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

Classification Appeals and FLSA Programs
Office of Personnel Management
1900 E Street, NW., Room 7671
Washington, DC 20415-6000

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

Appellants:	[Appellants' names]
Agency classification:	Investigator GS-1810-9
Organization:	Investigations Division Security Office [activity] Naval Shipyard U.S. Department of the Navy [city, state]
OPM decision:	Detective GS-083-9
OPM decision number:	C-0083-09-02

Melissa A. Drummond
Director
Classification Appeals and FLSA Programs

12/21/99
Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), 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 (PCS's), appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[appellants' names and addresses]

Director
Human Resources Office
[location] Naval Shipyard
U.S. Department of the Navy
[address]

Director, Plans, Programs, and Diversity
Office of the Deputy Assistant Secretary
of Navy, Civilian Personnel (CP/EEO)
U.S. Department of the Navy
3801 Nebraska Avenue, NW
Building 5, Room 117
Washington, DC 20393-5451

Chief, Classification Branch
Field Advisory Services Division
Defense Civilian Personnel
Management Service
1400 Key Boulevard, Suite B-200
Arlington, VA 22209-5144

Mr. Theodore Shepherd
OPM San Francisco Oversight Division
120 Howard Street, Room 760
San Francisco, CA 94105-0001

Mr. Carlos Torrico
OPM San Francisco Oversight Division
700 5th Avenue, Suite 5950
Seattle, WA 98104-5012

Mr. Michael Wilkin
OPM Philadelphia Oversight Division
600 Arch Street, Room 3400
Philadelphia, PA 19106-1596

Mr. Robert D. Hendler
OPM Philadelphia Oversight Division
600 Arch Street, Room 3400
Philadelphia, PA 19106-1596

Introduction

This decision covers two group appeals filed by employees of the Department of the Navy. Due to their physical location, one group appeal was initially filed with the San Francisco Oversight Division of the U.S. Office of Personnel Management (OPM) and the other group appeal with the Philadelphia Oversight Division of OPM. In reviewing these appeals, OPM found similarities between the two appealed positions as well as internal agency guidelines which specifically address these positions. We are, therefore, addressing the title, series and grade for both group appeals in this one decision. The overall fact finding process led to a delay in issuing a decision; however, OPM felt that it was important to obtain all of the information about the similarities and differences in the positions before formally issuing our determination to ensure internal consistency in our final decision. These appeals were accepted and decided under section 5112 of title 5, United States Code (U.S.C.).

General Issues

As is customary with our appeal decisions, we will initially discuss the specific background information inherent to the two group appeals. This information is crucial to better understanding the appealed positions. The appeal received by the San Francisco Oversight Division was from a group of five Navy employees located in [Location #1]. The appeal received by the Philadelphia Oversight Division was from two Navy employees located in [Location #2].

[Location #1]

On June 15, 1998, OPM's San Francisco Oversight Division received a classification appeal from [appellant #1, appellant #2, appellant #3, appellant #4, and appellant #5], who occupy identical additional positions (PD# [number 1]). The agency currently classifies the appellants' positions as Investigator, GS-1810-9. The appellants' positions are located in the [organization] Naval Security Forces, Shore Operations Department, Public Safety Division, Security Branch, Department of the Navy, [Location #1].

Until May 24, 1998, all of the appellants were classified as Criminal Investigators, GS-1811-11. Based on a decision by the Commander, Naval Sea Systems Command (signed W.D. McCafferty by direction) dated December 17, 1997, and confirmed by the Acting Director, Program Development and Direction Division, Office of the Deputy Assistant Secretary of the Navy (Civilian Personnel/EEO) by memorandum dated March 19, 1998, the classification of the appellants' positions was changed. On May 24, 1998, the agency reclassified the appellants' positions to Investigator, GS-1810-9. However, the appellants believe that their positions should be classified as Criminal Investigator, GS-1811-11. These appellants maintain that the decision to reclassify their positions was not based on the duties they perform, but rather on the agency's desire to save money by removing the appellants from coverage under the law enforcement retirement provisions and the provisions of Law Enforcement Availability Pay. In adjudicating this appeal, our only concern is to make our own independent decision on the proper classification of the appellants' positions. Therefore, the motivations behind the agency classification decision for these individuals are not relevant to our decision.

The appellants and their supervisor have certified that the position descriptions are current and accurate. To gain additional information and insights into the appellants' duties and responsibilities and the manner in which they are carried out, an OPM representative conducted on-site audits with the appellants and interviews with their supervisors on May 19 and 20, 1999. Case samples were also provided by each appellant. In addition, the Special Agent-in-Charge, [organization] Field Office, Naval Criminal Investigative Service (NCIS), was interviewed by telephone to clarify the appellants' case assignment and reporting relationships.

[Location #2]

On November 16, 1998, OPM's Philadelphia Oversight Division accepted a classification appeal from [appellant #6] and [appellant #7]. The identical additional positions they occupy are currently classified as Investigator, GS-1810-9, (PD# [number 2]). The appellants initially requested reclassification of their positions as Criminal Investigator, GS-1811-9. However, on January 26, 1999, they requested reclassification as Criminal Investigator, GS-1811-11. The positions are in the Investigations Division, Security Office, [activity] Naval Shipyard ([activity acronym]), Department of the Navy, [Location #2].

