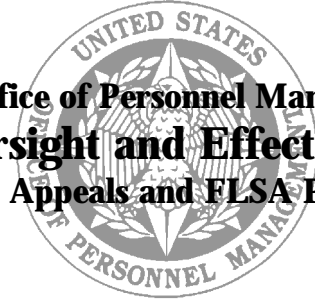


**U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs**



**Philadelphia Oversight Division
600 Arch Street, Room 3400
Philadelphia, PA 19106-1596**

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

Appellant: [appellant' name]

Agency classification: Criminal Investigator
GS-1811-12

Organization: Office of the Special Agent-In-Charge
Office of Investigations
U.S. Customs Service
U.S. Department of the Treasury
[location]

OPM decision: Criminal Investigator
GS-1811-12

OPM decision number: C-1811-12-11

Robert D. Hendler
Classification Appeals Officer

/S/ 5-6-99

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, appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

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

Chief, Classification and
Compensation Policy Staff
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U.S. Customs Service
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Introduction

On February 16, 1999, the Philadelphia Oversight Division of the U.S. Office of Personnel Management (OPM) received a classification appeal from [appellant's name]. His position currently is classified as Criminal Investigator, GS-1811-12. However, he believes the classification should be Criminal Investigator GS-1811-13. He works in the U.S. Customs Service, Office of Investigations, in [location]. We have accepted and decided his appeal under section 5112 of title 5, United States Code (U.S.C.).

General issues

The appellant is assigned to a standard agency-wide position description (PD) for Criminal Investigation, GS-1811-12. He believes his position should be graded at the GS-13 level due to the complexity and sensitivity of the cases to which he has been assigned and which he has submitted for review. In his letter of December 28, 1998, he specifically cites one of those cases ([name]) as at the GS-13 level and justifying a promotion to the GS-13 level at that time. This case, on which his supervisor stated he spent 90 percent of his time for its duration, is the primary basis of his appeal.

In that same letter, the appellant complained of the fact-finding procedure used by his agency in response to an earlier classification appeal. All positions subject to the Classification Law contained in title 5, U.S.C., must be classified in conformance with published position classification standards (PCS's) of the Office of Personnel Management (OPM) or, if there are no directly applicable PCS's, consistently with PCS's for related kinds of work. The classification appeal process is a de novo review that includes a determination as to the duties and responsibilities assigned to the appellant's position and performed by the appellant, and constitutes the proper application of the appropriate PCS's to those duties and responsibilities. Therefore, the appellant's perceptions regarding the fact finding and other methods used by his employing agency in reaching its decision on the classification of the position are moot.

The agency has applied the Grade-Level Guides for Classifying Investigator Positions, GS-1810/1811 (GLGIP) to evaluate the appellant's work. The appellant agrees this is the appropriate PCS, and we concur. [appellant's name]'s immediate supervisor, [supervisor's name], has certified that PD A01243, which we incorporate by reference, accurately reflects the duties and responsibilities assigned to [appellant's name]. The appellant, however, does not believe that his PD of record accurately reflects his duties and responsibilities because it does not reflect the difficulty and complexity of the cases for which he is responsible.

We received the appeal administrative report on March 22, 1999. On April 2, 1999, during an initial telephone contact with the appellant to arrange for a telephone audit, we learned that the cases discussed in the administrative report covered cases that ended in 1995. We asked the appellant to provide descriptive information on his most difficult and complex case assignments from 1995 to the present so that we could discuss them during a telephone audit with him on April 28, 1999. Despite additional telephone calls, he did not submit the requested information. We conducted a two-part (morning and afternoon) telephone audit with the appellant on April 28,

1999, during which he described two additional recent cases ([name] and [name]) that were not part of the written documentation he submitted with his original appeal package. These cases will be discussed, in addition to the four cases that were submitted in the original appeal material.

On May 4, 1999, we conducted a telephone audit with his current supervisor, [supervisor's name], who supervised the appellant during the [name] and [name]. We also conducted a telephone audit, on April 28, 1999, and with [supervisor's name], who was the appellant's supervisor during the [name], [name], [name], and [name] cases that formed the basis of the appeal. We conducted a telephone interview on April 29, 1999, with [name], of the U.S. Attorney's Office, who was in charge of the strike force on the [name] case to obtain information about the appellant's role in that case.

