

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

**Chicago Oversight Division  
230 South Dearborn Street, DPN 30-6  
Chicago, Illinois 60604**

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

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

**Agency Classification:** Criminal Investigator, GS-1811-12

**Organization:** Department of the Treasury  
U.S. Customs Service  
Office of Investigations  
[City, State]

**OPM decision:** Criminal Investigator, GS-1811-12

**OPM decision number:** C-1811-12-10

/s/

\_\_\_\_\_  
Frederick J. Boland  
Classification Appeals Officer

August 7, 1998

\_\_\_\_\_  
Date

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

**Decision sent to:**

[appellant's name and address]

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## Introduction

The appellant contests his agency's decision classifying his position, number A01243, as Criminal Investigator, GS-1811-12. The position is located in the Department of the Treasury, U.S. Customs Service (USCS), Office of Investigations, [Group Name], [City, State]. The appellant agrees that his position description accurately reflects his major duties, but believes that his role in working with the [City]-based interagency High Intensity Drug Trafficking Area (HIDTA) Task Force requires that he perform investigative duties typical of the GS-13 level of difficulty. He also claims that Criminal Investigators assigned to the HIDTA Task Force who are employees of the U.S. Department of Justice's Drug Enforcement Administration (DEA) and the U.S. Department of the Treasury's Bureau of Alcohol, Tobacco, and Firearms (AT&F) are classified at the GS-13 level and that he is performing duties comparable to theirs, but provides no specifics regarding their organizational location and regular duties.

Regarding this latter point, the U.S. Office of Personnel Management (OPM) is required by law to classify positions on the basis of their duties, responsibilities, and qualification requirements by comparison to the criteria specified in the appropriate classification standard or guide. Other methods, such as comparisons to other positions, whether in the same agency as the appellant's or another, are not permitted. Similarly, other factors (e.g., work volume, quality of work performed, length of service in a position, or difficulty in recruiting to fill a given position) are not considered in determining the correct grade level to be assigned. Agencies are required to apply classification standards and OPM decisions consistently to ensure equal pay for equal work. OPM will require an agency to conduct a consistency review upon showing that specifically identified positions at different grades have identical duties. However, because of differences in agency missions, functions, organization, and delegations of responsibility, there are likely to be differences in how seemingly similar positions operate between agencies.

## Position Information

The appellant is one of about 10 Criminal Investigators or Special Agents (SA) in the [Group Name], which reports to a GS-14 Supervisor and is composed of six GS-13 and four GS-12 Criminal Investigators. The [Group Name] itself is one of four units within the Office of Investigations, the others being the [Group Name], the [Group Name], and the [Group Name]. The appellant has responsibility for conducting and providing technical direction to criminal investigations involving violations of laws enforced by the USCS. This includes dealing with the following types of investigations:

- *Strategic*: Dealing with illegal exportation of munitions or critical technology, violation of neutrality laws, and terrorism;
- *Financial*: Concerning currency transaction violations, especially as related to organized or white collar crime, narcotics trafficking, and similar illegal activities (collectively and usually termed "money laundering");

- *Fraud*: Involving merchandise undervaluation and false invoicing or marking of merchandise in order to avoid or reduce customs duties and other relevant legal restrictions; and
- *General*: Dealing with smuggling activities, applications for Customhouse broker and Customs attorney licenses, thefts of material in Customs Service custody, and legal violations involving matters administered by other Federal agencies.

In carrying out such investigations, the appellant works as a “Case Agent” and is assigned responsibility for conducting and/or directing all aspects of a given criminal investigation. This can include overseeing the activities of other SAs if and when such co-workers have been assigned to assist him in conducting such investigations. In his Case Agent role, the appellant plans all aspects of an investigation, including determining the methods, tactics, and techniques to be employed; establishing necessary liaison with other Federal and non-Federal public jurisdiction law enforcement agencies; and representing the USCS when presenting a case to the relevant U.S. Attorney’s Office for prosecution.

