

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

Dallas Oversight Division
1100 Commerce Street, Room 4C22
Dallas, TX 75242-1027

Classification Appeal Decision
Under section 5112 of title 5, United States Code

Appellant: [appellant's name]

Agency classification: Investigator
GS-1810-11

Organization: [appellant's Branch]
Civilian Personnel Flight
[Group]
Department of the Air Force
[location]

OPM decision: GS-1802-09
title at agency discretion

OPM decision number: C-1802-09-02

/s/ Bonnie J. Brandon

Bonnie Brandon
Classification Appeals Officer

February 27, 2002

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).

Since this decision lowers the grade of the appealed position, it is to be effective no later than the beginning of the sixth pay period after the date of this decision, as permitted by 5 CFR 511.702. The servicing Civilian Personnel Flight must submit a compliance report containing the corrected position description and a Standard Form 50 showing the personnel action taken. The report must be submitted within 30 days from the effective date of the personnel action.

The Civilian Personnel Flight must also determine if the appellant is entitled to grade or pay retention, or both, under sections 5362 and 5363 of title 5, United States Code, and 5 CFR 536. If the appellant is entitled to grade retention, the two-year retention period begins on the date this decision is implemented.

Decision sent to:

[appellant's name and address]

[appellant's civilian personnel office]

Chief, Civilian Policy
HQ USAF/DPFC
U.S. Department of the Air Force
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Introduction

On July 27, 2001, the Dallas Oversight Division of the U.S. Office of Personnel Management accepted a classification appeal from [the appellant]. We received the agency's administrative report on August 21, 2001. The appellant's position is currently classified as Investigator, GS-1810-11. The appellant requests that his position be classified as Criminal Investigator, GS-1811-12. The position is assigned to the [appellant's branch] Civilian Personnel Flight, [Group], [higher organization and location]. We have accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.).

Under a Memorandum of Understanding signed April 30, 1998, by the Director of Personnel, Headquarters Air Force Materiel Command (AFMC); the Commander of [Region] of Air Force Office of Special Investigations (AFOSI); and the Commander, AFMC Security Forces, the local AFOSI Commander provides immediate supervision to the appellant's position. Second-level supervision is provided by [a Branch Chief] in the local Civilian Personnel Flight.

To help decide the appeal, an Oversight Division representative initially conducted a telephone audit with the appellant on October 3 and October 4, 2001, and telephone interviews with the appellant's first-level and second-level supervisors on October 30, 2001, and October 31, 2001, respectively. We conducted an on-site audit on November 30, 2001. On December 17, 2001, we also interviewed a Special Agent of the Office of the Inspector General (OIG), Department of Labor (DOL), in Denver, Colorado. The Special Agent has handled certain aspects of the worker's compensation cases that have been assigned to the appellant. In reaching our classification decision, we fully considered the audit and interview findings and all information of record provided by the appellant and his agency.

Position information

The [appellant's Branch Chief] certified to the accuracy of the appellant's position description, [number]. The appellant, however, believes the position description does not adequately reflect that the cases he works are criminal in nature and does not adequately describe the techniques he employs to accomplish his work, e.g., conducting surveillance, compiling evidence, and drafting and serving subpoenas. The appellant prepared and submitted a draft position description with his appeal that he believes more appropriately describes his duties and responsibilities.

We found that the draft position description submitted by the appellant overstates the difficulty and complexity of his work. The draft position description indicates the appellant conducts extremely difficult and complex fraud investigations and conducts extremely sensitive investigations relating to prominent or senior level civilian or military personnel suspected of involvement in complex criminal activities. The draft description also reflects the appellant plans and directs sensitive surveillance and undercover operations. Neither the information in the appeal record nor our fact-finding supports the sensitive, complex work reflected in the draft description.

While the position description of record covers the work that the appellant performs, the position description must be modified to describe the techniques the appellant uses in his work and to

accurately reflect that the position operates under the technical supervision of the local AFOSI Commander. In addition, the Supervisory Controls statement currently indicates that the appellant receives assignments from the Injury Compensation Program Administrator. This part of the position description should be revised to reflect that the appellant also independently identifies the majority of cases he works based on a review of DOL's Office of Workers' Compensation Program (OWCP) compensation benefits received by current and former [Air Force Base] personnel.

