in getting permission to travel to England to work with Scotland Yard resulted in deterring the delivery of electrified riot shields to Romania. You have used a high degree of originality and initiative in discovering that flammable substances were transported in diplomatic pouches on commercial airlines, endangering flight safety; and in discovering that the government of Korea was defrauded of 1.4 million dollars in the sale of military parts, resulting in two arrests and convictions. As at the GS-12 level, you were responsible for dealing with jurisdictional matters on your trips and were held accountable for overall case coordination and resource management functions. However, you operated beyond the parameters of the GS-12 level in aiding the DOD in preparing a report intended to alter government procurement regulations based on the findings of your cases.

We find that your position overall fully meets the criteria described at the GS-12 level of responsibility, but does have some aspects of the level of responsibility described at the GS-13 level of the GLGIP. However, the level of responsibility is closely linked to the level of complexity of assignments that we have evaluated at the GS-12 level. It is an established classification principle, when applying narrative standards, discussed in the Digest of Significant Classification Decisions and Opinions, that there is an interrelationship between the nature of assignments and level of responsibility. Neither increased independence nor increased difficulty of assignments is meaningful unless each is viewed concomitantly with the other. When the nature of assignments and level of responsibility are one level apart, the lower level controls the grade of the position as a whole to insure that the classification is in harmony with the total concept of the grade level as depicted in the standard. Based on the above analysis, the work that you perform is credited properly at the GS-12 level for this factor.

Summary

In summary, we have evaluated both Complexity of Assignments and Level of Responsibility at the GS-12 level. Our analysis has taken into consideration the cases that formed the core of your appeal rationale. Therefore, it is our decision is that your position is classified properly as Criminal Investigator, GS-1811-12.

18.

Please be assured that this decision is not intended to reflect on your ability, qualifications, or the quality of your performance. Rather, it reflects our evaluation of the duties and responsibilities assigned to your position in terms of comparison with the appropriate PCS.

Sincerely,

/S/ 10/9/97

Robert D. Hendler
Classification Appeals Officer

cc:
Chief, Classification and
Compensation Policy Staff
U.S. Department of the Treasury
U.S. Customs Service
2120 L Street
Gelman Building, Room 6100
Washington, DC 20229

Director, Human Resources
U.S. Customs Service
Washington, DC 20229

Director, Classification Appeals
and FLSA Programs
OSMO, U.S. OPM
Washington, DC 20415