The PD of record was initially classified as Criminal Investigator, GS-1811-9, on August 15, 1990. As annotated on the PD of record, it was reclassified by the agency on May 1, 1998, as Investigator, GS-1810-9. In support of their appeal, the appellants cite a Merit Systems Protection Board decision of September 10, 1998, that concluded they were properly covered under law enforcement officer retirement ending when their positions were reclassified on May 1, 1998.

The appellants state their PD is not accurate with regard to supervisory controls because the Operations Division head position has been vacant for an extended period of time. They report to Security Officer [name]. Information provided in the appeal administrative report shows that the Security Office is in the process of reorganizing, and the appellants will report to the Operations Division head. The appellants state that they plan and conduct investigations relating to alleged or suspected violations of criminal law covered by the Criminal Investigating Series, GS-1811.

Based on our review of the March 11, 1999, appeal administrative report, we requested synopses of a representative sample of the most difficult cases assigned to each of the appellants over the past year, beginning March 1998. Descriptions of two criminal investigations provided by the appellants and a copy of selected portions of the MSPB transcript describing case work performed by the appellants were received on August 13, 1999. On September 2, 1999, we conducted an on-site audit with [appellant #7], and interviews with Security Officer [name] and NCIS Special Agent [name]. An on-site audit was conducted with [appellant #6] on September 7, 1999. This fact finding concentrated on work performed by the appellants from March 1998 through August 1999.

In reaching our classification decision, we have carefully considered information from our audits and interviews, and all other information furnished by both the appellants and the agency, including the sample of cases provided by the appellants.

Position information

The appellants perform work for, and support the activities of, the NCIS for the Department of the Navy. Both appeals cite similar work samples, including:

[Location #1]	[Location #2]
Theft of Government property	Fraud, theft, and damage to Gov't property
Fraud for FECA benefits	Fraud for FECA benefits
Narcotics	Narcotics
Credit Card Fraud	Internet child pornography
Other minor thefts	Arson
Range of physical assaults	Sexual assaults/unlawful sexual conduct

Here is more specific information regarding the assignments:

[Location #1]

The appellants investigate crimes committed by employees, contractors, residents, and visitors against the interest of the United States Navy within the large area of the [geographic location] under the jurisdiction of [organization] Naval Security Forces. The appellants are under the supervision of the Regional Security Director/Security Program Manager, and also receive supervision, case assignment and guidance from the assigned Regional NCIS Special Agent, GS-1811-13. The Regional Special Agent reports to the Assistant Special Agent-in-Charge, of the [organization] Field Office, NCIS.

The appellants' assignments include a range of cases extending from minor theft in a base housing area to theft of government property worth hundreds of thousands of dollars; from personal use of controlled substances to small time narcotics sellers. At least 50 percent of their time is spent on Federal Employees Compensation Act (FECA) cases which includes long term defrauding of the FECA program. Their cases also have involved passing small value bad checks, abuse of position, the making of threats, and a range of physical assaults. To perform their duties, the appellants are authorized to carry concealed weapons, make arrests, execute warrants, swear out affidavits, conduct surveillance, work undercover, and interrogate witnesses and suspects. Their authority is not limited to naval bases and adjacent Federal property, but extends anywhere in the region where crimes against the Navy or suspects in crimes against the Navy engage in criminal activity or reside.

[Location #2]

The PD of record states that the appellants are responsible for conducting investigations "including, but not limited to, personnel absent on traumatic injury, sick leave, compensation; verification of signed documents, disciplinary claims, and criminal investigation involving violations of federal laws" 60 percent of the time. The criminal investigations listed include robbery, burglary, assault, malicious damage to Government property, sabotage, and security violations such as loss of classified materials. The PD states:

> majority of cases concern fraud and theft of any dollar amount and could result in imprisonment of suspects more than one (1) year, and alleged damage to Government property. The nature of the cases are such that they normally take a period of time to complete; i.e., days, weeks, or sometimes months. The cases are generally non-controversial in that they start and end with the same issue and are not of the type that frequently receive the attention of the public or news media.

The investigative methods and techniques used include "interviewing suspects, witnesses, arresting officers, etc.; searching for physical or documentary evidence; examining pertinent records . . . doing undercover work and surveillance work . . . and using available investigative equipment." The appellants serve as contact points with other agencies, including NCIS, the Federal Bureau of Investigation (FBI) and State and local authorities to exchange information or assist in actual investigations.

The other primary function, occupying 40 percent of the time, involves conducting general investigations of: (1) damaged property claims, e.g., privately owed vehicles damaged by paint, falling debris, or Government vehicles; (2) travel claims submitted by Shipyard personnel on a random selection basis; and (3) FECA claims. Injury compensation cases include conducting interviews with physicians, witnesses, claimants; gathering evidence; reviewing records; and preparing reports recommending denial of Continuation of Pay or compensation as appropriate.

In his January 26, 1999, letter, the appellant [appellant #6] claimed that they work with NCIS Special Agent [name] who occupies a Criminal Investigator, GS-1811-13 position. The PD states that assignments are made on a case-by-case basis, and the supervisor provides information on new or unusually complicated cases, e.g., what problems may be encountered during the course of the investigation. On recurring cases, the appellants are expected to work independently, using agency directives, manuals, State and local laws, precedent cases, and local instructions. They may seek help from the supervisor in the interpretation of guides applying to unusually difficult or controversial cases. The work is reviewed for technical accuracy and compliance with rules, regulations and instructions.

The appellants' position descriptions, results of our interviews, and other material and information in the case record furnish much more information about the appellants' duties and responsibilities and how they are carried out.

