



United States
**Office of
Personnel Management**

Philadelphia Oversight Division
William J. Green, Jr. Federal Building
600 Arch Street
Philadelphia, Pennsylvania 19106-1596

In Reply Refer To:

Your Reference:

OPM decision number: C-1811-12-08, 1/22/98

PH:OD:97-19

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

Dear [appellant's name]:

This is our decision on the position classification appeal filed with our office which we accepted under the authority contained in section 5112(b) of title 5, United States Code (U.S.C.).

This appellate decision constitutes a classification certificate that is mandatory and binding on administrative, certifying, payroll, disbursing, and accounting officials of the Government. It is the final administrative decision on the classification of this position, and is not subject to further appeal. It is subject to review only under the limited conditions and time limits specified in title 5, Code of Federal Regulations (CFR), sections 511.605 and 511.613, and the Introduction to the Position Classification Standards (Introduction), Appendix 4. It must be implemented according to the provisions contained in 5 CFR 511.612.

Position Information

Appellant	: [appellant's name]
Current Classification	: Criminal Investigator, GS-1811-12
Position Description	: AO1243
Requested Classification	: Criminal Investigator, GS-1811-13
OPM Decision	: Criminal Investigator, GS-1811-12
Organizational Information	: U.S. Department of the Treasury U.S. Customs Service Office of Investigations Special Agent in Charge (SAC) - [location]

Analysis and Decision

In considering your appeal, we carefully reviewed all of the information submitted by you or on your behalf, information obtained from an on-site audit with you, your acting supervisor, [supervisor's name], and your former supervisor, [supervisor's name], on October 1 and 2, 1997, and other pertinent classification information provided by your agency at our request. We also considered the information you submitted in your letter dated September 9, 1997, and your fax dated January 5, 1998 in response to the position evaluation reports submitted by the U.S. Customs Service, Office of Human Resource Management.

It is our decision that your position is classified properly as Criminal Investigator, GS-1811-12. Accordingly, your appeal is denied.

In your appeal letter you requested your position be reclassified to GS-1811-13. Your letter stated you believe that you have successfully performed GS-13 level work over the last several years and included three case synopses that you believed supported your request for reclassification. Following is a summary of those cases:

JOSE DANIEL BEJERANO - SUNNY TRANSFER COMMUNICATIONS

This was a money laundering and narcotics investigation. It was initiated based on information from a confidential source. A Columbian-based organization established a New York state licensed money remitting business, SUNNY TRANSFER COMMUNICATIONS, and used the business to facilitate laundering of narcotics proceeds back to Columbia. As case agent, you planned and organized the objectives of the case, analyzed and developed the information, led members of the Task Force involved in the investigation, collected and analyzed the evidence, prepared written reports, and presented the case orally to the U.S. Attorney's Office. The case resulted in the arrest and conviction of two individuals, the seizure of approximately \$300,000 in cash, \$30,000 in structured money orders, and the ultimate dismantling of the enterprise.

RAPHAEL ROJAS

This was a multi-jurisdictional, Organized Crime Drug Enforcement Task Force (OCDETF) investigation of a San Juan based narcotic smuggling organization that was smuggling multi-kilo shipments of cocaine from Columbia, through Puerto Rico, and distributing the narcotics in the New York City (NYC) metropolitan area. The organization then used several members of the organization to travel to New York and physically transport the illicit proceeds back to Puerto Rico. You were the case agent and headed the OCDETF investigation composed of agents from the SAC/New York,

Drug Enforcement Agency (DEA)/Newark and the SAC/San Juan. The investigation was assisted by Custom Inspectors of the Contraband Enforcement Team (CET)/Newark and agents of the DEA/New York, DEA/Newark and DEA/San Juan, and local police. The investigation resulted in the seizure of approximately \$336,000 in U.S. currency, approximately 600 pounds of cocaine, the vehicle used to transport the drugs, and the arrest and conviction of three individuals.

