

**OFFICE OF PERSONNEL MANAGEMENT  
ATLANTA OVERSIGHT DIVISION  
ATLANTA, GEORGIA**

**CLASSIFICATION APPEAL DECISION**

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

Appellant: [appellant's name]

Position: Marine Enforcement Officer  
GS-1801-12

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

Decision: **Criminal Investigator**  
**GS-1811-13**  
(Appeal granted)

**OPM Decision Number:** C-1811-13-02

Kathy W. Day  
Classification Appeals Officer

Date: 7/3/97

Rdfile # 181137A.AT

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## **Background**

On April 2, 1997, the Atlanta Oversight Division, Office of Personnel Management (OPM), accepted an appeal for the position of Marine Enforcement Officer, GS-1801-12, [appellant's activity, U.S. Customs Service (USCS), Department of Treasury]. The appellant is requesting that his position be changed to Criminal Investigator, GS-1811-13.

After the appellant filed his appeal with OPM, the agency conducted an onsite audit and determined that the position was properly classified as Criminal Investigator, GS-1811-13. The appellant's classification appeal was suspended on May 13, 1997, waiting verification from the agency that his classification had been officially corrected. As of June 20, 1997, no action had been taken and information from the agency indicated that no action was imminent. The appeal has been reactivated at this time.

The appeal has been accepted and processed under section 5112(b) of title 5, United States Code. This is the final administrative decision on the classification of the position subject to discretionary review only under the limited conditions and time outlined in part 511, subpart F, of title 5, Code of Federal Regulations.

## **Sources of Information**

This appeal decision is based on information from the following sources:

1. The appellant's letter received March 31, 1997, appealing the classification of his position.
2. The agency's letter of May 13, 1997, providing position and organizational information.
3. Additional position information and documentation from the appellant received April 7, and June 20, 1997.
4. A telephone interview with the appellant on June 23, 1997.
5. A telephone interview with [the appellant's supervisor] on June 27, 1997.

## **Position Information**

The appellant is assigned to Position Number 6254, Marine Enforcement Officer, GS-1801-12. The appellant states that since 1994, he has been performing the duties of a Criminal Investigator with the knowledge of management at USCS. As early as February 7, 1995, at the direction of the Deputy Assistant Commissioner of Investigations, an onsite evaluation of the [appellant's activity] was conducted which confirmed that criminal investigative work was being performed by Marine Enforcement Officers with the approval of the RAC and SAC [in a large city]. In spite of repeated requests for a desk audit and assignment to a correct position description, the appellant has been

unable to settle the question of position description accuracy with his agency and asks that OPM determine the duties he is currently performing.

In the desk audit performed by the agency in conjunction with their response to this appeal, they determined that over the last 3 fiscal years, the majority of the appellant's time has been spent performing work that involves planning and conducting investigations relating to alleged or suspected violations of criminal laws. The appellant is functioning as a case agent responsible for initiating, conducting, and coordinating activities associated with the investigations of illegal activities and in particular, child pornography and sexual exploitation of children and computer crimes via the Internet.

The appellant identifies leads; establishes sources; conducts investigations through record searches, surveillance, and contacts with informants; analyzes information; prepares and serves subpoenas and search warrants; conducts searches; gathers evidence; works with U.S. Attorneys, as well as other Federal, state, local, and international law enforcement offices; testifies in court; and prepares investigative reports. He represents USCS in court. He has acted as the lead case agent on approximately 40 cases in the child pornography and computer crimes area and is recognized by USCS officials and other law enforcement officials, both nationally and internationally, as an expert in this field. The appellant performs marine interdiction duties less than 5 percent of the time.

The appellant receives only general direction from the RAC. He determines which leads to follow, determines the violations associated with each case, develops his own strategy, and plans the utilization of resources for his cases. Although he works independently, he does keep the supervisor informed. The results of his cases are reviewed by upper level management, but his reports are seldom changed.

### **Standards Referenced**

Grade-Level Guides for Classifying Investigator Positions, GS-1810/1811, February 1972.