Position information

As a Special Agent, the appellant is responsible for initiating, conducting, coordinating and leading investigations of substantial complexity concerning violations of the civil and criminal laws enforced by the U.S. Customs Service. He may act independently, or as a member of a team, or as a "case agent" responsible for directing and monitoring the activities of other agents assigned to a specific investigation. When functioning as a "case agent", in addition to planning, initiating, conducting, and coordinating assigned investigations and directing the activities of other agents assigned to an investigation, he identifies and acquires needed resources and coordinates the conduct of the investigation with other offices of the U.S. Customs Service, as well as with other Federal, State, and local law enforcement agencies. The appellant works under the direction of a Group supervisor who provides general guidance concerning assignments and is available for consultation and advice on matters of extreme sensitivity or exceptionally difficult investigations. He is expected to perform with independence, relying on training and experience in making judgments and decisions on how to proceed in the conduct of an investigation. Work is reviewed for effectiveness and compliance with policy guidelines.

Series, title, and guide determination

The agency has allocated the position to the Criminal Investigating Series, GS-1811 with which the appellant has not disagreed. We concur with the allocation. Accordingly, the appellant's position is allocated properly as Criminal Investigator, GS-1811.

Grade Determination

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

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

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

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

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

The appellant has submitted as part of his appeal cases in which he participated or was the case agent and which all ended by the summer of 1995. The question thus arises as to what period of time should be examined to identify the investigative cases that are to be regarded as representative of the position for the purpose of grading.

Established OPM guidance requires that a representative work cycle be determined for establishing what work is characteristic of the work for classification evaluation. OPM has found that

sometimes, e.g., long-term criminal investigations, work cycles beyond one year, are appropriate. The "cycle of work" representative of the position can vary from agency to agency, or even within a given agency. Classifiers must therefore exercise judgment in determining the "cycle of work" for a given position. The representative period for determining the nature of duties and responsibilities for classification purposes is not fixed because some cases are protracted, sometimes requiring more than a year, and many of these require substantially full-time effort. As a result, it is not uncommon for one or two cases to occupy virtually all of an investigator's work time for several months, a year, or even more. The point here is that a work cycle of 12 years (1987-1999) cannot be considered the appellant position's current duties and responsibilities. While the earlier investigations provide useful historical background in the adjudication of this case, we must focus on the more recent work performed by the appellant constituting the current work cycle within the meaning of the classification process; i.e., within the past two to three years given the extended period of time over which complex criminal investigations frequently evolve. We will address the earlier cases to deal with issues underlying the entire appeal and apply the aforementioned grade determining principles to the entire period of time covered by the submitted cases.

Also, cases that appear to be of a level of complexity appropriate for the positions at the time of their assignment frequently become more complex or less complex because of unpredictable variables largely beyond the agency's control or other variables peculiar to the investigator and his or her development of the cases (usually the level of responsibility varies correspondingly). Sometimes cases known to be above or below the level of complexity appropriate for the positions are assigned to meet organizational objectives and needs, and to fully utilize the available investigator staff. As a result, the level of complexity and responsibility, i.e., grade level, of cases being handled is sometimes above and sometimes below the grade level of the positions.

The periods during which the appellant was involved in the various cases were as follows: [name] Fall 1987 to Spring 1995; [name] 1990 to 1994; [name]: 1991 to 1994; [name]: 1995; [name]: Spring, 1997 to present; [name]: Winter 1997 to present. The appellant identified the [name] and [name] cases as the most complex in which he has participated from 1996 to the present, which is the appropriate period for classification determination.

Case Synopses:

Following are limited synopses of the earlier cases submitted by the appellant. The appeal record contains additional descriptive information incorporated by reference into this decision. Greater detail is provided for the appellant's two recent cases.

[name]: The subject of this investigation, an attorney for [name] Enterprises (an entertainer), understated the amount of cash that he was bringing into the United States after a European tour. Customs Inspectors seized more than \$260,000 in U.S. currency from [name] for failure to report as required by Title 31, U.S.C., section 5316. As a result of the investigation, \$120,000 of the defendant's currency was forfeited.

[name]: [name] was a worldwide wire transfer company, alleged to have laundered money for drug traffickers. The appellant was responsible for gathering evidence sufficient for conviction of the owners of [name].