MICHAEL ANGELO O'FIELD

This was a money laundering and narcotics investigation developed through a separate but related money laundering investigation. The investigation involved agents from the U.S. Customs Service, SAC/NY and SAC/LA and agents from DEA/NY, DEA/LA and various state and local police. You were the case agent and planned and organized the objectives of the case, developed the information to identify the organizations engaged in laundering narcotics proceeds to Columbia, identified the narcotics trafficking organizations providing the proceeds to be laundered, evaluated the evidence gathered, decided whom to arrest, and presented the facts in the case to the U.S. Attorney. Subjects of the investigation were members of an organization spread out over NYC, Houston, TX and Los Angeles, CA. The investigation resulted in the actual seizure of approximately 44 kilos of cocaine, and approximately \$8,000 in U.S. currency, the arrest of four persons, and the subsequent arrest of four co-conspirators.

Series and Title Determination

Your agency has determined that your position is classified properly to the Criminal Investigating Series, GS-1811, with which you have not disagreed, and with which we concur. Based on the titling practices contained in the GS-1811 PCS, your position is allocated properly as Criminal Investigator, GS-1811.

Grade Level Determination

All positions subject to the Classification Law, contained in title 5, U.S. C., must be classified in conformance with published position classification standards of the U.S. Office of Personnel Management (OPM), or if there are no directly applicable standards, consistently with published standards for related kinds of work. The appropriate standard to be applied to the work you perform is the Grade-Level Guides for Classifying Investigator Positions (GLGIP), GS-1810-1811. You and your supervisor stated neither of you had read this standard. 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, i.e., only the case agent position may be credited with performing the full grade level of the cases.

The standard recognizes that besides work individually assigned to an investigator, 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, an investigator 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 as 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 your coordinative responsibilities is wholly dependent upon the grade level worth of the cases for which they are performed.

Complexity of Assignments

This factor measures the scope, complexity and sensitivity of investigative assignments in terms of six elements. To be classified at the GS-13 level, the work must not only meet most or all of the characteristics outlined at the GS-12 level in the standard, but should substantially meet most or all of the characteristics illustrated at the GS-13 level.

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

At the GS-12 level, the work involves a degree of difficulty in obtaining, working with, and discretely handling facts or evidence as illustrated by the fact that several principles are involved in the investigation and suspicion of their relationship is aroused initially more by circumstantial evidence than by directly verifiable evidence.

At the GS-13 level, cases involve assignments of extreme complexity and scope as evidenced by: The organization is very complex in structure with a large number of primary and subsidiary activities; investigations are of major interregional dimensions or are nationwide in origin or coverage with occasional international implications; there are typically indications of actual or potential threats or challenges to major segments of national welfare or security; the results, effects, or consequences of the investigation, *to a major degree*, constitutes deterrents to crimes, and may often influence changes in laws or future court actions. At the GS-13 level, the investigator must piece together

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evidence that comes from other investigators stationed throughout several states of the nation; 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, and must be aware of the implications of precedent court decisions over a broader area, i.e., in more judicial and law enforcement jurisdictions.

Your work in the **BEJERANO** and **ROJAS** cases meet the characteristics of the GS-12 level since the investigations were initiated based on sketchy information and several principles were involved in the investigations. The investigations originated from sketchy information provided by confidential sources.

They do not meet the GS-13 level of difficulty. The **BEJERANO** case was limited in scope to a metropolitan NYC drug dealing/money laundering operation. Although the Columbian Cartel may have a very complex structure and have national and/or international implications, your case responsibility was limited to the SUNNY TRANSFER COMMUNICATIONS organization, one part of the larger organization. the SUNNY TRANSFER COMMUNICATIONS organization did not have a very complex structure and was not nationwide in scope or have international implications.

The characteristics of the **ROJAS** case also do not meet the GS-13 level of difficulty. The organization was not as complex in structure as envisioned at the GS-13 level. It did not have major interregional dimensions; it involved the shipment of a large amount of narcotics from PR to NY. There were no actual or potential threats or challenges to major segments of national welfare or security, and the results of the investigation did not influence changes in laws or future court actions.