### **Series and Title Determination**

The Criminal Investigating Series, GS-1811, includes positions that involve planning and conducting investigations relating to alleged or suspected violations of criminal laws. These positions require primarily a knowledge of investigative techniques and a knowledge of the laws of evidence, the rules of criminal procedure, and precedent court decisions relating to admissibility of evidence, constitutional rights, search and seizure and related issues; the ability to recognize, develop, and present evidence; and skill in applying the techniques required to maintain surveillance, perform undercover work, and advise and assist the U.S. Attorney in and out of court.

The appellant conducts investigations encompassing civil and criminal statutes enforced by USCS. The position requires a knowledge of the investigatory skills described in the GS-1811 series and is properly placed in that series. The authorized title for nonsupervisory positions is *Criminal Investigator*.

## Grade Determination

The Grade-Level Guides for Classifying Investigator Positions, GS-1810/1811, uses two factors to distinguish between grade levels: *Complexity of Assignments* and *Level of Responsibility*.

Because of the wide variety of tasks and assignments normally carried out during the conduct of an investigation, the standard provides that classification of investigative positions be based on assignments that are typical and representative of the cases for which an investigator has primary responsibility over a period of time. Therefore, classification at a particular grade is based on performance at a specific level of difficulty over a period of time, and no one case can be the basis of the determination of a position's grade.

The appellant provided information on numerous cases that are representative of his case work during the past 3 fiscal years. Seven of the cases, representing 53 percent of his time, are discussed below:

**#FP07QR95FP0001** - This was the first investigative initiative by the Federal Government into illegal activity, i.e., child pornography, on the Internet. This case led to hundreds of other investigations conducted by the appellant and others and, due to media exposure, caused substantive issues to be addressed at the political level, nationally and internationally. Numerous suspects were apprehended in the U.S., Great Britain, Canada, and Australia. The appellant designed the investigative strategy for this case which included instructing other agents in undercover tactics on the Internet.

**#FP07QR95FP0015** - This is a continuing international and multi-jurisdictional enforcement effort in which the appellant is acting as the case agent. He initiated the investigation on an individual which led to the identification of a multi-state/multi-national group of individuals utilizing the Internet to trade and traffic in child pornography. The appellant was responsible for preparing search warrants and subpoenas and orchestrating the apprehension of the initial target. Through analysis of computer data and additional facts, he then identified 40 additional suspects world-wide which led him to work with the Department of Justice (DOJ) in the organization of a service-wide enforcement effort. He coordinated investigations in various locations throughout the U.S., Canada, and Europe including the execution of simultaneous world-wide search warrants. He developed the search warrant affidavits served on Internet service providers which have to conform with the Electronic Communication Privacy Act which were rare at the time of the initial investigation. To date, 19 individuals in the U.S., 3 in Canada, and 8 in Great Britain have been convicted or are under indictment, and the case continues to produce more suspects.

**#FP07QR95FP0009** - This case involved using the Internet to trade and distribute child pornography. The appellant assumed an undercover role and acted as the lead case agent coordinating the efforts of other investigators. The appellant testified before the Grand Jury to secure indictments, prepared discovery material evidence, prepared the case for trial, and dealt with multi-jurisdictional issues. This case resulted in one conviction.

**#FP07QR95FP0022** - The appellant identified a suspect located in Australia who was operating a commercial child pornography business providing pornography throughout the world. This was Australia's first involvement in Internet child pornography crimes. The appellant coordinated efforts in undercover communications and commercial transactions directly with the Australian government which culminated in the arrest of the suspect who was an Australian political figure. Australian authorities advised that this case would lead to changes in Australian law.

**#FP07QR96FP0001** - This case involved a member of the local news media who was distributing child pornography using America On-Line computer service. The appellant coordinated the efforts of various local and Federal agents and analyzed complex computer transaction records, telephone records, building access records, and service records from America On-Line. When the suspect moved to a different location, the appellant coordinated the efforts with the other state and Federal agents to secure the suspect's arrest. The appellant secured the suspect's cooperation in identifying an active child molester and pornographer in a third state. The appellant conducted undercover transactions and intercepts with this individual which led to his arrest and conviction also.