The appellant is primarily responsible for conducting investigations involving current or former employees of [the] Base who have claimed or receive benefits under the Federal Employees' Compensation Act (FECA) administered by OWCP. Benefits consist of payments of medical expenses and/or compensation for lost wages based on injuries or diseases sustained while working at [the] Base. The appellant gathers facts and evidence sufficient to support that the individuals are not entitled to the benefits claimed or are fraudulently claiming benefits in violation of 18 U.S.C. 1920, False Statement or Fraud to Obtain Federal Employee's Compensation. Fraud usually occurs when claimants exaggerate the severity of their medical injuries or willfully fail to report income earned to OWCP.

The appellant independently identifies the majority of cases worked based on his review of OWCP reports which reflect the nature of the claimants' injuries, the length of time the claimants have been receiving benefits, and the dollar amount of compensation payments made to claimants. The appellant uses a profiling method to prioritize and identify the cases on which he believes additional facts and evidence should be gathered. Some cases worked by the appellant are initiated either because an individual comes forward to an agency official with information that may indicate the FECA claim is not valid or at the request of the agency's Injury Compensation Program Administrator when more factual information is needed in relation to a claim.

Almost all of the appellant's cases are placed in a "developmental file," which, under AFOSI policy, is used in lieu of establishing a substantive case file while the appellant gathers sufficient facts and evidence needed to controvert the claim or establish that FECA fraud may have been committed. If the appellant obtains information that indicates the claimant possibly should not continue receiving OWCP benefits, a substantive case file is established for which the appellant concludes his investigation by preparing a written report of his findings.

In working a case in a developmental file, the appellant routinely initiates a number of record checks on the individual to obtain information regarding such matters as criminal history, vehicle ownership, previous false insurance claims, and names of household members and neighbors. He checks county and city records to obtain information about marriages and divorces, arrest records, property ownership, business licenses, etc. Typically, the appellant spends numerous hours conducting surveillances of individuals to observe whether they are performing physical activities that may be incompatible with their medical conditions claimed. He also spends time commuting to establishments where the claimant may be employed. If his review of records or surveillance does not indicate the claimants may be fraudulently claiming benefits, the appellant usually conducts pretext interviews with neighbors to verify that the claimants are not working or performing physical activities beyond the limitations of their medical condition. These

interviews consist of asking questions about the claimant under the pretext that the investigation is a background check for reemployment. The appellant closes the cases if the interviews do not produce any additional information.

The appellant has worked on several cases for which he issued administrative challenges requesting that OWCP either terminate or limit benefits received by the claimants. He requested challenges on these claims based on information he developed during his investigations or as a result of his review of the claim files and medical information. Examples of the bases of the challenges follow.

- From his surveillance of individuals' activities and his review of the claim files, the appellant concluded that those cases involved circumstances analogous to those outlined in DOL Employee Compensation Appeals Board (ECAB) decisions in which claims had been denied.
- From his review of medical records, the appellant determined an individual was submitting a claim based on the same injuries for which she had filed a previous claim that OWCP had denied.
- The appellant's review of a claimant's financial and business records revealed the claimant was presently earning more money from non-Federal employment than he would have earned had he not been injured on the job.
- Based on surveillance of the claimant and review of medical records, the appellant believed the individual was physically able to work at least part of each day.
- The appellant established that a claimant was improperly receiving benefits concurrently from the Department of Veterans Affairs and OWCP for an injury received in the military that later was aggravated while the claimant was working as a civilian.
- From his review of medical information, the appellant deduced that a claimant's injury was caused by a preexisting medical condition.

The appellant has worked one case that resulted in indictment by a county prosecutor and one case that may result in indictment by Federal prosecutors. As the lead, the appellant worked these cases as "joint investigations" with a Special Agent from DOL's OIG.