[name]: [name] was convicted of smuggling marijuana into the United States and exporting arms to Ireland for illegal sale to the Irish Republican Army. The appellant conducted a follow-up investigation focused on identifying and seizing assets derived from the criminal activities of [name].

[name]: [name] is head of the largest organized crime group in [regional name]. The appellant was the case agent for the money laundering aspects of this complex case under the jurisdiction of the U.S. Customs Service and, with the assistance of IRS agents, was responsible for tracing the placement of funds generated by the illegal activities of this organized crime group.

[name]: This case is ongoing. The [name] organization is an alleged narcotics importer from the Caribbean area and uses “mules” (carriers of narcotics on their person or luggage) flying into major airports, such as JFK Airport in New York, due to less detailed examination of passengers arriving at busier airports. Moreover, the organization first ships its narcotics to Aruba which, being a non-source country, excites less surveillance of those arriving from there. [name] operates a legitimate telecommunications business and has access to numerous telephone lines and sophisticated equipment, making surveillance of their communications difficult. The organization was also involved in fraudulent billing for its telecommunications services. This aspect of their operations required the appellant to coordinate his work for Customs with the [agency name], which has jurisdiction over telecommunications fraud. The [name] organization was also involved in child pornography via its telecommunications services.

[name]: This case is ongoing. The [name] organization is allegedly involved in narcotics smuggling. The organization uses a legitimate front organization, [business name], that imports filters from [country name]. [business name] is owned by [name]’s ex-wife, from whom he was divorced some time ago and with whom he apparently has no dealings. Actually, he is using his wife’s legitimate business to bring in narcotics hidden in shipments of oil filters. During this ongoing investigation, ties were discovered between this organization and local police, resulting in an investigation of the local police. The organization is apparently adept at developing smuggling techniques based on knowledge of Customs practices and procedures. For example, [business name] has shipped perfectly innocent parts to [country name] to have them returned, with narcotics hidden therein, because U.S. goods being brought out of [country name] are subject to less scrutiny than goods originating there.

Factor 1: Complexity of Assignments

This factor measures the scope, complexity and sensitivity of investigative assignments in terms of six elements. The classification standard notes that for this factor to be evaluated at a particular

grade level, most or all of the six elements must be at that particular grade level. We will apply the standards for each element to each of the cases submitted by the appellant as part of his appeal.

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

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

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

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

[name]:

This case is credited at the GS-11 level. The suspicion was aroused by directly verifiable rather than circumstantial evidence, the evidence was not fragmentary or cold, all of which are typical of the GS-12 level. The situation was a gross disparity between the amount of cash declared by [name] and amount he actually was bringing into the U.S. The investigation did not require investigation of conflicting facts or evidence as the evidence was irrefutable and the only possible defense by [name] was that he forgot how much money he was bringing into the country.

[name]:

This case is credited at the GS-12 level. The investigation was planned and initiated by the appellant and required an undercover operation involving clandestine recordings and videotapings as well as the cooperation with the Special Agents in Charge (SAC) in [location] and [location], and [agency name] Agents, [name] State Police and local police. However, the extreme complexity of the organization investigated, as indicated by a large number of primary and subsidiary activities, required at the GS-13 level is absent. Also absent were the many separate matters of great scope and complexity which grow out of the original assignment in typical GS-13 level cases.

[name]:

This case is credited at the GS-13 level. The subject of the investigation was an arms trafficker, money launderer, and narcotics dealer. The [name] organization used extensive front organizations, offshore accounts, and false identities. The suspects were prominent and numerous. The number of covers used by [name] and the multiple sources of evidence required meets the GS-13 level. Even though the investigation did not involve activities that were a threat to national welfare, it meets most of the criteria for GS-13 level work on Element 1 and so will be credited as minimally meeting the GS-13 level.

[name]:

This case is credited at the GS-13 level. The [name] organization is one of the largest, most powerful, and complex criminal organizations in [regional name], involving numerous illegal activities and contacts with the law enforcement community as informants. The organization also had numerous legitimate enterprises and was made up of separate and distinct cells that were ignorant of the activities of other cells. The investigation required the appellant to gather evidence from widely disparate sources and demonstrate a pattern of activity to demonstrate money laundering.