**#FP07QR97FP0005** - This investigation came from a lead that the Federal Bureau Investigation (FBI) did not have the expertise to follow. The appellant took charge of a confidential source and identified a suspect heavily involved in child pornography distribution via the Internet. The appellant used monitored telephone calls and subpoenas to track the suspect who used numerous aliases. This case required the appellant to coordinate agents from separate USCS offices, compose search warrants used across jurisdictions, and coordinate the service of simultaneous search warrants. The suspect will be charged with violations of several untried Federal laws dealing with child exploitation and coercion. The analysis of the evidence associated with this case has caused the appellant to identify another 50 suspects in the U.S. and Europe.

### **Complexity of Assignments**

This factor measures the scope, complexity, and sensitivity of investigative assignments, including such elements as level of difficulty involved in resolving conflicting facts, the difficulty and complexity imposed by the subjects, the nature of matters that grow from the original assignment, the skill required to establish facts and evidence, the sensitivity of the assignment, and jurisdictional problems. Most or all of the elements must be present for a position to be evaluated at a particular grade.

Element 1 - The levels of difficulty involved in resolving conflicting areas of facts or evidence.

The agency determined that the appellant's cases are comparable to the GS-13 level for this element.

The GS-12 level involves difficulty in obtaining, working with, and discretely handling facts or evidence when several principals are involved in the investigation, and suspicion of their relationship is aroused initially more by circumstantial evidence, such as word of mouth, tips, or observations, rather than by directly verifiable evidence, such as paid bills, licenses, testimony, or passports. At this level, improper development and conduct of the investigation could cause significant public

embarrassment of the several principals, or the agency head, or could discredit the agency investigative program.

The GS-13 level involves extreme complexity and scope of assignments, such as investigations of legal or illegal organizations that are very complex in nature with a large number of primary and subsidiary activities, and investigations are of major interregional dimensions or are nationwide in origin or coverage with occasional international implications; or the investigator must piece together evidence that comes to him through other investigators throughout several states or the nation, to recognize the suspect's pattern of operation and anticipate or influence events as they unfold. The investigator must at the same time avoid entrapment of the suspects who are more prominent and numerous and engage in more complex and serious activities, and the investigator must be more aware of the implications of precedent court decisions over a broader area than at lower grade levels.

The appellant's cases are comparable to the GS-13 level. Tracking suspects through the Internet is very complex and by its very nature, has national and international dimensions. The appellant's cases routinely involve suspects located throughout the U.S. and various foreign countries. This type of investigation is in many respects, uncharted territory, and the appellant must find ways to piece together numerous transactions, understand the patterns of operations, and ultimately identify individuals who are mostly using aliases and are conducting business electronically with potentially hundreds of other individuals rather than in person. Since this type of investigation is newly emerging, there are many legal questions, as yet unanswered, concerning privacy on the Internet and entrapment. It is imperative that he stay abreast of court decisions that could affect his mode of operation and his ability to compile evidence that will be usable in a court of law.

The appellant's cases meet the GS-13 level for Element 1.

Element 2 - The difficulty and complexity imposed by the subjects of the investigations.

The agency determined that the appellant's cases are comparable to the GS-13 level for this element.

At GS-12, the subjects of investigations normally exhibit characteristics of prominence such as a suspected or known racketeer, gambler, or smuggler who is known through his associates, behavior, or background as a prominent figure in organized crime or subversion; 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, where the separate parties do not know each other; a figure with financial interests overlapping several activities both legal and illegal; or the head of an organization involved in legitimate business who is suspected of fraudulent activities under the cover of his legitimate organization, and the suspected violation requires assistance from several accomplices, such as attorneys or accountants, who are themselves in positions of public trust. The involvement of such subjects substantially increases the difficulty and/or the complexity of the case.

At GS-13, subjects are involved in such activities as planning acts that are extremely harmful to national security, e.g., foreign agents stealing national defense documents. The organizations under investigation are extremely complex in nature with many diversified interests.

The difficulty imposed by the subjects of the appellant's cases is comparable to the GS-12 level. The Internet affords anonymity and makes it especially easy for distributors and buyers of child pornography to conduct their business without ever knowing the true identity of the person with whom they are dealing. In addition, in several of the appellant's cases, persons in positions of public trust, i.e., the Australian political figure or the high level engineer in the National Aeronautical and Space Administration, had easy access to the Internet and used it for criminal activity. Their positions complicated the conduct of the investigation.

Although conducting business on the Internet could be considered organizationally complex, the appellant's cases do not compare to the range and variety of interrelated activities described at GS-13 which are harmful to national security or are extremely complex organizationally with diversified interests and widespread distribution networks.

