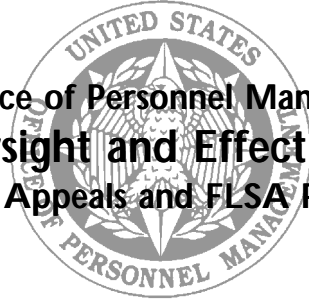


U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs



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

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

Appellant: [appellant's name]

Agency classification: Criminal Investigator
GS-1811-12

Organization: [appellant's geographic organization]
Office of the Inspector General for Tax
Administration
Department of the Treasury
[city, state]

OPM decision: Criminal Investigator
GS-1811-12

OPM decision number: C-1811-12-12

/s/ Bonnie J. Brandon
Bonnie J. Brandon
Classification Appeals Officer

5/28/99
Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the Introduction to the Position Classification Standards, appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[appellant's name and address]

Chief
Consolidated Position Classification/
Position Management Site
Internal Revenue Service
Department of the Treasury
401 W. Peachtree Street NW., Stop 821-D
Atlanta, GA 30365

Director of Personnel Policy
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Room 4180-ANX
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Introduction

On December 18, 1998, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) received a classification appeal from [the appellant]. [The appellant's current position is classified as Criminal Investigator, GS-1811-12. However, the appellant believes the classification should be Criminal Investigator, GS-1811-13. He works in the Office of the Inspector General for Tax Administration (OIGTA), Department of the Treasury, [city, state]. The appellant's duty station is [city, state]. We have accepted and decided his appeal under section 5112 of title 5, United States Code (U.S.C.).

General issues

The appellant, who states that his position description is accurate, believes his position is comparable to GS-13 Criminal Investigator positions in his office and in other OIGTA offices in the United States. By law, we must classify positions solely by comparing the current duties and responsibilities of the job to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Comparison to standards is the exclusive method for classifying positions; therefore, we cannot compare the appellant's position description to others as a basis for deciding this appeal.

The appellant believes the complexity of his caseload has been at least equal to the GS-13 level in excess of 50 percent of the time consistently over a period of years. Cases which may appear to initially be one level of complexity may become more or less complex due to unpredictable variables, resulting in cases being handled sometimes above and sometimes below the grade level of the position. Some cases may require more than a year to complete or may demand a substantial full-time effort. Because of the variation or fluctuation in the grade level of assigned cases and the caseload discussed with the appellant, we determined a representative period for review of the appellant's cases to be more than one year but not more than two years. For the past two years, prior to the elimination of case grading in the agency's Internal Security Management Information Systems (ISMIS), approximately 75 percent of the appellant's cases have been "graded" at the GS-13 level, based on the determination made either by the supervisor or the appellant himself. The percentage was derived from the numbers of hours worked, not individual cases. The case gradings, which are now defunct, were not based on direct application to the OPM classification standard elements. Instead, the case gradings were supposed to be linked to the agency's internal security handbook, but they still included some subjective determination upon entry into the ISMIS. Because the case gradings did not result from comparison of the cases to OPM classification standards, we cannot consider those gradings in determining the grade of the appellant's position.

Position information

The appellant serves as an inspector with the OIGTA of the Department of the Treasury. He is responsible for independently working investigations of a criminal and noncriminal nature. Investigations may involve Internal Revenue Service (IRS) or other Treasury employees, or non-Treasury subjects. The appellant may apprehend and arrest persons in violation of U.S. laws,

conduct searches and seizures of evidence, interrogate or interview investigative subjects or witnesses, review credit sources and other public information, confer with United States Attorneys or Treasury officials and employees, work with other law enforcement agencies, testify as an expert witness for the Government or testify before grand juries or U.S. Magistrates, and prepare written reports of investigations. The appellant's position description and other material of record furnish more information about his duties and how they are performed.

Series determination

The GS-1811 Criminal Investigating Series includes positions that involve planning and conducting investigations relating to alleged or suspected violations of criminal laws. The appellant's position requires knowledge of investigative techniques, laws of evidence, rules of criminal procedure, and search and seizure issues and requires skill in applying this knowledge. Therefore, we find the appellant's position to be properly classified to the GS-1811 series.

Title determination

The title of Criminal Investigator is authorized for nonsupervisory positions that meet the definition outlined in the GS-1811 Criminal Investigating Series. Neither the agency nor the appellant disagrees with the title or series of the appealed position.