- In the first case, the claimant allegedly concealed his outside employment activities and earnings. Based on a disclosure from an anonymous caller to OWCP, the claimant was suspected of picking up grain spillage to sell to granaries. By locating and interviewing individuals at several granaries, the appellant established that the claimant was selling grain to one of the granaries. From his review of financial records, the appellant also learned that the claimant, his wife, and another family member purchased a business establishment. The appellant and the DOL OIG investigator jointly interviewed individuals at several businesses and confirmed that the claimant was performing work at his business establishment, selling grain, and breeding and selling horses. The appellant prepared grand jury subpoenas and an ex parte order for the U.S. Attorney to obtain copies of financial and tax records to establish

the claimant's earnings from those activities. The appellant prepared a final report of the investigation findings. The U.S. Attorney's Office declined to prosecute the claimant. However, the county attorney's office is using the appellant's investigative report in its prosecution of the claimant for violations under [a State Code concerning workers' compensation insurance fraud]. To assist the county attorney, the appellant obtained administrative subpoenas from the DOL OIG to re-acquire necessary documentary evidence. The appellant is also assisting the county attorney's office in a pre-trial motion hearing.

- The other case involves a claimant who allegedly fraudulently claimed to have sustained an injury on the job. Based on a co-worker's disclosure to the supervisor, the appellant located the establishment from which the claimant had rented a snowmobile the weekend before he claimed his on-the-job injury. The appellant interviewed a number of witnesses who confirmed the claimant had been injured in an accident on the snowmobile. The appellant established that the claimant was not scheduled to work the day following the weekend accident. However, the claimant convinced another worker to change shifts with him so that the claimant could be at work on the day he claimed to have sustained a job-related injury. During the investigation, additional allegations surfaced concerning theft of government property. The appellant interviewed witnesses, reviewed records, drafted a civilian search warrant, and, along with the DOL OIG Special Agent, conducted a custodial interview with the claimant. The theft inquiry was later terminated because the property alleged to have been stolen by the claimant was returned anonymously. The appellant prepared a final report of his investigation, which the U.S. Attorney's Office will use if it pursues a misdemeanor indictment of the claimant for violations of 18 U.S.C. 1920.

Both the appellant and the AFOSI Commander indicate the appellant spends approximately 20 percent of his time on cases resulting in administrative challenges and approximately 75 percent of his time conducting surveillance, reviewing records, or interviewing individuals in relation to the other substantive or developmental file cases. The appellant spends about five percent of his time working standard leads requested by AFOSI agents either within or outside his office. Generally, the leads involve picking up copies of various records, interviewing individuals, or conducting surveillance.

Series and title determination

The agency determined the appealed position is covered under the General Investigating Series, GS-1810, and used the Grade-Level Guides for Classifying Investigator Positions (GLGCIP) to determine the grade level. The appellant agrees with use of that guide for grading purposes, but he believes his position should be allocated to the GS-1811 Criminal Investigating Series.

The GS-1810 series includes positions that involve planning and conducting 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 investigations are used to make or invoke administrative judgments, sanctions, or penalties. These positions require primarily knowledge of investigative techniques and knowledge of the laws, rules, regulations, and objectives of the employing agency; skill in interviewing, following

leads, researching records, and reconstructing events; and the ability to elicit information helpful to the investigation from persons in all walks of life and to prepare reports of findings.

The GS-1811 series includes positions that involve planning and conducting investigations relating to alleged or suspected violations of criminal laws. In addition to the knowledge, skills, and abilities needed by GS-1810 positions, the work of GS-1811 positions requires knowledge of what constitutes a crime or violation as defined in pertinent statutes and the kind of evidence that is required to prove that a crime was committed; the relationships among the criminal investigative jurisdictions of various agencies; decisions and precedent cases involving admissibility of evidence, search and seizure, and arrest authority; sources of information such as informants and methods of obtaining required evidence; the methods and patterns of criminal operations; availability and use of modern detection devices and laboratory services; awareness of continuing advances in investigative technology; and skill in activities such as maintaining surveillance, performing undercover work, making arrests, and taking part in raids.