The appellant's cases meet the GS-12 level for Element 2.

Element 3 - The nature of separate investigative matters that grow from the original assessments.

The agency determined that the appellant's cases are comparable to the GS-13 level for this element.

At GS-12, the investigation begins, for example, with the pusher or passer of stolen goods or illegal goods. The investigator proceeds through the intermediate distributor and then, by piecing together bits of evidence from interviews, surveillance, documentary examinations, or informants, eventually involves the manufacturer, backer, organizer, or importer.

At GS-13, many separate investigative matters of great scope and complexity grow from the original assignment, such as situations where the suspected violators are highly organized crime groups whose criminal activities are interwoven with legitimate business activities, and the investigator develops leads from known criminal activities which cross over to legitimate businesses and cast suspicion on seemingly respected legitimate political, business, or professional leaders; or cases that unfold to involve large scale raids and seizures throughout several states and require the investigator to lead and coordinate several units of investigators from his own and other agencies tracing leads and gathering information.

The appellant's cases are comparable to the GS-13 level. It is common for many other investigations to result from the appellant's initial targets. Because of the nature of the Internet, his cases have routinely crossed jurisdictional lines, both nationally and internationally, and required him to carefully coordinate the tracking and gathering of information from other USCS agents, as well as agents from other Federal, state, and local law enforcement agencies and international organizations. He must routinely coordinate the service of search warrants and arrests simultaneously across the country and



in foreign countries because it is so easy for information of such activity to be quickly passed along to alert others via the Internet.

GS-13 is credited for the appellant's cases for Element 3.

Element 4 - The skill required to establish facts and evidence in assigned cases.

The agency determined that the appellant's cases are comparable to the GS-13 level for this element.

At the GS-12 level, there is a greater degree of difficulty in establishing direct relationships than at the GS-11 level where the subject is more clearly and directly involved in criminal activity. The subject is suspected of engaging in major and complex criminal activity but may be separated from the overt violation by a middle man or organization. This level requires careful judgment and expert skill in obtaining legal and administratively defensible testimony while avoiding issues of civil rights, invasion of privacy, entrapment, etc.

At the GS-13 level, the interrelationship of fact and evidence is extremely difficult to establish. Subjects are clearly separated from each other and the illegal activity. They deal exclusively through holding companies and subsidiaries with diversified mixtures of legal and illegal activities through several States. The work of other investigators or teams of investigators that the GS-13 investigator coordinates involves segments of the case that fully equate to the GS-12 level of difficulty.

The appellant's cases are comparable to the GS-13 level. It is extremely difficult to establish the origin of criminal activity on the Internet. The seller and buyer of child pornography can be separated by numerous layers and there can be the initial appearance of legitimate activities until the parties involved are willing to reveal their true intent. The appellant leads other investigators and law enforcement officials in conducting portions of Internet investigations which are complicated by the separation of the individual from the direct activity and require expert skill in obtaining legally defensible evidence while avoiding issues of privacy and entrapment and, therefore, equate to the GS-12 level.

GS-13 is credited for the appellant's cases for Element 4.

Element 5 - The sensitivity of assignments.

The agency determined that the appellant's cases are comparable to the GS-13 level for this element.

At the GS-12 level, subjects are so prominent that, after the first witness is interviewed, word of the interview precedes the investigator with the result that subsequent witnesses are evasive because of reluctance or fear. At this level, the subjects are very often of interest to major news media, and the investigation could result in publicity that would cast suspicion on the subject's reputation.

Investigations at the GS-13 level receive sustained and widespread coverage in major news media because of the prominence of the suspects or victims. Premature news coverage could hamper

progress or endanger the lives of victims. The suspects' financial involvements extend to enterprises that impact the national economy.

The appellant's cases are comparable to the GS-12 level. While not all of his cases involve prominent suspects, child pornography is considered such a heinous crime that any suspicion of being associated with this type of crime would easily ruin an individual's reputation. No one wants to be associated with such activity, and it can be difficult to get witnesses to cooperate. The news media at both a local and national level have contacted the appellant for information concerning his cases because of the public interest in seeing criminals associated with this type of activity brought to justice.