Series, title, and guide determination

The agency determined the appealed positions are covered by the General Investigating Series, GS-1810, are titled Investigator, and are graded using the *Grade-Level Guides for Classifying Investigator Positions* (GLGCIP). The appellants concur with the use of that guide for grading purposes, but believe the appealed positions are allocated properly as Criminal Investigator, GS-1811.

Positions classified to the GS-1810 series plan and conduct investigations covering the character, practices, suitability or qualifications of persons or organizations seeking, claiming, or receiving Federal benefits, permits, or employment when the results of the investigation are used to make or invoke administrative judgments, sanctions, or penalties. In contrast, the Criminal Investigating Series, GS-1811, includes positions that plan and conduct investigations relating to alleged or suspected violations of criminal laws. The GLGCIP lists some specific knowledges, skills, and abilities that distinguish GS-1810 and GS-1811 positions. They include: (1) knowledge of what constitutes a crime or violation as defined in pertinent statutes, including the Uniform Code of Military Justice, and statutes with anti-fraud or similar criminal penalties; and the kind of evidence required to prove that a crime was committed; (2) relationships among the criminal investigative jurisdictions of various agencies; (3) decisions and precedent cases involving: admissibility of evidence, search and seizure, and arrest authority; (4) sources of information, i.e., informants, and methods of obtaining required evidence; (5) the methods and patterns of criminal operations; (6) the availability and use of modern detection devices and laboratory services; (7) awareness of continuing advances in investigative technology; and (8) maintaining surveillance, performing undercover work, making arrests, and taking part in raids.

The appellants spend all of their work time investigating criminal or potentially criminal violations of Federal law. The appellants must know what constitutes a crime, the kind of evidence required to prove that a crime was committed, the methods and patterns of criminal operations, and the decisions and precedents that control search and seizure, admissibility of evidence, and arrest authority. The appellants' work is conducted in cooperation with NCIS, and other Federal, state and local criminal investigators. Therefore, they must be aware of the complex and sometimes overlapping authority of the several criminal investigative jurisdictions with whom they work. The appellants employ criminal investigative techniques like surveillance, covert photography, execute searches, and use information supplied by informants in performing their duties. Their work requires them to gather and preserve evidence for forensic analysis. They use photography for covert recording of criminal activity, carry weapons, and make arrests involving criminal activities. For these reasons, we find the appealed positions are excluded from the GS-1810 series.

However, many of the cited GS-1811 skills are required, to a more limited extent, by related investigative occupations. The Police Series, GS-083, includes positions that enforce law, maintain law and order, preserve the peace, and protect the life and civil rights of persons. Police are typically trained to deal with misdemeanors and felonies that can range from petty theft and verbal assault through murder, rape, simple and aggravated assault, domestic disputes, kidnapping, hostage

taking, theft of national defense information and materials, theft of office equipment, drug trafficking, assault on Government facilities, arson and bomb threats, crowd control, and other conditions involving violations of law and threats to human life. They prevent, detect, and investigate violations of laws, rules, and regulations involving accidents, crimes, and misconduct involving misdemeanors and felonies; arrest violators; and assist in the prosecution of criminals. Within their jurisdictions, police officers enforce many Federal, State, county, and municipal laws and ordinances, and agency rules and regulations relating to law enforcement. They must be aware of the rights of suspects, the laws of search and seizure, constraints on the use of force (including deadly force), and the civil rights of individuals. GS-083 personnel are commissioned, deputized, appointed, or otherwise designated as agency and/or local law enforcement officers by statute, delegation, or deputization by local governments, or other official act. Arrest and apprehension authority includes the power to formally detain and incarcerate individuals pending the completion of formal charges (booking); request and serve warrants for search, seizure, and arrest; testify at hearings to establish and collect collateral (bond); and/or participate in trials to determine innocence or guilt.

Therefore, while the GS-1810 series is not appropriate, it does not necessarily follow that the correct series for the appealed positions is GS-1811. The Police Series, GS-083, includes at its higher levels detective work that bears great similarity to the appellants' assignments. Clearly, these two occupations are closely related. The distinction between high level police work, discussed in the *Grade Evaluation Guide for Police and Security Guard Positions* (GS-083/085 Guide) as detective assignments, and lower level criminal investigating work can be difficult to make because the case work is often similar.

The GLGCIP states that covered positions are those that involve cases whose development requires application of the full range of knowledge, skills, and abilities described in this standard. Typically, this full range of knowledge, skills, and abilities is called into use only in the development of cases that are so complex that they normally unfold over a period of time. This distinguishes investigator positions from certain other law enforcement occupations that require incumbents to use some investigative techniques, e.g., interviewing, or records checking in on-the-spot or short-term situations that end with the arrest or detention of the suspect.

The GLGCIP, published in February 1972, must be read in concert with the more recent information contained in the April 1988, GS-083/085 Guide. That Guide clarifies that the GS-1811 series covers positions primarily responsible for investigating alleged or suspected *major offenses or violations of specialized laws of the United States*. While Navy policy typically requires NCIS involvement in violent crimes, this must not be construed as meaning the GS-1811 series alone covers all such crimes within its occupational definition. The GS-083/085 Guide defines major crimes found in the GS-1811 occupation as "capital crimes, those involving prescribed monetary values, or others that may vary in different jurisdictions." Level 1-4 in the GS-083/085 Guide specifically includes investigating violent crimes, such as conducting long term investigations, within the meaning of the GS-083 occupation, to detect and apprehend individuals committing acts of violence.