The appellant bases his appeal on his assignment, on an essentially full-time basis, to the interagency HIDTA Task Force from January 1997 until February 1998, and specifically to his work as a Case Agent on two closely interrelated HIDTA investigations cases targeting the [City]-based [Organization Name] street gang: Customs-HIDTA no. CH13CR96CH0020 and AT&F/DEA-HIDTA no. 20714960007 E-HIDTA. The cases respectively involved the criminal and civil aspects of the ongoing investigation. A total of 36 law enforcement personnel representing 16 Federal, State, and local governmental jurisdictions based in the [City] area participated in the work of the DEA-led HIDTA Task Force, which began operations in October 1995.

In addition to his investigations-related assignments, the appellant also functions as his work unit’s Firearms Officer. In this capacity, he oversees and coordinates the quarterly firearms qualifications recertification process for all staff authorized to use firearms. He also inputs data into the Firearms Inventory Tracking System (FITS), which is used to establish and maintain accountability for all firearms issued to authorized staff members.

## **Analysis and Findings**

### **Series and Title Determination**

The appellant's work, as described above, is covered by the Criminal Investigator, GS-1811, series, which includes duties that primarily require planning and coordinating investigations relating to alleged or suspected violations of criminal laws. The work requires primarily a knowledge of investigative techniques; the laws of evidence; the rules of criminal procedure; and precedent court decisions concerning admissibility of evidence, constitutional rights, search and seizure, and related issues. Also required is the ability to recognize, develop, and present evidence that reconstructs events, sequences, and time elements; and which establishes relationships, responsibilities, legal liabilities, and conflicts of interest, in a manner that meets requirements for presentation in various legal hearings and court proceedings. Skill is also

necessary in applying the techniques required in performing such duties as maintaining surveillance, performing undercover work, and advising and assisting the U.S. Attorney in and out of court.

Although the appellant's position description states that, as a Case Agent, he ". . . supervises the activities of other Agents . . ." who may be assigned supporting roles to assist in conducting specific investigations, it goes on to state that such supervision ". . . is limited to periodic review of progress achieved, ensuring compliance with established policies and procedures and an evaluation of overall results produced." Such "supervision" when carried out by the appellant, is a normal part of investigator work and unlike the full supervisory or lead responsibilities recognized in OPM's supervisory or leader guides. In addition to individually assigned cases, the investigator at any grade level, from time to time, may work on particular investigative tasks associated with cases assigned to others or personally lead or coordinate the work of others temporarily assigned to help on the investigator's cases. These temporary conditions are a normal part of completing investigative assignments and have no particular impact with respect to determining the grade level of an investigator's position. Nor is there a particular relationship between the grade level of the investigator who has primary responsibility for a case and the grade levels of other investigators who are temporarily called upon to assist him with particular investigative tasks. The appellant's position is, therefore, appropriately regarded as non-supervisory in nature.

The prescribed title for non-supervisory positions in the GS-1811 series is *Criminal Investigator*. A parenthetical title indicating a subject matter specialization or functional area may be added to the title at the discretion of the agency.

## **Grade Determination**

The OPM *Grade Level Guide for Classifying Investigator Positions, GS-1810/1811, Series* position classification standard, dated February 1972 presents grading criteria in terms of two factors: Complexity of Assignment and Level of Responsibility.

The first of these, Complexity of Assignment, assesses the scope, complexity, and sensitivity of investigative assignments and takes into account six principal elements:

1. Levels of difficulty involved in resolving conflicting facts or evidence;
2. Extent of difficulty and complexity stemming from investigations' subjects;
3. Nature of separate investigative issues that evolve out of the original investigations;
4. Skill necessary to develop facts and evidence in assigned investigations;
5. Sensitivity in assigned investigations; and
6. Inter-jurisdictional problems that arise in the course of conducting investigations.

The second factor, Level of Responsibility, evaluates the type and extent of supervision received by investigators and the degree of resourcefulness they must exhibit to find and verify information germane to assigned investigations.

A position must substantially meet most or all of the characteristics for a grade to be classified to that grade.