Standard determination

For purposes of this appeal decision, we will use the GS-1810/1811 Grade-Level Guides for Classifying Investigator Positions to grade the position.

Grade determination

The Guides use two factors to distinguish between grade levels. These factors are "complexity of assignments" and "level of responsibility." We will address the duties and responsibilities of the appellant's position with respect to these two factors.

Complexity of assignments

This factor measures the scope, complexity, and sensitivity of investigative assignments including several elements that will be noted in the discussion of the appellant's cases.

GS-12 level assignments are characterized by most or all of the following illustrations.

- Evidence is typically fragmentary or cold. Principals are initially identified through circumstantial or indirect evidence.

- Subjects are prominent figures in organized crime or principals in organizations with multiple components or overlapping financial interests.
- A substantial number of separate investigations grow from initial assignments, as when an investigation proceeds from the earliest subject to intermediate individuals or organizations and eventually to the primary individual or organization.
- Subjects are not directly associated with overt violations. Investigators must establish the association by developing physical or financial evidence that implicates the subject.
- Cases involve a high degree of sensitivity, as when the prominence of the subject causes witnesses to become evasive because of their reluctance to become involved in the case.
- The subjects and activities involved are the concern of multiple jurisdictions. Investigators must have knowledge of the laws, policies, and practices of these jurisdictions and must coordinate raids and other investigative activities with other law enforcement agencies.

Cases at the GS-13 level have significantly higher levels of complexity and involve most or all of the following characteristics.

- Assigned cases have extreme complexity and scope, such as interregional or national investigations of organizations that typically represent an actual or potential threat to major segments of national welfare or security or cases that require investigators to anticipate or influence events by guiding the efforts of other investigators located throughout several States or the nation who are working on various segments of the case.
- Organizations have extreme complex structures with diversified interests and function in a national market using widespread distribution and sales outlets.
- Many separate investigative matters of great scope and complexity grow from the original assignment and extend beyond the criminal activity to involve respected figures or unfold to involve large scale raids or seizures where investigators must coordinate several units of investigators.
- Exceptional difficulty exists in establishing interrelationships of facts and evidence, such as with subjects separated from the illegal activity by aliases and complex organizations (subsidiaries and holding companies, for example) which engage in diverse legal and illegal activities.
- Extreme sensitivity of assignments results from the possibility of media coverage that would hinder the investigation or endanger victims or from the significant effects on the national economy of the suspects' financial involvements.

- Extensive and critical jurisdictional problems occur; for example, contacts in other jurisdictions who are involved in wide-scale criminal conspiracies require the investigator to use suspects in dual or triple capacities without allowing them to realize how they are being used.

Our analysis centers on cases identified by the appellant and his supervisor as the appellant's highest graded work. These cases will be evaluated against the following six elements:

1. conflict resolution in facts or evidence
2. investigative subject
3. separate investigative assignments stemming from the original case
4. interrelationships of facts or evidence
5. sensitivity of assignments
6. jurisdictional problems

Case #1

This case involved a Special Agent, also a City Councilman, who was providing personal information on taxpayers to a private investigator.

Element #1 in this case meets the GS-12 level. The case was initiated based on information provided from an anonymous source who allegedly was present at the payoff point. The appellant was tasked with conducting surveillance, obtaining court orders authorizing installation and use of pen registers (a dial number recorder to identify time, date, and the phone numbers to and from the phone number called), establishing an undercover operation, monitoring phone calls and meetings, and conducting searches. The investigation of facts and evidence did not have major interregional or national scope, did not include potential threats to the national welfare or security, and did not influence new or existing laws, which would be an integral part of evidence gathering at the GS-13 level.

The subject of investigation was prominent as a veteran Criminal Investigator who was well known and respected by those he worked with in the Department of the Treasury and throughout other law enforcement agencies. The subject was also involved in a drug task force. This required the appellant to use an undercover operative from another OIGTA group who would not be easily recognized by the investigative subject. The prominence of the investigative subject and the legitimate business operations of the private investigator who became embroiled in the illegalities depict investigative subjects typically found in cases at the GS-12 level. There were no foreign agents nor a complex network of distributors typically found in GS-13 cases. Element #2 meets the GS-12 grade level.