GS-083 detectives conduct investigations of crimes and maintain surveillance over areas with high rates of crime. Investigations involve searching crime scenes for clues, interviewing witnesses, following leads, analyzing and evaluating evidence, locating suspects, and making arrests. In cases involving major crimes (capital crimes, those involving prescribed monetary values, or others that may vary in different jurisdictions), the FBI or other specialized law enforcement agencies may assume jurisdiction and control over the investigation. In these cases, police detectives may perform some investigative work under the direction of assigned criminal investigators. Full-time detectives typically work in civilian clothes; although, depending on the availability of investigative personnel, uniformed officers may also perform investigative duties.

Investigations conducted by police detectives are more limited than those conducted by criminal investigators (GS-1811). Detectives handle cases that occur within a prescribed local jurisdiction, where the violations are clearly within the authority of the local police force. Police investigations are limited by agreements with investigative agencies, e.g., FBI and Drug Enforcement Agency, that prescribe responsibility according to the seriousness of crimes committed and monetary values involved; are conducted totally within the local jurisdiction; and are commonly of relatively short duration. Criminal investigators, by contrast, tend to handle cases that clearly involve felonies, violate Federal law, extend over other Federal and civil jurisdictions or involve large monetary values, *and* extend for periods of weeks, months, or even years.

These Guides discuss a range of work typically performed in their respective occupations. Both recognize, however, that employees in the GS-083 and GS-1811 occupations frequently help one another. GLGCIP grade level distinctions are based on primary case agent responsibility. Helping in a case by executing warrants, conducting surveillance, and conducting interviews has no particular impact with respect to determining the grade level of an investigator's position. Similarly, the fact that the appellants have served warrants, traveled across state lines to perform searches and conduct interviews and suspect surveillance, and contacted local and State authorities to obtain and/or provide background information on suspects cannot be construed as proving the appellants are performing GS-1811 functions. For example, travel across state lines in the GS-1811 occupation typically means investigating criminal enterprises that operate in multiple jurisdictions. It is not intended to cover conducting interviews and/or searches in the commuting area around a Federal installation, or the similar off-post work examples provided by the appellants.

Duties and responsibilities assigned to a position flow from the mission assigned to the organization in which those positions are found. The positions created to perform an assigned mission must be considered in relation to one another; i.e., each position reflects only a part of the organization's work as a whole. Thus, the duties and responsibilities assigned to the Investigations Division and the appealed positions may not be considered in a vacuum. Secretary of the Navy (SECNAV) Instruction 5520.3B, Criminal and Security Investigations and Related Activities Within the Department of the Navy, January 4, 1993, stipulates that NCIS "is responsible for investigating actual, suspected or alleged major criminal offenses." Major criminal offenses are defined as punishable by confinement for a term of more than one year. In contrast, commands are authorized

to maintain "a limited investigative capability for resolving minor offenses and those of a purely military character." Minor offenses are defined as punishable by confinement of one year or less.

These definitions, however, must be interpreted within the context of other requirements stated in the instruction. The instruction stipulates that command investigators are permitted to investigate major crimes "when NCIS has declined jurisdiction." Certain types of matters, e.g., fraud offenses under the U.S. Code or Uniform Code of Military Justice, must be referred to NCIS. Information must be provided to NCIS on such cases as loss of ordnance, narcotics, dangerous drugs or controlled substances; incidents of aberrant sexual behavior involving force/coercion or when children are involved; and thefts of minor amounts of personal property when ordnance, contraband, or controlled substances are involved. The instruction states that command off-base investigative activities are to be limited to "minor offenses and to the immediate area surrounding the installation and off-base housing areas." However, this policy is not meant to restrict such functions as preventing the escape or loss of identity of suspected offenders, preserving crime scenes, and ensuring the integrity of physical evidence.

We find SECNAV Instruction 5520.3B limits the breadth, depth, and complexity of investigations that may be managed by the appellants. The cases discussed previously evidence the characteristics of long-term investigation within the meaning of the GS-083/085 Guide in that they extend from several days to several weeks, are local in nature, and are resolved by applying investigative and related techniques typical of the GS-083 occupation. These are defined at Level 1-4 of the GS-083/085 Guide as including: conducting stakeout operations; conducting long-term investigations from several days to several weeks to detect and apprehend persons committing acts of violence, theft of Federal or personal property, or violating laws concerning controlled substances; developing informants and informant networks; developing and following leads, taking statements, and otherwise gathering bits of information and facts; analyzing facts to identify suspects and develop case information for use in pressing charges and bringing suspects to trial; coordinating with U.S. and other prosecuting attorneys on case development and plans to perform arrests and prosecutions; developing cover conditions and working under cover to detect and prevent criminal activities; and coordinating with other law enforcement agencies to gather facts or evidence for use in assigned cases.

In essence, as mandated by Navy policy, the GS-1811-13 Supervisory Criminal Investigator for the NCIS is the one who determines whether enough evidence has been gathered to stand up in court, whether the case should be dropped or handled differently, and how the investigation impacts the agency as a whole. The full range of knowledge required to perform in this capacity, which the NCIS investigator must have since he is ultimately responsible for the program, is a basic requirement in the series definition of the GS-1811. It is not, however, a basic requirement that the base and regional Naval Security Forces investigators must have; specifically if they remain in compliance with the Secretary of the Navy's regulation which states that matters involving criminal investigative work are the exclusive jurisdiction of the NCIS. The authority to singlehandedly perform the full range of investigative work outlined in the GS-1811 standard is not vested in these positions, but in the NCIS investigator positions.