### **Factor 1: Complexity of Assignment**

#### 1. *Levels of difficulty involved in resolving conflicting facts or evidence.*

The appellant notes, among other things, that:

- The HIDTA program is a national investigation of the [Organization Name], an organization with a membership of [#] in [#] states.
- The investigation coordinates 16 federal, state, and local agencies and 36 law enforcement officers.
- In Phase I of the operation, targeting high level [Organization Name] members, he initiated investigations, conducted interviews with confidential informants, created extensive TECSII identification files, directed mobile and stationary surveillance, directed other agents in making undercover purchases of firearms and narcotics, used electronic surveillance recordings, conducted consent searches and trash searches, prepared affidavits, and instructed state and local officers in report preparation.
- In Phase II of the operation, he obtained evidence linking high ranking members to crimes, assisted in developing the strategy of the investigation, debriefed key criminal informants, directed surveillance, and transcribed surveillance recordings.
- Phase III of the operation included additional corroboration of evidence gathered in Phases I and II, coordinating activities with the [City] Police Department and Housing Authority such as directing undercover purchases and assisting in arrests, conducting search warrants, conducting contemporaneous interviews, and independently resolving inter-agency conflicts regarding enforcement methodology.
- In Phase IV, the prosecuting stage, he demonstrated extensive knowledge of the law in obtaining subpoenas, participated in defendant proffers to document incriminating statements, used garbage can searches to obtain prosecutable evidence, and used guidance directed by recent precedent setting court cases (Brady v. Maryland and US v. Parks were cited).

The appellant described in some detail the four phases of the HIDTA Task Force's work since its inception and the internal power structure and modes of operation used by the [Organization Name] organization, and included examples of his own contributions during each of these phases. (At the time he submitted his appeal, the first two phases were essentially completed, while work continued on the third and fourth phases.) During the first phase, in the course of which a number of investigations were initially launched of ranking members in the [Organization Name] hierarchy, the appellant described his work in such areas as developing intelligence files on [Organization Name] leadership figures using Treasury and Justice Departmental and other participating jurisdictions' automated systems, e.g., the Treasury Enforcement Communications System II (TECSII); conducting surveillance operations, conducting searches (consent and garbage-trash), interviewing confidential informers (CI's), etc. The Task Force's second phase concentrated on developing evidence clearly demonstrating how the internal organization of the [Organization Name] was interrelated in carrying out their illegal activities and the procedures they followed in so doing. The appellant's contribution to this initiative focused on debriefing CI's, providing surveillance direction, transcribing tape recordings of conversations of investigation targets, and helping to identify [Organization Name] leadership. The appellant's

involvement in the third phase, which concentrated on corroboration of the evidence gathered in the earlier phases and establishing operational coordination with [City] Police Department and [City] Housing Authority tactical units targeting gang activity, dealt with directing firearms and narcotics purchases, assisting local police in serving arrest and search warrants, interviewing defendants, working with U.S. Attorney's Office ([Name of District]) staff, and participating in discussions to resolve differences among Task Force members on the investigation's strategies to be pursued. The fourth and final stage involved use of the evidence acquired and developed in the earlier phases to prosecute identified ranking [Organization Name] members, with approximately [#] of this group being arrested and indicted in [Month Year]. The appellant did not detail any specific role he had at this stage, but reiterated his earlier work which helped to lead up to the culminating arrests and indictments.

The appellant's duties as he described them and the context in which they were performed are characteristic of the GS-12 level under this element, where available evidence implicating the subjects of an investigation is typically circumstantial in nature rather than providing direct verification of their involvement in criminal activity, and improper development of the investigation could have significant repercussions. The difficulty of developing direct evidence implicating the [Organization Name] leadership in a pattern of criminal activity and the possibility of negative consequences for the USCS leadership stemming from less than careful conduct of the investigation fit the GS-12 level of difficulty. There is little indication that the [Organization Name] leadership - the target of the HIDTA Task Force's efforts - constituted a threat of national proportions to the security or welfare of the United States or that the appellant's work with the HIDTA Task Force called for his involvement in investigative issues of the exceptional level of difficulty, extreme sensitivity, or interregional/national scope as envisioned at the GS-13 level, where, for example, investigators must piece together evidence from other investigators stationed throughout several States and instruct individual investigators working on segments of the case or where unprecedented investigations lay the groundwork for significant legal changes or judicial outcomes.