Investigative assignments that grew from this initial investigation included the addition of the private investigator who was receiving the taxpayer information and development of a case against a Revenue Agent who was also suspected of being involved in selling taxpayer information to

the same private investigator. The appellant was able to convince the private investigator to assist in gathering additional information on both the Special Agent and the Revenue Agent. These separate assignments are also typical of a GS-12 level case, as they did not involve large scale raids or seizures throughout several States, which typify a GS-13 investigation. Element #3 is rated at the GS-12 level.

Element #4 also meets the GS-12 level in that the appellant used surveillance and other investigative tools to establish a direct link to the suspect. The suspects did not use fictitious names and their operations did not cover a wide area (e.g., across several States); and, thus, this element does not meet the GS-13 level.

The sensitivity of the assignment was compounded by the fact that the Special Agent was also a City Councilman, which could have complicated the investigation had there been leaks to the news media. This level of sensitivity exceeds the GS-12 level of the standard. Therefore, Element #5 is deemed to meet the intent of grade 13.

With the subsequent investigations and the use of the private investigator to attempt to gain additional evidence on both the Special Agent and the Revenue Agent, Element #6 meets the GS-13 level. The appellant was the key coordinator of surveillance conducted by several investigators, including the undercover investigator. As such, he was required to make critical decisions on immediate actions that were needed in order to complete a complex assignment.

Four of the six elements are at the GS-12 level, and the other two meet the GS-13 level. Therefore, we evaluate the complexity of this assignment at the GS-12 grade level.

Case #2

This case involves [members of a specific tax protest group] and fraudulent liens.

The complexity of working with evidence in this case (Element #1) meets the GS-12 level. The case was initiated based on information provided by a Revenue Agent who received a copy of an affidavit and lien at his residence. The appellant was tasked with conducting interviews, reviewing records, performing forensic analysis of documents, and monitoring meetings. The investigation of facts and evidence did not have major interregional or national scope, did not include potential threats to the national welfare or security, and did not influence new or existing laws, which would be representative of the GS-13 level.

The subjects of investigation were members of a militaristic protest group and were all related to one another. This required the appellant to conduct surveillance on the group members. The prominence of the investigative subjects is akin to that found at the GS-11 grade level where there is illegal activity that operates independently or on the fringe of organized crime. This element (#2) is rated at the GS-11 level.

Investigative assignments that grew from the initial investigation included other members of the Republic of Texas group. The additional investigations were similar in nature (e.g., fraudulent liens). This element (#3) is typical of a GS-12 grade level case where all levels of a “business” are investigated.

Element #4 is also rated at the GS-12 level. The suspects did not use aliases, subsidiaries, or holding companies across several States, which would have made the process of surveillance and evidence gathering more complicated.

The sensitivity of the assignment was such that witnesses may have been reluctant to talk with investigators out of fear of reprisal due to the militaristic nature of the organization. The appellant had to use discretion in his interviews and investigative techniques to prevent this from occurring. This element (#5) meets the GS-12 level for sensitivity.

Surveillance in this case may have been riskier due to the militaristic views of the protest group but did not require wide area coverage at multiagency levels. Thus, Element #6 meets the GS-12 level.

Five of the six elements are at the GS-12 level, and the other element is at the GS-11 level. Our evaluation of the complexity of this assignment is at a GS-12 grade level.

Case #3

This case involved fraudulent tax returns and oil field schemes on the part of a tax preparer.

This case was initiated through a lead provided by an informant. The appellant had to research complex oil field records, conduct surveillance, and monitor telephone calls and meetings in an attempt to determine the extent of involvement of the tax preparer, taxpayers, and IRS employees. Although the workload involved in this case was voluminous, there was no indication that the investigations are nationwide or interregional in nature; and there are no potential threats to national security or welfare. Therefore, Element #1 is rated at the GS-12 level.

The subject of investigation worked with others in developing the fraudulent oil schemes which enabled a taxpayer to buy dry oil wells from a friend of the tax preparer. The oil documents were changed to reflect a higher investment level at an earlier date which permitted the taxpayer to take a loss on the tax return. Because of the multiple people involved, Element #2 meets the GS-12 level.

