

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

CLASSIFICATION APPEAL DECISION

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

Appellant: [appellant's name]

Position: Marine Enforcement Officer  
GS-1801-11

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

Decision: Criminal Investigator  
GS-1811-12  
(Appeal granted)

**OPM Decision Number:** C-1811-12-03

Kathy W. Day  
Classification Appeals Officer

Date:7/3/97

rdfile#1811127C.AT

Copies sent to:

Mr. Robert M. Smith  
Director, Office of Human Resources  
U.S. Customs Service  
Gelman Building, Room 6100  
1301 Constitution Avenue  
Washington, DC 20229-0000

Mr. Robert J. Breivis  
Director of Personnel Policy  
U.S. Department of the Treasury  
Pennsylvania Avenue at Madison Place, NW.  
Room 4164 Treasury Annex  
Washington, DC 20220

## **Background**

On April 2, 1997, the Atlanta Oversight Division, Office of Personnel Management (OPM), accepted an appeal for the position of Marine Enforcement Officer, GS-1801-11, [appellant's activity, U.S. Customs Service (USCS), Department of Treasury]. The appellant is requesting that his position be changed to Criminal Investigator, GS-1811-12 or 13.

After the appellant filed his appeal with OPM, the agency conducted an onsite audit and determined that the position was properly classified as Criminal Investigator, GS-1811-12. The appellant's classification appeal was suspended on May 13, 1997, waiting verification from the agency that his classification had been officially corrected. As of June 20, 1997, no action had been taken and information from the agency indicated that no action was imminent. The appeal has been reactivated at this time.

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

## **Sources of Information**

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

1. The appellant's letter received April 1, 1997, appealing the classification of his position.
2. The agency's letter of May 13, 1997, providing position and organizational information.
3. Additional position information and documentation from the appellant received April 15, May 6, and June 13, 1997.
4. Telephone interviews with the appellant on June 23 and 26, 1997.
5. A telephone interview with [the appellant's supervisor] on June 27, 1997.

## **Position Information**

The appellant is assigned to Position Number 6253, Marine Enforcement Officer, GS-1801-11. The appellant states that since 1994, he has been performing the duties of a Criminal Investigator with the knowledge of management at USCS. As early as February 7, 1995, at the direction of the Deputy Assistant Commissioner of Investigations, an onsite evaluation

of [the appellant's activity] was conducted which confirmed that criminal investigative work was being performed by Marine Enforcement Officers with the approval of the RAC and SAC [in a large city]. The appellant's supervisor supports this and stated that the appellant will continue to perform criminal investigator duties in the future. In spite of repeated requests for a desk audit and assignment to a correct position description, the appellant has been unable to settle the question of position description accuracy with his agency and asks that OPM determine the duties he is currently performing.

In the desk audit performed by the agency in conjunction with their response to this appeal, they determined that over the last three fiscal years, at least 90 percent of the appellant's time has been spent performing work that involves planning and conducting investigations relating to alleged or suspected violations of criminal laws. The appellant is functioning as a case agent responsible for initiating, conducting, and coordinating activities associated with the investigations of illegal activities.

The appellant identifies leads; establishes sources; conducts investigations through record searches, surveillance, and contacts with informants; analyzes information; prepares and serves subpoenas and search warrants; conducts searches; gathers evidence; works with the U.S. Attorneys office, as well as other Federal, state and local law enforcement offices; testifies in court; and prepares investigative reports. He represent USCS in court. The appellant performs marine interdiction duties less than 5 percent of the time.

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

### **Standards Referenced**

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

### **Series and Title Determination**

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

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

### **Grade Determination**

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

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

The appellant provided information on several cases that are representative of his case work. We have reviewed the case files and identified two representative cases averaging 59 percent of the appellant's workload for each of the last 3 fiscal years for analysis: **Fielder's Choice** and **Operation Farmhand**.