[name]:

This case is credited at the GS-12 level. It involved narcotics importation. The organization was not especially complex but the difficulty in gathering evidence stemmed from the fact that the primary suspect was in the telecommunications business and had numerous telephone lines available, thus making difficulties in overhearing calls or determining to whom they were made.

[name]:

This case is credited at the GS-12 level. The target was a convicted narcotics trafficker. The organizational complexity was that the target was divorced from his wife and apparently had severed all ties with her. In fact, the wife was collaborating with the target and using her

legitimate business of importing oil filters as a front. This created the level of difficulty in resolving conflicting facts justifying the GS-12 level. None of the GS-13 characteristics were present in this case.

The scope and complexity of two of these cases, [name] and [name] meet, but the others fail to meet, the GS-13 grade level. However, they are outside the time frame for being current for grade determination. The cases forming the basis of this appeal, while occasionally reaching the GS-13 level on portions of Element 1, do not consistently evidence the scope and magnitude envisioned at the GS-13 level. Although these cases required the piecing together of evidence from a variety of sources, and the cooperation of other agencies and governments, the record does not show in most cases the integrated network of investigative support, the anticipation or even influencing of events, or the prominence and larger number of suspects typical of GS-13 level cases. In the [name] case, which is the most complex of the cases cited, the appellant was not the case agent responsible for coordinating the entire operation. Therefore, because this element fails to meet the GS-13 level fully, it must be credited at the GS-12 level.

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

At the GS-12 grade level, difficulties or complexities imposed by the prominence or characteristics of the subjects investigated include: (1) a suspected or known racketeer, gambler, smuggler, etc., who is known through their associates, behavior or background as a prominent figure in organized crime or subversion; (2) the principal or financial backer in an organization consisting of separate manufacturers, distributors, and transporters of illegal goods, drugs, alcohol, counterfeit money, fraudulent documents, explosives or weapons (normally the separate parties do not know each other or the overall backer); (3) a figure with financial interests overlapping several activities both legal and illegal, e.g., funds from a legal concern are diverted and used to finance illegal activity; and/or (4) the head of an organization involved in legitimate business who is suspected of fraudulent use of invoices, operating fraudulent marriage rings, etc., which are carried out under the cover of the legitimate organization, and the suspected violation requires assistance from several accomplices, e.g., attorneys or accountants who are themselves in positions of public trust.

In contrast, at the GS-13 level, subjects are involved in the range and variety of such interrelated activities as: (1) a suspected foreign agent who, with several associates, is planning acts extremely harmful to national security, e.g., theft of national defense documents for benefit of a foreign government, or compromise of persons who have access to highly classified information concerning national defense; and/or (2) the organization under investigation has an extremely complex structure with diversified interests, e.g., the manufacture, distribution and sale of legal or illegal goods in a national market involving a complex network of widespread distribution and sales outlets.

[name]:

The subject of this investigation meets the criteria for GS-11 only insofar as he is the representative of a person sufficiently prominent to create the potential for local publicity that could cause embarrassment to the agency by casting suspicion on an otherwise respected individual. The subject, [name], although an agent of such a person, is not associated in the public mind with his principal nor is he, himself, a public figure.

[name]:

This case is credited at the GS-12 level in that the [name] Corporation, an international money transmittal house in [state name], employed more than three hundred subagents worldwide, thereby creating the organizational complexity envisioned at the GS-12 level. However, the complexity of the [name] Corp. was not so complex or multilayered, nor did it pose such a threat to national security, such as passing national security information to foreign governments or compromising people having access to such information, to meet the requirements for the GS-13 level.

[name]:

This case is credited at the GS-12 level because the subject is a suspected or known smuggler and money launderer who is known as a prominent figure in organized crime. The subject was also insulated from criminal activities by layers within the organization. However, the subject is not suspected of being a foreign agent, nor planning acts extremely harmful to the United States, nor did the organization have a structure of the complexity envisioned at the GS-13 level.

[name]:

This case is credited at the GS-13 level because the money laundering activities were on a large and international scale and the [name] organization itself had an extremely complex structure with diverse interests and a highly compartmentalized structure making the establishment of evidential connections difficult.

[name]:

This is credited at the GS-12 level in that the organization was involved in a legitimate business and was suspected of using fraudulent invoices in telephone billing to bilk hotels, as well as the more direct criminal activity of narcotics importation. This complexity justifies the GS-12 level. The organization is not engaged in the range and variety of interrelated operations found at the GS-13 level.