The primary purpose of the appealed position is to conduct investigations of FECA claimants to ensure the individuals are entitled to benefits claimed. Some cases may involve investigation of criminal or potentially criminal violations of Federal law. The work requires investigative knowledge similar to that needed by GS-1810 positions and subject-matter knowledge of compensation benefits payable under 5 U.S.C. chapter 81 (Compensation for Work Injuries). Further, the appellant's work requires some of the knowledge and skills needed by GS-1811 positions. For example, the appellant must know what constitutes a crime under the statute, the kind of evidence required to prove a crime was committed, admissibility of evidence, and knowledge of citizens' constitutional rights. The appellant uses surveillance as a primary technique to gather information during the investigations. Although some aspects of the appellant's position are similar to GS-1810 positions, the appealed position does not require the *full* range of investigator knowledge, skills, and techniques described for GS-1810 positions. For example, the appellant's position does not require knowledge of decisions relating to national security; specialized industrial, commercial, or agency accounting or recordkeeping practices; or specialized investigative devices and equipment or skill in developing and using specialized investigative techniques, devices, and procedures. The appellant's use of surveillance and interviews does not meet the intent of using or developing specialized investigative techniques and functions as described in the GLGCIP. Further, the appellant's assignments are typically completed within short time periods and primarily involve the use of interviews and surveillance of claimants. Consequently, the appealed position is excluded from the GS-1810 series.

While the GS-1810 series is not appropriate for the appealed position, we cannot necessarily conclude that the correct series is GS-1811. The total context of the position must be taken into account by comparison with the series definition, occupational information, and grade-level criteria of the appropriate standard or guide. In its discussion on the distinctions between investigating and other occupations, the GLGCIP indicates that not all positions that involve fact-finding and reporting are classified as investigators. Investigator positions covered by the GLGCIP are distinguished from certain other law enforcement occupations and subject-matter positions involved in fact-finding and reporting that do not require employees to apply the full range of investigator knowledges, skills, and techniques described in the GLGCIP.

The GLGCIP, which was published in February 1972, must be read in concert with the more recent information provided in the Grade Evaluation Guide for Police and Security Guard Positions, GS-083/GS-085, published in April 1988. The GS-083/GS-085 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*. As previously indicated, the appealed position does not focus on investigations of alleged or suspected violations of *criminal law* where the *full* range of knowledge, skills, and abilities is called into use in the development of complex cases involving significant crimes against the United States. The appellant's cases do not involve the variety, scope, or complexity of criminal cases described in the GLGCIP. Typically, the appellant's cases involve statutory violations that do not rise to the criminal level as illustrated for positions in the GS-1811 series. Consequently, the appealed position is excluded from the GS-1811 series.

Although the appellant's assignments bear some similarity to the higher levels of detective work described in the GS-083 series, that series is inappropriate for the appealed position. Detectives conduct investigations that involve searching crime scenes for clues, interviewing witnesses, following leads, analyzing and evaluating evidence, locating suspects, and making arrests. The appealed position does not involve authority to make arrests.

The primary purpose of the appealed position is to conduct investigations of FECA claimants to ensure the individuals are complying with Federal injury compensation benefits laws and requirements. The appellant's work in requesting and reviewing records related to claimants' backgrounds and financial activities, reviewing ECAB decisions to identify analogous cases, conducting surveillance on subjects, interviewing witnesses with knowledge of the claimants' activities, and preparing final investigative reports is comparable to the work covered by the Compliance Inspection and Support Series, GS-1802. Positions in the GS-1802 series perform inspections or technical support work in assuring compliance with or enforcement of Federal law, regulations, or other mandatory guidelines and that are not classifiable in another, more specific occupational series. The work requires knowledge of prescribed procedures, established techniques, directly applicable guidelines, and pertinent characteristics of regulated items or activities. Positions included in the GS-1802 series perform work in support of investigations such as searching for, gathering, screening, and providing factual information or explanations related to the subject of an investigation or to the compliance program itself. These tasks are performed by following prescribed or established procedures to assist program officials in their fact-finding or program administration responsibilities. The work includes activities such as obtaining background information on subjects of investigations by means of record searches, structured interviews, and automated information retrieval; compiling final investigative reports with necessary exhibits; and maintaining required administrative reports on case load and case status. Consistent with positions in the GS-1802 series, the appellant's work involves examining records and investigating Federal employees suspected of violating OWCP requirements through fraudulent claims or overstating the severity of their work-related injuries. Accordingly, the appealed position is properly assigned to the GS-1802 series.