We evaluate this element at the GS-12 level.

## 2. *Extent of difficulty and complexity stemming from investigations' subjects.*

The appellant notes, among other things, that:

- Investigations he worked concerned smuggling heroin from West Africa to [City], from Jamaica to [City] to [City] and from Mexico to [City] to [City].
- He worked closely with other [City]-HIDTA agents to investigate [City] [Organization Name] travel to [City] to purchase firearms and to [City] to purchase "crack" cocaine.
- He investigated the methods in which narcotics and weapons were obtained using false ID cards, "straw purchases", and theft and assisted the [City] police in establishing evidence for murder cases.
- Investigations into the illegal sale of CO2 gun parts to England demonstrate his knowledge of international law and treaties, as does execution of search warrants in a smuggling operation of electronic devices to Japan.

The appellant provided general information regarding the [Organization Name] organization, depicting it from its inception in [City] [#] years ago and its multistage expansion from that base during the last [#] years. He cited several situations involving [Organization Name]-related activities involving individuals from outside of the [City] area to demonstrate the far flung nature of [Organization Name] operations. Included was a description of local [City] area investigations involving four nationals of [Country], [Country], and [Country], who were allegedly conspiring with the [Organization Name] organization to bring illegal drugs to [City]. The appellant also cites an investigation which identified [Organization Name] efforts to obtain firearms illegally in [City] for shipment to [City] and another involving an attempt to recruit a member of a [City]-based [Organization Name] faction in connection with a “murder for hire” conspiracy in a [City] suburb. The appellant claimed that the [Organization Name] organization’s activities constituted an “Enterprise” which affected interstate and foreign commerce. The appellant also referred to three other cases in which he had been involved, but which were not related to the work of the HIDTA Task Force, which dealt with the investigation of the exportation of firearm component parts without proper licenses by two [State]-based firms and the illegal importation of certain electronic equipment by a [City] area company.

Although the agency’s position evaluation statement credited the appellant’s work under this element at the GS-13 level, our analysis of the appellant’s investigative assignments identified little evidence of regular involvement with the type of extremely complex organizations having a nationwide presence or impact, which is characteristic of GS-13 level investigations. The [Organization Name] organization is undoubtedly an enterprise which has engaged in interstate and foreign commerce (illegal or otherwise), but the information presented by the appellant makes clear that his HIDTA Task Force investigative involvement dealt almost entirely with [City] area-focused activities of the [Organization Name] organization (e.g., the local results or outcomes of the interstate transportation of weapons to [City] or the importation of illegal drugs to that location), and did not demonstrate the much wider national level presence and impact envisioned at the GS-13 level, where the organization investigated has an extremely complex structure with diversified interests, e.g., the manufacture, distribution, and sale of legal or illegal goods in a national market involving a complex network of widespread distribution and sales outlets. As such, his investigative assignments, in terms of the difficulty deriving from the subjects of these investigations (i.e., members of the [Organization Name] organization’s leadership), do not significantly exceed the GS-12 level, and, like that level, are best described as principals in organizations with multiple components each of which is separately involved in some form of criminal activity, or have overlapping financial interests involving a mixture of legal and illegal activities.

We evaluate this element at the GS-12 level.

### 3. *Nature of separate investigative issues that evolve out of the original investigations.*

The appellant notes, among other things, that:

- The [City]-HIDTA program led to several spin-off investigations at the federal, state, and local levels. These included the “[Name] Faction” investigation into money laundering, the creation of a multi-agency West African Task Force, and the creation of the [Name] HIDTA Task Force.



- He is the Primary Firearms Instructor for the Office of Investigations, [City, State].