[name]:

The organization used a legitimate business of importing oil filters from [country name] and elsewhere to smuggle narcotics. One technique was to also ship USA made goods to foreign locations where narcotics were packaged in the USA goods and returned as defective or unwanted. Returned USA goods are not inspected as closely as foreign goods. This complexity in the investigation justifies the GS-12 level. The organization is not engaged in the range and variety of interrelated operations found at the GS-13 level.

Only one of these cases, [name], meets the GS-13 level, and that case is outside the appropriate time frame for grade determination of 1996 to the present. Thus, this factor is credited at the GS-12 level.

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

At the GS-12 level, a substantial number of separate investigative matters typically grow from the original assignment. For example, an investigation beginning with the pusher or passer of stolen or illegal goods, e.g., drugs, counterfeit money, or fraudulent documents, is expanded by piecing together bits of evidence from interviews, surveillance, documentary examinations, informants, etc., proceeds through the intermediate distributor, and eventually involves the manufacturer, backer, organizer, importer, etc.

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

[name]:

This case is credited at the GS-11 level in that it fails to meet the GS-12 level requirement that a substantial number of investigative matters grow from the original assignment. The case did not require significant separate investigations beyond the immediate investigation triggered by the false declaration made by [name]. Although the immediate investigation triggered additional investigations in [country name], these were conducted by [country] authorities to recover taxes owed by [name]'s employer and do not meet the standard for crediting at the GS-12 level.

[name]:

The case grew out of information received by the appellant from a confidential source that [name] was engaged in money laundering activities. This case is credited at the GS-11 level in that no separate investigations or developments beyond the immediate conspiracy grew out of the case as is typical of the GS-12 level.

[name]:

This case is credited at the GS-12 level in that an immediate further investigation enabled the government to identify an illegal process. However, the case did not result in the many separate investigations of great scope and complexity or that involved large scale actions in a number of states found at the GS-13 level.

[name]:

Although the [name] case involved a complex and sophisticated money laundering scheme, and required lengthy investigation of the narcotics, loan sharking, and tax violations of [name], and some separate investigations evolved from it, they were not of the significance or complexity envisioned at the GS-13 level. We find the aspects of the [name] case in which the appellant was engaged is evaluated properly at the GS-12 level in that it was one portion of a broader investigation engaged in by multiple agencies that had evolved over a number of years. It is accordingly credited at the GS-12 level.

[name]:

The investigation of the use of the telephones of the legitimate telecommunications business to deal in narcotics importation led to another investigation of the use of the business to fraudulently bill hotels. This justifies crediting at the GS-12 level. The case did not result in the many separate investigations of great scope and complexity or that involved large scale actions in a number of states found at the GS-13 level.

[name]:

The initial investigation led to local police investigating ties between [name] and members of the local police force. This justifies crediting at the GS-12 level. The case did not result in the many separate investigations of great scope and complexity or that involved large scale actions in a number of states found at the GS-13 level.

Since the scope of the investigations does not meet the intent of the guide at the GS-13 level, they may only be credited at the GS-12 level under established classification principles and practices in instructions of the GLGIP. Accordingly, this element is credited at the GS-12 level.

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

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

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

[name]:

The facts of this case were obtained through interview of the suspect and review of the business records and ledgers. As such it would usually be credited at the GS-11 level, at which facts are uncovered by the investigator through interviews and record searches of financial documents. However, due to the necessity to determine the sources of the money, many of which were foreign promoters who paid cash in their own countries (allegedly to avoid taxation by their governments), the difficulty involved in establishing the relationship of the facts is credited at the GS-12 level.

[name]:

This case is credited at the GS-12 level in that the evidence was obtained through information provided by an informant and the subject of the investigation was directly involved in the money laundering. The GS-13 level is not reached in that the subjects were not clearly separated from each other and from the illegal activities, nor was the difficulty of establishing the interrelation of fact and evidence of the degree of difficulty as envisioned at the GS-13 level.

[name]:

This case is credited at the GS-13 level. The subject used subsidiaries or holding companies, and did it so effectively that it was difficult to establish the connection between fact and evidence. Although the work of other investigators under the direction of the appellant as case agent does not equate to the GS-12 level, the difficulty involved in establishing the relation of the subject to the illegal operations warrants assigning the GS-13 level for this case on this element.