Therefore, we find the appealed positions are allocated properly to the GS-083 series and are titled Detective.

Grade determination

The appellants conduct investigative work into crime-related and FECA claim cases. The FECA claims work is considered the most complex and is performed by both groups of appellants for more than 25 percent of the time. The *Introduction to the Position Classification Standards* recognizes that some positions involve performing different kinds and levels of work that, when evaluated separately in terms of duties, responsibilities, and qualifications required, are at different grade levels. The proper grade of such a position is determined by evaluation of the regularly assigned work that is paramount in the position. When, however, the highest level of work is a smaller portion of the position, 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 knowledge and skills needed to perform the work would be required in recruiting for the position if it became vacant.

The appellant's positions meet the above criteria.

We will first evaluate the crime-related duties carried out by the appellants, using the published GS-083/085 Guide, which is written in Factor Evaluation System (FES) format. Positions graded under the FES format are compared to nine factors. Levels are assigned for each factor and the points associated with the assigned levels are totaled and converted to a grade level by application of the Grade Conversion Table contained in the GS-083/085 Guide. Under the FES, factor level descriptions mark the lower end, i.e., the floor, of the ranges for the indicated factor level. If a position fails in any significant aspect to meet a particular level in the standard, the next lower level and its lower point value must be assigned unless the deficiency is balanced by an equally important aspect that meets a higher level.

We will then look to the fraud-related work performed by the appellants. These cases frequently lead to circumstances other than criminal prosecution involving the FECA claim cases. They require the application of similar knowledges, skills, and abilities but are the appellants' most difficult cases. The appellants' work with on-the-job injury claims is oriented toward criminal fraud not administrative compliance. For example, they are used in determining which FECA cases reflect likely fraud and how to develop the case information necessary for successful prosecution.

FECA claim duties are not appropriately addressed in the GS-083 Guide. Consequently, the grade level determination must be made by comparison with a standard for a closely related kind of work,

i.e., involving analogous knowledge and skills. In selecting a pertinent standard, the comparison is based on identifying a kind of work as similar as may be found to the position being evaluated, with respect to: (1) the kind of work processes, functions, or work subject matter involved; (2) the qualifications necessary to do the work; (3) the level of difficulty and responsibility; and (4) the combination of classification factors that have the most influence on the ultimate grade level to be established. In this instance, we look to a similar standard in the same occupational family -- the Deputy Marshall Series, GS-082 -- to help in addressing these more complex cases.

We must note here that the GS-082 is not the appropriate occupational series for these positions because of the following stipulation in the GS-082 standard. "As a minimum requirement for the classification of a position to this series, the service of process and the execution of orders issued by Federal courts and the Board of Parole must be a regular and recurring part of the position. Law enforcement positions which do not entail the service of process are excluded from this series." However, this does not preclude us from using this standard to help us determine the grade level of the appellants' most complex work, especially since the GS-082 describes work above the GS-08 level and is in the same occupational family as the GS-083 series.

GS-083 Guide

Factor 1, Knowledge required by the position

This factor measures the nature and extent of information and facts which employees must understand to do acceptable work, and the nature and extent of the skills needed to apply those knowledges.

The appellants' work meets Level 1-4 (550 points). Employees at this level, in addition to the knowledges required at the lower levels, use knowledge of an extensive body of standardized, optional, and innovative investigative procedures, techniques, and methods to detect, investigate, and resolve crimes and other incidents that are beyond the scope or requirements for solution on patrol assignments. They use this knowledge in performing a variety of standard and nonstandard assignments and in resolving a wide range of conditions or criminal activities typically requiring extensive research; interviewing, planning, observing, conducting stakeout operations; and executing investigative techniques, resulting in arrests of suspects and, in some instances, in changes in patrol operating methods.

Level 1-4 knowledge is used by the appellants to perform tasks such as: (1) conducting long- and short-term investigations when solutions cannot be achieved during the course of a normal patrol shift; (2) evaluating crime prevention programs and recommending changes to reduce opportunities for theft, assault, illegal entry, or other kinds of violations; (3) conducting long-term investigations (several days to several weeks) to detect and apprehend individuals committing acts of violence, theft of Federal or personal property, for violating laws concerning controlled substances; (4) developing informants and informant networks as a part of specific assignments or for general application; (5) developing and following leads, taking statements, and otherwise gathering bits of information and

facts; (6) analyzing facts to identify suspects and develop case information for use in pressing charges and bringing suspects to trial; (7) coordinating with U.S. and other prosecuting attorneys on case development and plans to perform arrests and prosecutions; (8) developing cover conditions and working under cover to detect and prevent criminal activities; and (9) coordinating with other law enforcement agencies to gather facts or evidence for use in assigned cases. These characteristics are particularly representative of many of the appellants' cases which extend over weeks or months. The majority of the appellants' time is spent on cases developed through investigative techniques (e.g., their own searches of records, informants, tips, fraud hot line information, referrals from NCIS). Level 1-4 is met.

Factor 2 - Supervisory Controls

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibility, and the review of completed work.