The appellant describes a number of “spin-off” investigations as an outcome of the work of the HIDTA Task Force’s work, and his work as “a major case initiator.” These include money laundering and tax evasion charges being pursued by Internal Revenue Service agents against specific [Organization Name] leadership figures and the formation of two other HIDTA-related task forces targeting specific facets of [Organization Name] criminal operations in the [City] metropolitan area. The appellant also cites, as an example of a large scale raid in which he has participated, one undertaken by the HIDTA Task Force in [Month Year], targeting the [Organization Name] organization, which was carefully coordinated so as not to disrupt the indictment and prosecution of [#] of the principal [Organization Name] leadership figures that had occurred just prior to the raid itself. He goes on to indicate that he had been called upon by HIDTA management staff frequently to plan for and carry out numerous search and arrest warrants as a result of his recognized expertise gained in USCS enforcement operations. In conjunction with this latter observation, the appellant cites the USCS decision to have him attend the Firearms Instructor Training Program and a Counter-Drug Special Weapons and Tactics Course for the purpose of enhancing his skills to coordinate and carry out large scale raids. He further cites his collateral duty as Firearms Officer for his work unit, discussing his work in implementing and maintaining the currency of information in the FITS system, ensuring compliance with weapons qualification procedures, and monitoring the accuracy of the TECSII Firearms Training System’s database.

With regard to the evolution of “spin-off” investigations resulting from the HIDTA Task Force’s efforts, the appellant indicates that he was significantly involved personally as a causative agent (a “major case initiator,” to use his term) in the decisions to launch these supplemental investigations. In contrast, his supervisor, who indicated that he maintained ongoing contact with HIDTA management to secure feedback on the appellant’s performance during his work on the Task Force, stated that the appellant carried out his Case Agent investigative and other responsibilities assigned to him by HIDTA management on specific aspects of Task Force investigations (e.g., conducting undercover surveillance, observing illegal drug sales, transporting prisoners, dealing with CI’s, etc.) in order to develop chains of evidence leading to [Organization Name] leadership figures who were not at the outset able to be implicated directly in suspected criminal activity. These activities did not involve an ongoing, routine expectation that the appellant coordinate large scale raids and seizures over a multistage area involving interagency teams of investigators. Decisions to launch supplemental investigations were made at HIDTA management levels relying upon the totality of information developed by Task Force participants. As such, the issues evolving from the appellant's personally performed work are like those at the GS-12 level, where investigations evolve from initial assignments, as when an investigation proceeds by developing evidence from less important figures to intermediate individuals or organizations and, eventually, the primary individual or organization. Unlike the GS-13 level, his personally performed work does not typically result in many separate investigative matters of great scope and complexity, extend beyond the criminal activity to involve respected figures, or unfold to involve large-scale raids or seizures occurring over several states where he must regularly coordinate several units of investigators involving his own and other agencies. Similarly,

his training of other investigators in firearms use is not equivalent to coordinating several investigative units across several states.

We evaluate this element at the GS-12 level.

4. *Skill necessary to develop facts and evidence in assigned investigations.*

The appellant notes, among other things, that:

- He uncovered evidence demonstrating the use of "front" activities that included pager companies, auto sales and repair stores, food and liquor shops, and clothing stores that were used as meeting places and drug distribution centers.
- He directed and coordinated purchase of evidence with County Sheriff and Special Agents from Housing and Urban Development.

The appellant describes a number of the companies and businesses which the [Organization Name] organization has acquired through the use of aliases on the part of the purchasers, the purpose being to conceal their efforts to launder funds generated as proceeds of illegal drug sales through such acquisitions. He also refers to his work in directing an investigator of a local jurisdiction (the [Name] County, [State] Sheriff) and a GS-13 investigator employed by the Department of Housing and Urban Development (HUD) in making five purchases of evidence on an undercover basis, and alluded to other situations in which he had directed other investigators in surveillance operations, acquiring consensually recorded taped conversations and tax/financial records, and purchasing firearms/narcotics-related evidence. The appellant also describes his participation in a multiagency/jurisdiction HIDTA Task Force initiative which took place on [Date], involving the arrest of [#] members of the [Organization Name] leadership and the seizure of extensive evidence of criminal activity on their part.