Your work in the **O'FIELD** case fully meets the level of difficulty described at the GS-12 level in the standard. The case was sensitive since the information grew out of a separate but related undercover operation, resulting in the need for discrete handling of evidence and the need to insure the investigation did not compromise the original overall operation. Several principles were involved in the investigation and suspicion of their relationship was aroused by circumstantial evidence such as observation and tips.

The complexity involved in the **O'FIELD** case is not of the extreme nature illustrated at the GS-13 level in the GLGIP. Most of the casework was done in NY. **O'FIELD** established four "front" companies including two body shops in NYC, a welding/body shop in TX and a body shop in Los Angeles. Your investigation involved suspects who drove a motor home between NY and Houston and Los Angeles to pick up and deliver cocaine. During your investigation, you traveled to and requested some assistance from the SAC/Houston in conducting surveillance and executing arrest warrants. You

also briefed the United States Attorney in Houston on these arrests. In addition, you traveled to Los Angeles to meet with agents there to brief them and identify the business used by **O'FIELD** to smuggle narcotics into the United States.

Complexity of organizations at the GS-13 level, as indicated above, is characterized as "very complex" with a large number of primary and subsidiary activities. The **O'FIELD** organization does not meet that definition. Although several of the body shops are in different states, they cannot be considered of "major interregional dimensions" and nationwide in origin. The investigation of **O'FIELD** was not of such complexity that it constitutes, to a major degree, deterrent to crimes nor does it influence changes in laws or future court actions. Although the **O'FIELD** investigation required travel to other cities, the necessity to piece together evidence from other investigators stationed throughout several states is not a key factor in this case. Therefore, this element is evaluated 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 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., 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, subjects at the GS-13 level, 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.

The subjects in the **BEJERANO** case meet the GS-12 definition since they are figures with financial interests overlapping several activities both legal and illegal. Although the subjects in the **ROJAS** case were not known as prominent figures in organized crime, their characteristics, e.g., the secretive nature of the organization, has some characteristics defined at the GS-12 level. The subjects in both the **BEJERANO** and **ROJAS** cases do not pose the level of difficulty and complexity envisioned at the GS-13 level either in the range or variety of interrelated activities.

The **O'FIELD** case completely meets the GS-12 level concerning the difficulty and complexity imposed by the subjects of the investigation. **O'FIELD** is known by his associates as a major figure in narcotics trafficking and he operates several "front" companies. The organization under investigation in the **O'FIELD** case, as described in the previous element, is not considered "extremely complex" in structure with diversified interests. Therefore, this element is evaluated 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, suspected violators at the GS-13 level, 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.

Both the **BEJERANO** and **ROJAS** cases meet the GS-12 definition since a number of separate investigative matters grew from the original investigation. For example, the investigation of SUNNY TRANSFER COMMUNICATIONS led to the identification of other money laundering operations, and the **ROJAS** case led to other narcotics investigations resulting in subsequent arrests.

Your work in the **O'FIELD** case meets the GS-12 level as to the nature of separate investigations that grow from the original assignment. The **O'FIELD** case grew from another assignment you had involving the surveillance of a female target in another investigation. Other separate investigations resulting from your work in **O'FIELD** are expected to be developed. The investigations resulting from your original assignment are not of the scope described at the GS-13 level where *many* separate investigative matters of *great scope and complexity* are involved. Therefore, this element is evaluated 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 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 engaging 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 and 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.

Both the **BEJERANO** and **ROJAS** cases meet the GS-12 level described above. Surveillance was used in the **BEJERANO** case and a variety of interviewing techniques used to establish facts and evidence. In the **ROJAS** case, the secretive nature of the operation increased the difficulty in establishing the relationships of facts and evidence, resulting in the use of undercover agents and hidden monitoring devices. Although the difficulty involved in establishing relationships of facts and evidence approaches the GS-13 level of difficulty, e.g., subjects use fictitious names and are sometimes separated from the illegal activities, it falls short as to the scope of the operations under

investigation. The cases do not deal *exclusively* through subsidiaries and holding companies engaged in *diversified* mixtures of legal and illegal activities throughout *wide sections* of the country as discussed in the case synopsis.