**Operation Farmhand**: This case is ongoing and targets a Mexican organization smuggling marijuana, heroin, and cocaine into Florida, Texas, and the southeast United States. Initial sources identified the probable head of the operation with further investigation leading to the identification of local sub-organizations directly involved in smuggling, transporting, and distributing illegal drugs; of multiple schemes using legitimate businesses to launder the drug proceeds; and the involvement of Mexican Federal Judicial Police and Florida police officers in the smuggling activities. The organization moves currency from Fort Pierce to Mexico utilizing various modes of transportation with the narcotics being sent back by the same couriers. The case so far has targeted 30 defendants, resulted in 6 seizures and over 15 arrests, and involved law enforcement personnel from 8 other Federal, state, and local agencies. The appellant is responsible for directing and coordinating this task force. The appellant is targeting for indictment those individuals in the organization that will effectively dismantle it when caught. He is working from the peripheral people to gather evidence to indict the head of the organization.

**Fielder's Choice**: This case involves the smuggling of methamphetamine and marijuana valued in excess of one million dollars a year from Mexico into Highlands County, Florida, and the laundering of drug proceeds. It began with 4 primary targets and has resulted to date in 14 arrests and indictments. One of the targets is believed to have ties to the Mexican mafia. Legitimate businesses are used for money laundering, as well as for supplying

vehicles for use in transporting the drugs. This investigation has required numerous search warrants and subpoenas to obtain extensive financial records and other documents necessary to lead to indictments, as well as careful coordination to prevent the numerous targets from being alerted of the investigation by others. Twelve defendants have already pled guilty based on the amount of evidence and the cases built against them. Eight other law enforcement departments are involved in this task force which the appellant established and directs. This case has resulted in the largest indictment in the area and has captured the interest of the media, as well as the Attorney General of the United States. The appellant developed the Organized Crime Drug Enforcement Task Force (OCDETF) proposal, brought the law enforcement agencies together, negotiated the manpower agreements, built the case strategy, directs the case, collects the evidence, writes the search warrants, prepares for trial and serves as a witness.

### **Complexity of Assignments**

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

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

The agency determined that the appellant's cases are comparable to the GS-12 level for this element.

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

The GS-13 level involves extreme complexity and scope of assignments, such as investigations of legal or illegal organizations that are very complex in nature with a large number of primary and subsidiary activities, and investigations are of major interregional dimensions or are nationwide in origin or coverage with occasional international implications; or the investigator must piece together evidence that comes to him through other investigators throughout several states or the nation, to recognize the suspect's pattern of operation and anticipate or influence events as they unfold. The investigator must at the

same time avoid entrapment of the suspects who are more prominent and numerous and engage in more complex and serious activities, and the investigator must be more aware of the implications of precedent court decisions over a broader area than at lower grade levels.

**Operation Farmhand** and **Fielder's Choice** both meet the GS-12 level. Both cases involve principles who operate within close-knit organizations mostly in the Hispanic community. The organizations and sub-organizations often included several family members which made it more difficult to obtain information. The original targets developed into multiple principles including law enforcement officials in the State of Florida and the Mexican Judicial Police, making the investigation very sensitive and potentially embarrassing if not handled correctly. The appellant developed additional targets through repeated questioning of sources and surveillance, as well as tracking financial documents and business records and using wiretaps. In addition, **Operation Farmhand** originally begun several years ago. The appellant has had to develop leads from stale evidence.

The GS-13 level assignments are very complex in nature involving a large number of subsidiary activities and typically resulting in actual or potential threats to the national welfare. Suspects are prominent and numerous and the investigator must piece together evidence from other investigators throughout several States or the nation. There is no evidence that any of the appellant's cases involve the type of activities described at the GS-13 level.

Both cases meet the GS-12 level for Element 1.

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

The agency determined that the appellant's cases are comparable to the GS-12 level for this element.

At GS-12, the subjects of investigations normally exhibit characteristics of prominence such as a suspected or known racketeer, gambler, or smuggler who is known through his associates, behavior, or background as a prominent figure in organized crime or subversion; the principal or financial backer in an organization consisting of separate manufacturers, distributors, and transporters of illegal goods, drugs, alcohol, counterfeit money, fraudulent documents, explosives, or weapons; a figure with financial interests overlapping several activities both legal and illegal; or the head of an organization involved in legitimate business who is suspected of fraudulent activities under the cover of his legitimate organization, and the suspected violation requires assistance from several accomplices, such as attorneys or accountants, who are themselves in positions of public trust. The involvement of such subjects substantially increases the difficulty and/or the complexity of the case.