The appellant's HIDTA Task Force activities so described do not significantly exceed the GS-12 level, where subjects are separated from open personal involvement by middlemen or organizations, and the investigator must establish their association by developing physical or financial evidence implicating the subjects, which imposes a requirement to verify and evaluate such data with extreme care. The complexity factor stemming from the [Organization Name] leadership's efforts to disassociate themselves clandestinely through the use of fictitious names from the organization's acquisition of legitimate businesses and the employment of the investigative measures so described by him to get at the truth are typical of GS-12 investigative performance. The appellant's personal work with the Task Force as depicted is largely localized and does not reflect his having to cope consistently with the type of widespread, geographically dispersed criminal activity that is an expectation at the GS-13 level. He does not personally direct investigations of subsidiaries and holding companies engaged in diverse activities throughout wide sections of the country, as expected at the GS-13 level. The coordinative role he described involving other investigators indicates that these situations were small in scope, although occasionally involving a higher graded investigator, and were otherwise typical of GS-12 Case Agent duties. The appellant's role in the [Month Year] case as described did not involve him as a principal coordinator of the efforts of other participating investigators, a situation which was confirmed by his supervisor.

We evaluate this element at the GS-12 level.

5. *Sensitivity of assigned investigations.*

The appellant notes, among other things, that:

- The [Organization Name] organization is the largest criminal organization in [City] and is the constant focus of media attention and inquiry. He must be cognizant of this so as not to jeopardize the integrity of the investigation and his informants and the safety of the other investigators.
- The sensitivity of his investigations is underscored by his communication with informants in prison through use of "medical call" and other covert techniques to maintain informant confidentiality and safety. Recently he worked closely with other [City]-HIDTA agents using covert means in an attempt to turn a high ranking [Organization Name] member into an informant.

The appellant discusses the notoriety of the [Organization Name] organization, the “celebrity status” as well of its incarcerated leader, and the consequent tenacity of news media figures in seeking to learn of ongoing developments regarding any investigation of the [Organization Name] organization. He cited the concomitant urgency of avoiding any action that could jeopardize the proceedings of the Federal grand jury, which the U.S. Attorney was using extensively to document evidence against the [Organization Name] organization as it was developed. The history of the willingness of the [Organization Name] leadership to invoke retaliatory violence against CI’s or others suspected of cooperating with law enforcement authorities required that the appellant be extremely circumspect in conducting CI interviews, and he claimed to have developed new techniques for ensuring the confidentiality of such cooperating individuals in a prison environment. The appellant cited a specific instance in which he worked with a potential CI’s attorney whose client was being held in custody and with Federal and local prosecutors to facilitate the parties’ negotiations for the cooperation of the incarcerated source, using highly discreet methods to ensure that knowledge of these exchanges was not disclosed.

Sensitivity concerns arising out of the prominence of suspects and/or victims are present at both the GS-12 and 13 levels under this element. The distinction between them arises from the presence of additional complicating factors characteristic of the higher grade level (e.g., the potential for national economic impact due to the scope of suspects’ financial activities or the involvement of public officials with the suspects as a result of attempted bribery, fraud, collusion, or extortion). There is no indication that factors involving such expanded sensitivity issues were present in the appellant’s investigatory duties with the HIDTA Task Force. (In this regard, in the appellant’s discussion of relevant issues under the third element above, he had alluded to the “...attempted ‘extortion’ of [City] [State] officials by [Organization Name] 21st Century Vote...,” but there was no indication that this had any bearing on investigations issues in which he was involved.)

We evaluate this element at the GS-12 level.