[name]:

This case is credited at the GS-13 level. [name] himself was separated by layers of intermediaries from the criminal activities. Also, due to the [name] organization connections with law enforcement agencies as informers, [name] may have had advance information about several investigations and thus been forewarned. In addition, [name]'s reputation for violence and respectful relations with organized crime leaders made the gathering of evidence and testimony very difficult because of [name]'s ability to locate potential informants and evidential bases early and eliminate or intimidate them.

[name]:

This case is credited at the GS-12 level. [name] maintained distance between the actual transporters of the illegal drugs and himself through the use of intermediaries. Those vulnerable to arrest were generally ignorant of his involvement. [name] was separated from the overt violation by an intermediary. The organization of the criminal enterprise, however, did not consist of the variety of subsidiaries and holding companies engaged in a mix of legal and illegal operations found at the GS-13 level, and did not require the extensive coordination required at the GS-13 level.

[name]:

There was a clear separation between the filter importing company, headed by [name]'s divorced wife, and [name] himself. They were living apart and very circumspect in their communications. The difficulty involved in establishing the relationship justifies crediting at the GS-12 level. The organization of the criminal enterprise, however, did not consist of the variety of subsidiaries and holding companies engaged in a mix of legal and illegal operations found at the GS-13 level, and did not require the extensive coordination required at the GS-13 level.

The difficulty involved in establishing the relationship of facts or evidence of two of these cases, [name] and [name] meet, but the others fail to meet, the GS-13 grade level. However, they are outside the time frame properly considered for grade determination. The cases forming the basis of this appeal, while occasionally reaching the GS-13 level on portions of Element 4, do not consistently evidence the difficulties envisioned at the GS-13 level. Therefore, this element is credited at the GS-12 level.

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

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

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

[name]:

This case minimally meets the requirements for the GS-12 level. [name] is the attorney for a prominent singer and entertainer. Although not newsworthy himself, his employer is very often the subject of major news media. Therefore, because of the distinct possibility of the media becoming aware of the situation and the association, the GS-12 level is attained.

[name]:

This case is credited at the GS-11 level. There was no widespread media coverage, nor did the subject's activities have a significant impact on the national economy nor was there any indication of bribery, fraud, collusion, or extortion of public officials.

[name]:

This case minimally meets the GS-13 level due to the violent nature of the subject and the fear his reputation would likely inspire in potential witnesses. It was therefore critical to avoid publicity which would likely severely hamper the ability of the investigation to obtain witnesses or information necessary for the successful prosecution of the case. However, unlike the typical GS-13 level, [name]'s financial involvements did not extend to enterprises having a significant impact on the national economy.

[name]:

This case is credited as meeting the GS-13 level for reasons very similar to the [name] case above. Like the [name] case, the impact of [name] on the national economy was less than envisioned at the GS-13 level, but reached more into State and local affairs than [name]. Moreover, The [name] organization was large and well connected, with suspected connections as informants for the FBI, thus making the avoidance of publicity critical for the success of the investigation.

[name]:

Had publicity been attached to this investigation, significant difficulties in gathering evidence would have ensued. [name] had previously been involved in child pornography and, consequently, would have received wide local press coverage had the media discovered the ongoing investigation. Also, part of [name]'s telecommunications business was used by sexual predators, who would have distanced themselves from investigators had they been made aware of the investigation. No GS-13 level characteristics are present. Consequently, this case is credited at the GS-12 level.

[name]:

The [name] front organization did business with a number of prominent legitimate local businessmen who would have severed ties with [name] had the investigation been made a matter of public knowledge. Knowledge of their involvement, albeit innocent, with an international drug dealer would have caused these legitimate businessmen to erect self-protection barriers impeding the collection of necessary evidence. No GS-13 level characteristics are present. This case is accordingly credited at the GS-12 level.

As in the previous element, only two of the cases, [name] and [name], meet the GS-13 level, and both cases are outside the appropriate time frame of 1996 to the present. Accordingly, this element is credited at the GS-12 level.

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

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

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

investigator that their contacts in other jurisdictions are themselves involved in wide-scale criminal conspiracies, which require the investigator to use such suspects in double or triple capacities, e.g., in getting and exchanging information without permitting such suspects to realize how they are being used.