At GS-13, subjects are involved in such activities as planning acts that are extremely harmful to national security, e.g., foreign agents stealing national defense documents. The

organizations under investigation are extremely complex in nature with many diversified interests.

The suspects in **Operation Farmhand** are connected to a Mexican drug organization with sub-organizations in the United States to transport and distribute the drugs. Several legitimate businesses are used to launder the drug proceeds, some of the targets are known smugglers, and some use numerous aliases making them difficult to identify. The involvement of the Mexican Judicial Police and Florida police officers in the smuggling organization has increased the difficulty of the investigation. This case is comparable to GS-12. **Fielder's Choice** meets the GS-12 level also. The suspects operated in an organized smuggling ring with connections originating in Mexico. One of the targets had suspected Mexican mafia ties and was known in the smuggling world. There were connections to legitimate business used as a front for the organization. This investigation expanded from 6 primary targets and resulted in 14 arrests and indictments and required numerous search warrants and subpoenas to obtain volumes of financial records and other documents. Eight other law enforcement agencies were involved.

The appellant's cases do not compare to the range and variety of interrelated activities described at GS-13 which are harmful to national security or are extremely complex organizationally with widespread distribution networks.

Both cases meet the GS-12 level for Element 2.

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

The agency determined that the appellant's cases are comparable to the GS-12 level for this element.

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

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



units of investigators from his own and other agencies tracing leads and gathering information.

In both cases, the appellant's assignments involved the identification of individuals or organizations violating Federal laws by engaging in drug smuggling. His responsibility has been to gather evidence to establish that the parties under investigation have committed the violations. The individuals and groups investigated operate both independently and in drug organizations, and a few legitimate businesses are interwoven with the criminal activities. In **Operation Farmhand**, the appellant identified the probable head of the smuggling organization and is working through the peripheral associates to reach him and, in the process, to identify other related organizations, thereby dismantling the operation. To date, the appellant has used interviews, surveillance, informants, and documents to target 30 defendants. The case has included 6 seizures and over 15 arrests using law enforcement personnel from 8 other Federal, state, and local agencies. In **Fielder's Choice**, 4 primary targets were originally identified. Through the use of informants, wiretaps, bank documents, surveillance, and undercover work, the case was expanded and 14 individuals were arrested, also dismantling that organizational structure.

The appellant's cases do not involve the degree of highly organized crime groups described at the GS-13 level, nor have they required him to oversee large-scale raids and seizures throughout several states. Although many other separate investigations grew from his original assignments, the scope of these other investigations is not comparable to the GS-13 level description.

GS-12 is credited for both cases for Element 3.

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

The agency determined that the appellant's cases are comparable to the GS-12 level for this element.

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

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

investigators that the GS-13 investigator coordinates involves segments of the case that fully equate to the GS-12 level of difficulty.

Both cases meet the GS-12 level. The links between the suspects and the smuggled drugs was difficult to trace. The appellant had to use wiretaps, develop informants and witnesses, and obtain information that is legally defensible. He directed undercover work and worked directly with defendants who agreed to assist the government in obtaining evidence against other members of the smuggling organization.

The case information provided does not indicate the appellant's cases required the degree of skill to establish facts and evidence that the GS-13 level intends. His cases did not include the type of holding companies and diversified mixtures of legal and illegal activities that are typical of the GS-13 level.

GS-12 is credited for both cases for Element 4.

Element 5 - The sensitivity of assignments.

The agency determined that the appellant's cases are comparable to the GS-12 level for this element.

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

Investigations at the GS-13 level receive sustained and widespread coverage in major news media because of the prominence of the suspects or victims. Premature news coverage could hamper progress or endanger the lives of victims. The suspects' financial involvements extend to enterprises that impact the national economy.