6. *Inter-jurisdictional problems that arise in the course of conducting investigations.*

The appellant notes, among other things, that:

- He has been utilized to provide direction, coordination, and assistance in furthering the success of the 16 agency HIDTA task force.
- He has maintained liaison between Federal, state, and local law enforcement personnel. He demonstrated the ability to ameliorate a jurisdiction conflict between the FBI and his HIDTA group through ceasing some activities while the FBI conducted their investigation and resuming his activities upon their completion.
- He has developed contacts with private attorneys and CEOs of major corporations and financial institutions.
- He worked investigations that resulted in halting the export of certain illegal weapons and supplies to foreign countries.
- He coordinated the protection of the President of [Country] during a two week visit for the 50th anniversary of the United Nations. This required coordinating advance surveys for protection between officials from [Country] and the United States.
- He has demonstrated ability to independently deal with methodology and jurisdictional problems, resolve conflicts, and maintain focus on the mission of the U.S. Customs Service and the [City]-HIDTA.

As mentioned above, the [City] HIDTA Task Force represented a coordinated, interagency pooling of efforts designed to bring to bear the combined law enforcement resources of the Federal, State, and local jurisdiction participants against the [Organization Name] organization's leadership. A total of 16 agencies drawn from across the intergovernmental spectrum, represented by 36 assigned investigations staff, were engaged in this common undertaking. The appellant stated that there were a number of problems, especially in the early stages of the Task Force's work, involved in meshing the work of this disparate group, many members of which not surprisingly brought their own organizational and personal viewpoints as to the best methods or approaches to be used in this joint investigative endeavor. He also indicated that, based on their knowledge of his background, that HIDTA Task Force management "called upon certain agents to assist in maintaining the direction of this investigation" and that he had been repeatedly used in such a capacity. As an example of this, the appellant cited an instance when the U.S. Attorney's Office requested that the HIDTA Task Force suspend its investigation of one prominent member of the [Organization Name] leadership so as not to interfere with the work of a Federal Bureau of Investigation (FBI) task force that was targeting the same individual. The appellant said the USCS HIDTA Task Force members cooperated but that he clarified with the FBI what aspects of the HIDTA group's investigation could go forward without compromising the work of the FBI.

Apart from his HIDTA Task Force involvement in issues concerning interagency investigative coordination, the appellant also cited a number of non-HIDTA related cases on which he had worked in the course of which he had occasion to maintain liaison with various other law enforcement organizations. In the same vein, he mentioned his work assisting the U.S. Secret Service in the course of protection assignments involving presidential candidates or foreign dignitaries.

In none of the HIDTA Task Force-related liaison/coordination issues discussed, or for that matter in the relevant cases or situations outside the HIDTA Task Force environment that he mentioned, was there any indication that the demands upon the appellant regularly rose to GS-13 level

expectations, where extremely difficult planning and coordination problems in conducting cross-jurisdictional investigations exist due to extensive and critical inter-jurisdictional issues with which the investigator must deal, e.g., as when peers in other public jurisdictions are involved in wide-scale criminal conspiracies themselves, requiring the investigator's use of them in double or triple capacities, while not allowing them to realize how they are being so used.

As at the GS-12 level, the appellant was expected to be aware of and sensitive toward the policies and practices of other law enforcement jurisdictions participating in the work of the HIDTA Task Force, and, as a Case Agent, had occasion to plan for and coordinate the use of other participating agencies' in conducting raids and surveillance operations. GS-12 level investigations typically concern criminal activities that are the focus of multiple law enforcement jurisdictions, and the GS-12 investigator must have in-depth knowledge of the relevant laws, policies, and practices of these jurisdictions and, in coordinating and planning for raid and surveillance operations using other jurisdictions' investigators, must take these into account.

We evaluate this element at the GS-12 level.

We evaluate all six elements of Factor 1, and Factor 1 itself, at the GS-12 level.