At the GS-13 level, undercover and surveillance work involves serving as a key person or coordinator in assignments with complex, dangerous or delicate elements, e.g., penetration of closely knit groups on assignments of GS-13 level complexity, where discovery on assignment would not only result in great injury or death to the investigator, but would cut off information linking the evidence together and thus jeopardize or destroy a critical case that the Federal government had been developing for months or years, involving a network of State, local, and other Federal agents and informers.

[name]:

As there were no jurisdictional problems, and the subject was not engaged in activities that were of concern of several local, county, state, or federal agencies, this case does meet GS-12 level and is accordingly credited at the GS-11 level.

[name]:

While other jurisdictions were involved but there is no evidence of difficulties in coordinating the different parts of the investigation, and there is no evidence of the use of suspects in double and triple capacities typical of the GS-13 level. Therefore, this case is credited at the GS-12 level.

[name]:

This case is credited at the GS-12 level. The appellant was responsible for coordinating the activities of a task force consisting of [three agency names], and local police. Thus, while several agencies were involved, there is no indication of significant jurisdictional problems. There is no evidence of the use of suspects in double and triple capacities typical of the GS-13 level.

[name]:

This case is credited at the GS-13 level. The investigation involved [five agency names]. In addition, [name] was an [agency name] informant, who was himself involved in numerous major felonies, and the [agency name] may have been unwilling to cooperate fully with the investigative team and fully share the relevant information and evidence it had on the [name] organization. The [name] case also involved several judicial districts: [four state names]; numerous state and local police organizations; and several foreign countries: [three names].

[name]:

There was a jurisdictional problem between [agency name] and [agency name] in that [agency name] did not pass on leads to [agency name] in a timely fashion, thus hampering the [agency name] aspect of the investigation. Ultimately, the joint effort with [agency name] collapsed. These jurisdictional problems justify crediting this case at the GS-12 level. There is no evidence of the more complicated jurisdictional issues or the use of suspects in double and triple capacities typical of the GS-13 level.

[name]:

Both [agency name] and [agency name] were involved in this case, and both had confidential informants in the [name] organization. These confidential informants were not aware of each other, leading to complexities in the avoidance of entrapment, tainted evidence, exposure of a confidential informant. These complexities were a result of the joint jurisdiction of two agencies and justify crediting this case at the GS-12 level. There is no evidence of the more complicated jurisdictional issues or the use of suspects in double and triple capacities typical of the GS-13 level.

We find that only one of the six cases submitted by the appellant, [name], can be classified at the GS-13 level based on most or all of the elements achieving that level. However, during the period appropriately considered for this appeal, the level of work was predominantly at the GS-12 level. Also, the cases identified by the appellant as his most complex cases during the period appropriate for grade determination, 1996 to the present, are both evaluated at the GS-12 level. Although GS-13 level work was clearly performed from time to time by the appellant, that level of work is not representative of the current duties and responsibilities assigned to and performed by the appellant. Consequently, this factor must be credited at the GS-12 level.

Level of Responsibility

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

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

In contrast, at the GS-13 level, investigators receive assignments through program discussions, e.g., conferences or written directives that outline broad objectives, e.g., to stop smuggling of a particular commodity at a given port. The GS-13 investigator outlines the objectives and boundaries of the assignment, plans the resources needed, and includes plans for assuring coordination with other jurisdictions. Instructions are more generalized than at the GS-12 level, and review of work is typically in the form of discussions at certain critical points, e.g., suggestions on the commitment of resources in other domestic or foreign offices that are normally approved. Recommendations for extension, modification, or adoption of new lines of inquiry are normally accepted, although the sensitivity and importance of the cases must be cleared by the very highest individuals in the agency. GS-13 investigators devise methods, techniques and approaches to problems that often set patterns for subsequent investigations in similar areas and are often adopted for use by investigators at lower grades. GS-13 investigators are responsible for devising breakthroughs in investigative approaches, techniques, and policies. Investigations are planned and executed for the greatest possible deterrent impact. An extremely high degree of initiative and originality is required at the GS-13 level because of the various locations throughout a wide area under investigations, and suspected violators typically retain the best legal or accounting advice available; and investigations often establish important precedents, e.g., the first case of a particular type investigated under a new provision of law, the outcome of which may affect pending cases or influence the decision on such cases in the future.

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

Summary

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