Both **Fielder's Choice** and **Operation Farmhand** are comparable to GS-12. Because of the amount of methamphetamine involved and the multiple arrests and seizures that had to be conducted simultaneously, **Fielder's Choice** attracted the attention of the news media in the area. The U.S. Attorney's Office held a formal press conference in which the appellant participated. The case also captured the interest of the Attorney General of the United States. **Operation Farmhand** was also extremely sensitive because of the involvement of local police officers and the Mexican Judicial Police who were using their credentials to aid in the smuggling.

There is no evidence that the appellant's cases attracted the level of major media coverage described at the GS-13 level nor did the financial enterprises associated with his cases have any impact on the national economy.

Element 5 is credited at the GS-12 level for both cases.

Element 6 - The jurisdictional problems involved in case assignments.

The agency determined that the appellant's cases are comparable to the GS-12 level for this element.

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

At GS-13, investigations involve extremely difficult planning and coordination problems involving other Federal, State, county, and local agencies. For example, evidence may warn the GS-13 investigator that certain of his contacts in other jurisdictions are themselves involved in wide-scale criminal conspiracies which require the investigator to use such suspects in double or triple capacities, e.g., in getting and exchanging information without permitting such suspects to realize how they are being used.

Both cases meet the GS-12 level. The suspects in the appellant's cases were involved in drug smuggling from Mexico into the United States. Agents from other USCS divisions, the Federal Bureau of Investigations, Immigration and Naturalization Service, Drug Enforcement Agency, Internal Revenue Service, the U.S. Attorney's Office, and state and local law enforcement offices were involved in bringing the defendants to justice and stopping the entry of drugs into their areas. The appellant had to coordinate with these other Federal, state, and local law enforcement authorities to obtain information, issue search warrants simultaneously, make arrests, gather evidence, etc. He has to have a knowledge of various rules, laws, and regulations that pertain to different jurisdictions in order to ensure that the actions taken and the evidence that is gathered will stand up in court and that none of the defendants' rights are violated.

Although the appellant used defendants in other cases from different jurisdictions as informants and sources, they were aware of how they were being used and agreed to cooperate. There is nothing in the record to indicate that the cases the appellant normally handles involve such wide-scale conspiracies that suspects are used in double or triple capacities without their knowledge.

GS-12 is credited for Element 6 in both cases.

In summary, this factor is evaluated as follows:

<b>ELEMENT</b>	<b>FARMHAND</b>	<b>FIELDER'S CHOICE</b>
<b>1</b>	12	12
<b>2</b>	12	12
<b>3</b>	12	12
<b>4</b>	12	12
<b>5</b>	12	12
<b>6</b>	12	12

Most or all of the elements must be evaluated at a particular grade for that grade level to be assigned. Based on that criteria, each of these cases equates to GS-12.

### **Level of Responsibility**

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

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

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

The appellant's freedom from technical supervision and the supervisory review are similar to the GS-12 level. The appellant's investigations are virtually always generated and conducted independently. His immediate supervisor is kept apprised of case progress on

a regular basis. None of the cases are of the importance and sensitivity or involve the type of complexity described at the GS-13 level which would require devising breakthroughs in investigative approaches, techniques, and policies and establishing precedents.

GS-12 is credited for both cases for this factor.

### **Summary**

The **Operation Farmhand** case is credited at the GS-12 level for *Complexity of assignments* and the GS-12 level for *Level of responsibility*. The overall evaluation of this case is GS-12.

The **Fielder's Choice** case is credited at the GS-12 level for both factors and is, therefore, evaluated at the GS-12 level.

Established classification principles require that higher-graded work be performed a minimum of 25 percent of the time to be grade-determining. The GS-12 level is representative of the majority of the appellant's caseload for the past three fiscal years and is, therefore, the appropriate grade level for this position.

### **Decision**

This position is properly classified as Criminal Investigator, GS-1811-12. This decision constitutes a classification certificate issued under the authority of section 5112(b) of title 5, United States Code. This certificate is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.