## **Factor 2: Level of Responsibility**

The appellant notes, among other things, that:

- He apportioned a case where approximately 500 grams of cocaine were found in possession of a man going through customs.
- He assisted in boarding and inspecting a boat carrying illegal weapons and narcotics.
- His role as case agent and co-case agent on five unique identifiers for the [City]-HIDTA task force required assignments that included confidential informants and witness interviews, recruitment and payment of informants, obtaining and corroborating intelligence, directing multiple mobile and stationary surveillance, directing undercover agents in the controlled purchase of firearms and narcotics, and utilizing innovative techniques such as garbage searches.
- He was assigned to the President's [Name] Organized Crime Drug Enforcement Task Force on the basis of his extensive investigative knowledge of U.S. Customs. He planned, coordinated, and directed investigations of major smuggling operations involving sizeable numbers of suspects.

The appellant's position description indicates that he receives general guidance on case assignments from his supervisor, who is available to provide supplemental advice on matters of extreme sensitivity or exceptional difficulty that arise in conjunction with specific investigations. However, the appellant operates with extensive independence in recognition of his past training and experience. Discussion with the appellant confirmed that he is indeed expected to carry through on investigative assignments with little if any need for technical instruction, although he does check with his superior on complex policy-related issues as such may arise, with work review being largely concerned with the end results of the investigations he conducts. The appellant's supervisor stated that the former is accorded a wide latitude of independence and that he (the supervisor) maintains ongoing review of the appellant's work through monitoring the

USCS periodic investigations work status reporting system and through review of the summary Reports of Investigation submitted by USCS investigators.

In the discussion of this factor in his written appeal submission, the appellant provided an extensive case compendium summarizing his activities with the HIDTA Task Force and in numerous other cases with which he had been involved. He described various investigative techniques he had employed in the course of conducting these cases and claimed that a number of these were innovative in approach. These included use of “garbage-trash” searches, electronic tracking devices (including preparation of Federal affidavits supporting their use), consent searches to seize evidence, assisting in the preparation and service of Federal and State search warrants, assisting in searches for [Organization Name] fugitives, utilizing the intelligence databases maintained by USCS and other law enforcement agencies in various jurisdictions, and targeting for investigation cargo container repair facilities suspected of secreting illegal drugs in cargo containers. The appellant’s supervisor stated that these were well established investigative methods and that the appellant competently made use of such approaches but had not achieved any true breakthroughs in developing investigative “tools of the trade,” such as would be characteristic of GS-13 investigators’ contributions. The appellant did not claim that his past casework had dealt with issues of such complexity that senior USCS management had ever been involved in approving his investigative plans and his supervisor confirmed such lack of direct senior agency participation in the appellant’s casework.

The GS-13 investigator receives assignments in the form of broad objectives to be achieved, with any accompanying instructions being of a very generalized, non-technical nature, and then is expected to develop plans regarding the resources necessary to attain these goals and for assuring any needed coordination with other jurisdictions. Work review consists basically of discussions with the investigator’s supervisor at critical points in the course of a given investigation. Such critical points arise out of the nature of the cases assigned to GS-13 investigators, which involve much more complex and sensitive issues than those assigned to lower graded staff, and unexpected problems indicating a need for new or revised lines of inquiry arise frequently at which times the investigator typically makes recommendations regarding new or modified investigative approaches to be adopted, which are usually accepted.

Accordingly, evaluation of this factor at the GS-13 level hinges upon not only a high level of independence, which the appellant demonstrates, but also increased responsibility for the most difficult assignments. Since the appellant’s assignments fall short of the most difficult investigative assignments, as discussed under Factor 1, his credit under this factor is limited to the GS-12 level. The higher order complexity, importance, and sensitivity of GS-13 level cases (e.g., such a case may often be the first of its kind to be pursued under a new legal provision, and the outcome may affect other pending cases or otherwise influence the decisions reached on such cases subsequently; the investigative methods and approaches devised by the GS-13 Criminal Investigator often set the pattern for later investigations involving similar issues; etc.), when coupled with substantial independence, warrant GS-13 level credit. But when there is no corresponding increase in the level of responsibility to accompany increased independence, no additional credit would be appropriate.

We evaluate Factor 2 at the GS-12 level.

**Decision**

Based on the above analysis, the proper classification of the appellant's position is *Criminal Investigator, GS-1811-12*.