Three cases developed from the initial case. These include the tax preparer’s assistant, the oilman who helped “doctor” the oil well documents, and an IRS employee. Since the initial case is ongoing, the appellant expects additional cases will stem from the original investigation. In addition, the tax preparer owns a print shop, the assistant co-owns a sporting goods store, and the oilman owns six oil companies and a real estate business. All of these businesses will eventually

be targets of tax return analyses to determine if there is other fraudulent activity. The scope of this element involves all levels of the business being investigated, but the scope does not meet the GS-13 level of highly organized crime on a large-scale, multi-State level. Element #3 is at the GS-12 level.

Element #4 is also rated at the GS-12 level. The appellant had to establish direct links to the suspect through surveillance and other investigative means. There was no indication of fictitious names or that the activity was carried out through several States.

Although the investigative subject would normally be considered to be prominent enough that local publicity could cause embarrassment or suspicions in the community, the feasibility for additional taxpayers' involvement to surface escalates the sensitivity of this element (#5) to the GS-12 level. Premature leaks of information could enable the suspect to destroy potentially massive amounts of evidence. The tax preparer made statements to the informant that receipts can be manufactured in the suspect's print shop to support any false expenses that have been included on fraudulent tax returns. These circumstances could complicate the appellant's investigation and result in major news coverage.

Several other agencies have become involved in this investigation including local law enforcement [name of a specific state law enforcement group], multiple offices of the IRS, the [state] Railroad Commission, and the FBI. The appellant is coordinating with these other offices, and with the U.S. Attorney's Office. Because of the nature and complications of the coordination required for this case (and the subsequent cases), Element #6 is deemed to meet the GS-13 level.

Five of the six elements are at the GS-12 level and the other element is at the GS-13 level. Our evaluation of the complexity of this assignment is at a GS-12 grade level.

Case #4

This case involved misconduct of an upper level IRS manager in a Regional Office. The manager was suspected of conducting non-IRS work (military reserve and other personal issues) during duty hours, using IRS employees to complete non-IRS work, falsifying travel vouchers, falsifying affidavits to cover up harassment and intimidation of employees, and conspiring to cover up these allegations and fraud by subordinates.

Initial information in this case was provided by an EEO Investigator who was gathering information on harassment and intimidation of employees by the manager. Additional information was developed through contact with a reluctant employee who had filed an EEO complaint against the manager. As discussed further under Element #3, the investigation eventually enveloped the suspect's supervisor. The appellant used interviews, forensic analysis of computer data, records review, monitored meetings, and consensual searches to resolve conflicts in evidence. Because multilevel IRS offices as well as military offices in other States were involved in this investigation, Element #1 meets the GS-13 level.

The investigative subject was sufficiently prominent because of the position he held within the agency that this increased the difficulty of the case. Both the suspect and his manager were aware of the investigation at an early stage. Some of their subordinates feared the managers for reprisal and, to some extent, physical harm. Element #2 is rated at the GS-12 level.

Element #3 meets the GS-12 level. A case against the suspect developed into a case against the suspect's manager for similar actions. Additionally, two of the suspect's subordinates were also implicated in the filing of fraudulent travel vouchers. This meets the element definition for GS-12 which includes exploration at all levels of the "business" being investigated.

Element #4 is rated at the GS-12 level. The work involved to identify the relationships of the managers and subordinates in this case to the allegations illustrates some difficulty but not to the extent of the typical GS-13 case which would involve fictitious names or hard-to-identify companies or elements of companies.

The prominence of the investigative subjects within the IRS organization were such that potential witnesses were reluctant to talk with the appellant. Some witnesses were very uncooperative because they were uncertain of the outcome of the investigation, how it might impact their jobs and careers, and how it might affect their personal lives. Element #5 meets the GS-12 grade level.

The appellant not only dealt with investigative complications within IRS (the awareness of the two managers of the investigation and reluctance of witnesses to talk), but allegations also involved a military base in [a specific state], several hundred miles away where the suspect also had access to records and personnel. The appellant was unsure of which military personnel to talk with in order to obtain the information needed for the investigation. It was necessary for the appellant to work with the Army Criminal Investigation Division at the base and with an Army attorney in Arkansas to obtain information and records on the investigative subject. This is most akin to the GS-12 level, where more than one Federal agency would be involved, but not at the wider multiagency level typical of a GS-13 case. Element #6 is rated as GS-12.