We find the appellants' work compares favorably with Level 2-3 (275 points). At that level, the supervisor makes assignments such as long-term investigations and undercover work within the employee's scope of responsibilities; defines the objectives, priorities, and deadlines; and assists the employee in unusual situations which do not have clear precedents. The employee, plans and carries out the steps required based on specific case conditions (time and place to deal with witnesses and suspects; consideration for confidentiality and exposure of witnesses; coordination with other law enforcement agencies; and cover, need for, and nature of stakeouts). The employee handles deviations from established procedures by resolving problems that arise according to agency or local standards, previous training and experience, established practices, legal precedents, or other controls appropriate to the immediate circumstances. Assignments may require performing investigations extending beyond a single shift and to ascertain interrelationships with other cases and/or law enforcement agencies that may affect the methods and procedures used. Completed work is evaluated for technical soundness, such as the quality of evidence, veracity of suspect or witness statements, ability to get U.S. Attorneys or others to accept cases for prosecution, success in solving crimes and violations, and contributions to the unit's crime prevention program. The techniques used by the employee are not usually reviewed in detail.

The limited direction provided by the supervisor compares favorably to the basic assignment of work and contact on sensitive issues found at Level 2-3. The appellants plan and carry out steps based on case conditions that involve the exercise of judgment and discretion on the breadth of case issues envisioned at that level, e.g., long-term investigations within the meaning of the GS-083/085 Guide. The review, that the appellants receive from NCIS investigators regarding crime-related investigations, warrants the assigning of Level 2-3.

Factor 3 - Guidelines

This factor covers the nature of guidelines and the judgment needed to apply them, e.g., Federal, State, and local laws; agency and local rules and regulations; definitions about the rights of

suspected, accused, and innocent individuals; local operating methods, techniques, and procedures, including those on the availability and use of equipment; concurrent jurisdiction agreements; and others that set the enforcement and protection program framework and describe how the work is to be performed within the agency's jurisdiction.

We find the appellants' work meets Level 3-3 (275 points). The guidelines are generally similar to those described at the next lower level. However, because of the nature of work assignments or the environment in which they are performed, they are not always applicable or there are gaps in specific applicability in circumstances such as those encountered in volatile emergency situations such as armed robbery, prolonged investigations, or when enforcing traditional (written or unwritten) customs or laws. Judgment must be used to interpret, adapt, apply, and deviate from guidelines, based on unusual or emergency circumstances and concern with protecting public safety. The employee analyzes the results of such adaptations and recommends changes in established methods and procedures.

We find the appellant's assignments meet the intent of guideline interpretation, adaptation, application and deviation found at Level 3-3. The appellants determine the methods and techniques likely to develop information legally sufficient to prove a violation of law, rule, and/or regulation and withstand scrutiny in a court of law when conducting prolonged investigations within the meaning of the Guide. The appellants consult directly with the NCIS or legal office on technical and potential legal issues. Modified methods become part of ongoing program procedures. Therefore, Level 3-3 is credited.

Factor 4 - Complexity

This factor covers the nature, number, variety, and intricacy of tasks, steps, processes, or methods in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

We find the appellants' work meets Level 4-3 (150 points). At Level 4-3, the employee performs various duties requiring the application of different and unrelated methods, practices, techniques, or criteria. The work typically involves such assignments as extensive investigative responsibilities, e.g., detective work extending beyond the span of a single shift, assignments that vary frequently in the nature of cases handled, and assignments requiring the application of a wide variety of police techniques to resolve. The employee decides what actions to take and the applicable methodology based on assessment of facts obtained from other officers, witnesses, and personal observations and interviews. Decisions made vary according to the nature of a perceived threat, as from demonstrators or anticipated terrorist actions, by the nature of hazards imposed by local terrain, and/or weather or other conditions that affect lighting, communications, and the ability to observe or pursue violators. They decide on whether standard or special procedures are appropriate, and whether the situation is real or simulates a potential threat. The chosen course of action may be selected from several alternatives depending on the nature of the case, facts and clues available, personal analysis of case information, jurisdictional questions, and other considerations

that affect the ability to identify sufficient facts and resolve case issues. The nature of the incident or threat, presence or absence of weapons, number and kinds of persons encountered, and other variables must be assessed to determine the proper course of action. The assessment of such conditions and elements must be made quickly in order to determine among several alternatives the kinds of action to take and the level of force to use.

As at Level 4-3, the appellants must identify what needs to be done in conducting their long-term investigative responsibilities. For example, based on case circumstances, they must determine the timing of record searches and witness interrogation to minimize alerting the suspect. Depending on the case, facts, and clues available, the appellants determine the need for covert surveillance or other actions necessary to resolve case issues, including the need to coordinate with other jurisdictions. Therefore, Level 4-3 is credited.

Factor 5 - Scope and effect

This factor covers the relationship between the nature of the work (i.e., the purpose, breadth, and depth of the assignment) and the effect of work products or services within and outside the organization.

We find the appellants' work meets Level 5-3 (150 points). As at Level 5-3, the appellants treat a variety of law enforcement problems ranging from simple rules violations to felony crimes in conformance with established criteria, methods, techniques, and procedures. They also perform criminal investigative work typical of detectives. The scope of the appellant's work is unlike most Federal police officers. In addition, the appellants' work is not limited to the Navy base, base housing, and the immediate area outside the base. Rather, the appellants pursue their assignments in the wide area covered by the metropolitan areas surrounding the bases. The results of their work contribute to crime prevention objectives in the local installation or jurisdiction and the adequacy of the local law enforcement program. As at Level 5-3, their work, resulting in the charging of or convicting of persons for a violation, effect the economic well-being and freedom of individuals. Therefore, Level 5-3 is credited.

Factor 6 - Personal contacts

This factor includes face-to-face contacts and telephone and radio dialogue with persons not in the supervisory chain. Levels described under this factor are based on what is required to make the initial contact, the difficulty of communicating with those contacted, and the setting in which the contact takes place, e.g., the degree to which the employee and those contacted recognize their relative roles and authorities.