Since no titles are specified for positions in the GS-1802 series, the agency may establish a title consistent with OPM's guidelines on titling practices outlined in the *Introduction to the Position Classification Standards*.

Standard determination

The standard for the GS-1802 series does not contain grade level criteria. Consequently, we made a grade level determination by comparing the appellant's work with a standard covering a closely related kind of work, i.e., involving analogous knowledge and skills. In selecting a pertinent standard, we based the comparison on identifying a kind of work as similar as may be found to the appellant's position 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 found that the standard for the GS-082 United States Marshal Series provided an appropriate comparison for the appellant's position. The GS-082 series requires knowledge of court procedures and the ability to testify in legal, quasilegal, and administrative proceedings; a high degree of ability to meet and deal effectively with a wide variety of people from every level of society, frequently under conditions of stress and sensitivity; knowledge, ability, and sophistication in ways of finding and identifying wanted persons; and expertise in the use of surveillance and detection techniques.

We must note here that the GS-082 series is not appropriate for the appealed position because 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. The appellant's position does not involve such activities.

Grade determination

The GS-082 standard addresses two factors: *Nature of assignments* and *Level of responsibility*.

Nature of assignments

GS-9 is the highest grade level described in the standard. Positions at the GS-9 level involve the complete range assignments where unusual difficulties are anticipated. Assignments exceed the GS-7 level because of the more complex person-to-person relationships required and 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. Such assignments 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 the person to get information about the person's background, living habits, and temperament. GS-9 employees pay particular attention to indications of the person's character and estimate the likelihood of danger and resistance when making the arrest.

GS-9 employees trace leads and put together bits of information from a variety of sources. They establish 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 persons to conceal their 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 by others to conceal information.

The way the appellant performs his work is comparable to the GS-9 level. The subjects of the appellant's investigations have a vested interest in concealing the truth concerning their involvement in activities that violate Federal injury compensation laws. The appellant is often confronted with conflicting information concerning the medical and financial status of the subjects of his investigations. The appellant's investigations typically involve attempts by the subjects to hide income and/or the true nature of their injuries. The appellant uses considerable effort to establish the source and the amount of fraudulently earned income and the physical competencies of the claimants. In addition, the appellant must conduct his investigations in accordance with the stringent requirements designed to protect the constitutional rights of suspects and innocent citizens. The appellant's position fully meets, and does not exceed, the intent of the GS-9 level.

Level of responsibility

GS-9 is the highest grade level described in the standard. With respect to most assignments, GS-9 employees work independently, or they 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.

GS-9 employees keep their supervisor informed of the actions they take in specific cases, particularly those likely to result in serious repercussions involving the supervisor and/or the agency. Because of training and seasoned judgment developed through experience in handling a wide variety of assignments, employees at this level seek advice infrequently, as they determine it to be necessary. GS-9 employees make significant decisions concerning their assignments without prior review. In planning their approach, GS-9 employees review all the information concerning the case, perceive potential problems, and determine the nature and scope of the inquiry they must make. From all sources of information, sometimes including informants, GS-9 employees sort facts and opinions, piece together the data needed to locate and identify the persons or property, evaluate alternative courses of action, and make decisions on the timing, manner, and circumstances of their actions.

The appellant works with the freedom described at the GS-9 level. He develops his own cases or receives case assignments when individuals come forward with information that suggests fraudulent activities may be occurring. The appellant is expected to seek supervisory guidance only when he encounters new or unexpected developments. His case work is reviewed for overall adequacy, accuracy, completeness, and accomplishments of objectives. The appellant's level of responsibility fully meets, and does not exceed, the intent of the GS-9 level.

Summary

The appellant's work meets the GS-9 level for both factors in the GS-082 standard.

Decision

The appealed position is properly classified as GS-1802-9, with the title at the discretion of the agency.