There is no evidence that the appellant's cases routinely involve sustained and wide-spread coverage by major news media typically associated with prominent suspects; financial enterprises that have an impact on the national economy; or principles in enterprises that impact state and Federal affairs which are normally found at the GS-13 level.

Element 5 is credited at the GS-12 level for the appellant's cases.

Element 6 - The jurisdictional problems involved in case assignments.

The agency determined that the appellant's cases are comparable to the GS-13 level for this element.

At GS-12, the subjects are engaged in activities that are the concern of several local, county, State, and Federal agencies, e.g., drug smuggling and forgery. This involves a web of relationships that requires a more extensive knowledge of the laws, rules, and policies of each of these jurisdictions.

At GS-13, investigations involve extremely difficult planning and coordination problems involving other Federal, State, county, and local agencies. For example, evidence may warn the GS-13 investigator that certain of his 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 appellant's cases are comparable to the GS-13 level. Use of the Internet crosses jurisdictional lines requiring the appellant to be well-versed in the laws and regulations of state and local governments, as well as various foreign governments. As the recognized expert in this field, he is frequently contacted during the conduct of his cases to instruct other agents in preparing and serving search warrants and obtaining information and evidence that can be used in court and using sources in such a way that privacy laws and civil rights are not violated in the process. He frequently works undercover to conduct transactions with suspects in numerous locations leading to additional suspects and evidence. Coordinating simultaneous search warrants and arrests across the U.S. and sometimes including other countries is very difficult and requires extremely careful and thorough planning.

GS-13 is credited for Element 6 in the appellant's cases.

In summary, four elements of each of the appellant's cases equate to the GS-13 level and two elements equate to the GS-12 level. Most or all of the elements must be evaluated at a particular grade for that grade level to be assigned. Based on that criteria, the appellant's representative cases each equate to GS-13.

### **Level of Responsibility**

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

At the GS-12 level, the investigator receives or generates his own assignments and receives policy guidance, but little technical instruction, on the conduct of investigations. The GS-12 investigator independently plans and conducts investigations including working out arrangements with other jurisdictions. The commitment of resources is coordinated through the supervisor.

At the GS-13 level, assignments are received through conferences or written directives that outline broad objectives, e.g., to stop smuggling of a particular commodity at a given port. The investigator defines the scope and boundaries of the investigations. Unexpected problems indicating new lines of inquiry are more common at this level, however, cases are typically so important and sensitive, that plans must be cleared by the supervisor. The GS-13 investigator is responsible for devising breakthroughs in investigative approaches, techniques, and policies. An extremely high degree of originality and initiative is required because investigations involve inquiry into activities occurring in various locations throughout a wide area, suspected violators typically retain the best legal or accounting advice available, and investigations assigned often establish important precedents.

The appellant's freedom from technical supervision and the supervisory review are similar to the GS-12 level. The appellant's investigations are virtually always generated and conducted independently. His immediate supervisor is kept apprised of case progress on a regular basis. However, the GS-12 level is exceeded since the subject matter of the majority of his cases, i.e., Internet crimes, is comparable to the type of complexity described at the GS-13 level which requires devising breakthroughs in investigative approaches, techniques, and policies and establishing precedents. The appellant is recognized by USCS and other national and international law enforcement agencies as the expert in this area. Strategies and policies for conducting these types of investigations were very limited or nonexistent when he began to work these type of investigative cases. He developed the technical strategy, as well as investigative strategy and continues to provide guidance to the USCS headquarters level on policy issues dealing with Internet investigations which is still an emerging area. The appellant has created approaches and established precedents in this investigative arena.

GS-13 is credited for the appellant's cases for this factor.

### **Summary**

The appellant's representative cases are credited at the GS-13 level for both *Complexity of assignments* and *Level of responsibility*. The overall evaluation of his cases is GS-13.

Established classification principles require that higher-graded work be performed a minimum of 25 percent of the time to be grade-determining. The GS-13 level is representative of at least 53 percent of the appellant's caseload for the past 3 fiscal years and is, therefore, the appropriate grade level for this position.

### **Decision**

This position is properly classified as Criminal Investigator, GS-1811-13. This decision constitutes a classification certificate issued under the authority of section 5112(b) of title 5, United States Code. This certificate is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.