We find the appellants' work meets Level 6-3 (60 points). At Level 6-3, contacts are with individuals or groups from outside the employing agency in a moderately unstructured setting, e.g., the contacts are not established on a routine basis, the purpose and extent of each contact is different, and the role and authority of each party are identified and developed during the course of the contact.

Typical of contacts at this level are those with persons in their capacities as attorneys; contractors; or representatives of professional organizations, the news media, or public action groups. Other contacts typical of Level 6-3 are with violators of laws, rules, or regulations where those contacted are reluctant to accept the officer's authority and may resist detention or attempt to flee, or with unruly individuals who pose a threat to the officer and/or other individuals present. Such contacts may include, for example, individuals involved in a serious disagreement or fight, trespassers attempting to avoid apprehension and detention, demonstrators attempting to cross control lines, and others where the circumstances commonly cause the violators to react negatively and violently to the enforcement officers. They may also include contacts with individuals such as felons, suspects in felony crimes, recalcitrant witnesses, distraught individuals involved in or witness to accidents, and others where there is potential for arrest, detention, or issuing citations for serious offenses of law, rule, or regulation, or for violent or irrational response on the part of the perpetrator or victim. The appellants' contacts with felony suspects, uncooperative witnesses, and others where there is the potential for arrest or detention for serious offenses are typical of Level 6-3. Therefore, Level 6-3 is credited.

Factor 7 - Purpose of contacts

The purpose of personal contacts ranges from factual exchanges of information to situations involving significant or controversial issues and differing viewpoints, goals, or objectives. The purpose of contacts must relate directly to the level of contacts selected under Factor 6.

We find the appellants' work meets Level 7-3 (120 points), where the purpose is to influence, motivate, interrogate, or control persons or groups. Persons contacted may be fearful, skeptical, uncooperative, or dangerous. The employee must be skillful in approaching the individual or group in order to obtain the desired effect, such as gaining compliance with established policies and regulations by persuasion or negotiation, or gaining information by establishing rapport with a suspicious informant. Contacts at this level may include uncooperative individuals involved in traffic violations, persons disturbing the peace, "peaceful" demonstrators, persons attempting to commit suicide, suspects and reluctant witnesses to a crime, deranged persons, or families involved in domestic disturbances. The nature of the appellants' most demanding contacts, e.g., suspects of the most serious crimes they investigate, compares favorably to those typical of Level 7-3.

The appellants do not, on a regular and recurring basis, engage in the types of contacts found at Level 7-4 (220 points), where the purpose is to overcome life threatening situations such as hostage, barrier, terrorist attack, kidnap, or felony assault conditions where the persons dealt with are unstable and pose an imminent and direct threat to the life of the officer, innocent victims, or bystanders. The officer must negotiate with individuals who clearly intend to carry out threats of

violence, mayhem, or murder and because of the emotional instability involved must be convinced to cease their life threatening activities. The record shows that the suspects detained by the appellants, and the nature of the investigations they conduct, do not routinely involve the life threatening or equivalent conditions found at Level 7-4. Therefore, Level 7-3 is credited.

Factor 8 - Physical demands

This factor covers the requirements and physical demands placed on the employee by the work assignment. This includes physical characteristics and abilities (e.g., specific agility and dexterity requirements) and the physical exertion involved in the work (e.g., climbing, lifting, pushing, balancing, stooping, kneeling, crouching, crawling, or reaching).

The appellants' physical demands match Level 8-2 (20 points). At that level, the work requires regular and recurring physical exertion such as long periods of standing, walking, driving, bending, stooping, reaching, crawling, and similar activities. Employees engage in such exertions when responding to alarms, pursuing suspects, or participating in weapons or other kinds of training activities, climbing stairs in office buildings, or walking foot patrols in and around large buildings. In some positions, the work may regularly involve lifting and carrying of heavy objects of 23 kilograms (50 pounds) or less, such as weapons. Some positions may require common physical characteristics and abilities in agility and dexterity and the strength to pursue, apprehend, and detain uncooperative suspects. The appellants' conducting of searches, prolonged surveillance, and similar operations reflect the physical demands typical of Level 8-2.

The record shows that the appellants' work does not meet Level 8-3 (50 points), where the work requires, on a regular and recurring basis, considerable and strenuous physical exertion such as frequent climbing of multiple flights of stairs, lifting heavy objects over 50 pounds, crouching or crawling in restrictive areas during search or pursuit activities, or defending oneself or others against physical attack. The case examples provided by the appellants show these demands are infrequent and, therefore, are not performed with the frequency to control the evaluation of this factor. Therefore, Level 8-2 is credited.

Factor 9 - Work Environment

This factor considers the risks and discomforts in the employee's physical surroundings or the nature of the work assigned and the safety regulations required. Although the use of safety precautions can practically eliminate a certain danger or discomfort, such situations typically place additional demands upon the employee in carrying out safety regulations and techniques.

The appellants' work meets Level 9-2 (20 points), where work is performed in settings in which there is regular and recurring exposure to moderate discomforts and unpleasantness, such as high levels of noise in industrial settings, high temperatures in confined spaces, or adverse weather conditions during extended periods of traffic and patrol duties. The employee may be required to use protective clothing or gear such as masks, gowns, coats, boots, goggles, gloves, or shields.
The work involves moderate risk requiring exercise of safety precautions when working around hazardous materials such as toxic gases, explosives, infectious biological materials, and others that pose a moderate risk of exposure. The work also involves moderate risk and discomfort when working outdoors without shelter or operating vehicles for extended periods of time over rough

terrain. The appellants' conducting of searches, prolonged surveillance, and similar operations reflect the work environment typical of Level 9-2.