The degree of difficulty involved in establishing the relationship of facts or evidence in the **O'FIELD** case also meets the GS-12 level as described in the GLGIP. **O'FIELD** was separated from the overt violations by intermediaries typical of the GS-12 level. This required surveillance and other similar techniques to establish a direct link between the suspect and other violators. The degree of difficulty in establishing the interrelationship of facts and evidence is not as *extremely difficult* to establish as envisioned at the GS-13 level. The subjects do not deal exclusively through subsidiaries and holding companies that engage in *diversified* mixtures of legal and illegal activities throughout wide sections of the country. Rather, the "fronts" established involved primarily local body shop operations. Therefore, this element is evaluated 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 with the result that subsequent witnesses are evasive because of reluctance to or fear of becoming involved in giving information that 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.

Although the subjects in the **BEJERANO, ROJAS**, and **O'FIELD** cases do not meet the level of prominence described at the GS-12 level, the sensitivity involved in these cases

was such that extreme caution had to be used so that the cases would not be jeopardized by premature disclosure. For example, speedy search in the **BEJERANO** case was necessary so that evidence would not be destroyed. In the **O'FIELD** case extreme sensitivity had to be used to insure the original investigation was not compromised. Neither of these cases involved the degree of sensitivity envisioned at the GS-13 level. These investigations were not the subject of sustained and widespread coverage in the major news media, the suspects' financial involvements did not extend to enterprises having a significant impact on the national economy, and the suspects were not principles in financial or other enterprises that reach into State and local affairs. Therefore, this element is evaluated 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; 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, cases at the GS-13 level, 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.

The jurisdictional problems involved in the **BEJERANO, ROJAS, and O'FIELD** cases meet those described at the GS-12 level. The **ROJAS** case was a multi-jurisdictional and multi-agency investigation. The **BEJERANO** case involved a business incorporated in the State of NY and involved several jurisdictions including the NY police department. **O'FIELD** involved coordination with other SAC offices in Houston and Los Angeles. The jurisdictional problems involving other Federal, State, county and local agencies are not as extensive or complicated as those envisioned at the GS-13 level described in the GLGIP. Therefore, this element is credited at the GS-12 level.

Level of Responsibility

This factor measures the kind and extent of supervision given to investigators and the 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, investigators at the GS-13 level, 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 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. 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, 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.

The level of responsibility described in your position description, the information you submitted in your appeal, and the information we obtained during our desk audit with you and your supervisors matches the level of responsibility described at the GS-12

level in the standard. You are responsible for planning, coordinating, and supervising your investigative activities. You analyze the sources of your information and obtain the details of the investigations and prepare clear and concise reports. In the **ROJAS** case, you used information supplied by a confidential informant to identify and seize a narcotics shipment, you planned and coordinated the controlled delivery of the narcotics, you used undercover agents and planned and coordinated around-the-clock surveillance and you instructed the arrest of the persons responsible for planning and smuggling the narcotics. In the **BEJERANO** case, you initiated investigations, planned and organized surveillance, seized evidence, planned interview strategies, directed searches, resolved conflicting facts or evidence, and presented all facts and evidence to the United States Attorney. In the **O'FIELD** case, you planned the resources you needed and worked out arrangements with other jurisdictions when necessary. You worked with the independence typical of that described at the GS-12 level in the standard.

The level of responsibility in your position does not meet that described at the GS-13 level in the GLGIP. You do not devise methods, techniques and approaches to problems that often set patterns for subsequent investigations in similar areas and are often adopted for use by other investigators. You are not responsible for devising breakthroughs in investigative approaches, techniques, and policies and your investigations do not often establish important precedents, as is typical at the GS-13 level of responsibility. Therefore, this element is credited at the GS-12 level.

Summary

In summary, we have evaluated both factors at the GS-12 level. Therefore, it is our decision that your position is classified properly as Criminal Investigator, GS-1811-12.

Please be assured that this decision is not intended to reflect on your abilities, qualifications, or the quality of your performance. Rather, it reflects our evaluation of the position based on a comparison of the duties and responsibilities with the appropriate standards.

Sincerely,

/s/ 1/22/98

Robert D. Hendler
Classification Appeals Officer

cc:

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