Five of the six elements are at the GS-12 level, and the other element is at the GS-13 level. Our evaluation of the complexity of this assignment is at a GS-12 grade level.

Other Cases

Other cases were discussed with the appellant and his supervisor, but most of these investigations were conducted outside of the time period designated as representative of the appellant's current work assignment. However, these other cases are of no higher level than the four cases previously outlined.

Summary

As the majority of the factor elements for the appellant's cases meet the GS-12 level, we evaluate the overall level of complexity of these assignments at grade GS-12.

Level of responsibility

At the GS-12 level, cases may be either formally assigned or generated independently by the investigator. Investigations are usually conducted independently with few instructions on technical aspects or activities requiring assistance from other jurisdictions (e.g., joint raids). An investigator receives guidance or formal approval when policy issues such as jurisdictional problems or resource commitments arise. Completed work is reviewed for accomplishment of overall objectives and adherence to policy.

A GS-13 Criminal Investigator develops assignments based on broad program objectives. An investigator is responsible for outlining the case objectives and boundaries, including planning for needed resources and coordinating with other jurisdictions. As at the GS-12 grade level, technical assistance is limited; but at this level, investigators also devise breakthroughs in investigative approaches and techniques. Considerable originality and initiative are required to manage cases that may involve activities in various locations or that set precedent. Recommendations to extend, modify, or adopt new lines of inquiry are generally accepted, but such recommendations usually require management clearance at the highest agency level due to the critical or precedent-setting nature of the case.

The appellant's position meets the GS-12 level. Assignments are developed in the manner typical of this level: the appellant is either directly assigned responsibility for a case or he may initiate cases independently based on leads provided by external sources. The appellant conducts investigations independently, tracing leads, conducting interviews, and coordinating work such as raids with other agencies as needed. The appellant's supervisor is apprised of the status of the case, but technical guidance is minimal. Extended resource and manpower commitments must be cleared through the supervisor, who assesses the requested commitment in light of the expected results and competing demands. Completed work, as reflected by the investigative report, is checked to assure that policy requirements are met and that the evidence and documentation are adequate to support planned actions (e.g., prosecution).

Although there are occasional aspects of the appellant's responsibilities that may be likened to the GS-13 grade level, the GS-13 level is not fully met. At the GS-13 level, assignments are derived from program objectives. Investigators at this level set the objectives and boundaries of investigations. This is different from generating case assignments based on leads, which is characteristic of much of the appellant's work. He estimated 85 to 90 percent of his assignments come from informants or other leads.

Although the appellant's position resembles those at the GS-13 level in that he exercises considerable discretion in the day-to-day management of cases, this similarity masks an important point. The appellant exercises a considerable degree of discretion in conducting assigned investigations precisely because his cases are not "so important and sensitive that his plans must be cleared by the very highest officials in his agency," as are the cases at the GS-13 level.

The appellant's position does not demand the technical innovation characteristic of the GS-13 level. There is no doubt that the appellant's case assignments and the limited day-to-day supervision presume a high degree of technical competence. However, there is no indication that the appellant's methods, techniques, and approaches typically set patterns for other investigations. The appellant has, on his own, learned the innovative technique of statement analysis which is a forensic investigation of documents. As the appellant explained the process, it is something like a "paper lie detector" in that handwriting and other parts of the document may be examined in such a way as to determine if a suspect is lying. The appellant has taught this process to other investigators. However, this process was not one developed by the appellant.

Finally, the appellant's position does not require the degree of initiative and originality found at grade GS-13. At the GS-13 level, assignments are complicated by the precedent-setting nature of the investigation which requires investigators to weigh actions in terms of their impact on future similar cases. The appellant has shown initiative. He examined 105 bribery cases that had been conducted to determine if there were any cases that might reflect strong bribe overtures (e.g., under the table payments) that could lead to additional investigations. This initiative, in itself, is insufficient to warrant a GS-13 level in the area of responsibility.

We evaluate this factor at the GS-12 level.

Summary

Although some elements of individual cases worked by the appellant approach or meet the GS-13 level, the overall complexity of assignments and the overall level of responsibility meet the GS-12 level. As both factors are evaluated at the GS-12 level, that is the overall grade of the position.

Decision

The proper classification of this position is Criminal Investigator, GS-1811-12.