The record shows that the appellants' work does not meet Level 9-3 (50 points), where work regularly involves high risks with exposure to potentially dangerous situations or unusual environmental stress requiring a range of safety and other precautions, e.g., subject to possible physical attack or mob conditions, or similar situations where conditions cannot be controlled. This level includes work in a high crime area where the public has easy access and officers must patrol in locations where persons may be armed while attempting auto theft, vandalism, narcotics transactions, and other offenses which can lead to assault with or without a weapon in order to avoid arrest. Also at this level are police and guard operations regularly performed in areas of extremely rough terrain with wide annual variations in climatic conditions such as encountered in very large military installations or Indian reservations. The case examples provided by the appellants show these demands are infrequent and, therefore, are not performed with the frequency to control the evaluation of this factor. Therefore, Level 9-2 is credited.

Factor	Level	Points
1. Knowledge required by the position	1-4	550
2. Supervisory controls	2-3	275
3. Guidelines	3-3	275
4. Complexity	4-3	150
5. Scope and effect	5-3	150
6. Personal contacts	6-3	60
7. Purpose of contacts	7-3	120
8. Physical demands	8-2	20
9. Work environment	9-2	20
Total points:		1,620

A total of 1,620 points falls within the GS-8 grade level point range of 1,605-1,850 points on the Grade Conversion Table in the GS-083/085 Guide.

GS-082 Standard

The GS-082 standard addresses two factors: nature of assignments and level of responsibility.

Nature of Assignments

In this standard, GS-9 positions involve the complete range of functions, including assignments where unusual difficulties are anticipated. Assignments at this level exceed the GS-7 level because of the more complex person-to-person relationships required, the critical nature and scope of the

decisions required, and because guidelines cannot be clearly drawn. Typical assignments include: planning and making arrests that involve locating evasive and potentially dangerous persons through a series of leads that the employee builds up through astute questioning and deduction and require careful planning to minimize the danger of injury to the employee and others. The GS-9 employee reviews criminal records, interviews witnesses and others who have dealt with the person, and talks with individuals who know him to get information about his/her background, living habits, and temperament. He/she pays particular attention to indications of the person's character and estimates the likelihood of danger or resistance when he makes the arrest.

The employee traces leads and puts together bits of information from a variety of sources. He establishes reliable sources of information through employers, coworkers, relatives, friends, and neighbors of the person, or through other persons in the community who can be persuaded to provide the information they have. In many cases, this phase is complicated by the efforts of the person to conceal his location and by their refusal to provide reliable information. Personal contacts typical of this level include situations in which the employee must overcome resistance, untangle schemes to evade service of process, and overcome efforts to conceal information.

This is commensurate with the way the appellants perform their FECA-related work. Because the appellants are involved in the independent investigation of these cases, the subjects of their investigations have a vested interest in concealing the truth as well as their involvement in nefarious activities. Evidence is typically conflicting. For example, when investigating FECA fraud, the appellants are often confronted with conflicting testimony concerning the medical and financial status of the subject of their investigation. FECA investigations also typically involve attempts by the subjects to hide income. Considerable effort is needed to determine both the source and the amount of fraudulently earned income. In addition, the appellants must conduct their investigations in accordance with the stringent requirements designed to protect the constitutional rights of suspects and innocent citizens. The GS-9 level is met.

Level of Responsibility

With respect to most assignments, GS-9 employees in the GS-082 standard work independently, or serve as senior members of small teams. In some instances, however, they play key nonsupervisory roles as members of special teams organized to carry out especially critical or sensitive assignments. In either case, they have great independence and authority to make decisions on a broad range of matters involved in arrest, seizures of property, and other assignments.

The GS-9 keeps his supervisor informed of the actions he takes in specific cases, particularly those likely to result in serious repercussions involving the supervisor and/or the agency. Because of his training and his seasoned judgment developed through experience in handling a wide variety of assignments, the employee at this level seeks advice infrequently, as he determines it to be necessary. The GS-9 makes significant decisions concerning his assignments without prior review. In planning his approach, he reviews all the information concerning the case, perceives potential problems, and determines the nature and scope of the inquiry he must make. From all

his sources of information, sometimes including informants, he sorts facts and opinions, pieces together the data needed to locate and identify the persons or property, evaluates alternative courses of action, and makes decisions on the timing, manner, and circumstances of his actions.

The appellants work with this level of freedom. They develop their own cases or receive case assignments from the NCIS criminal investigator assigned to the region. They are expected to work independently. They are expected to seek supervisory guidance only when they encounter new or unexpected developments. Their case work is reviewed for overall adequacy, accuracy, completeness, and accomplishment of objectives. The appellants work with the level of independence as described at GS-9.

The appellants' FECA-related work meets the GS-9 level for both factors in the GS-082 standard.

Decision

The appellant's crime-related and FECA claim work equate to the GS-8 and GS-9 grade levels, respectively. We have found that the FECA cases are performed by the appellants on a regular basis and require higher level knowledges and skills to perform the work. These duties are, therefore, considered grade controlling. Since more than 25 percent of the work relates to FECA claims, the higher level applies when there is a difference between the two. The appealed positions are classified properly as Detective, GS-083-9.