

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

San Francisco Oversight Division  
120 Howard Street, Room 760  
San Francisco, CA 94105-0001

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

**Appellant:** [The appellant]

**Agency classification:** Injury Compensation Investigator  
GS-1802-9

**Organization:** [The appellant's organization]  
U.S. Department of the Navy

**OPM decision:** GS-1802-9  
title at agency discretion

**OPM decision number:** C-1802-09-03

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Carlos A. Torrico  
Classification Appeals Officer

August 23, 2002  
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:**

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[The appellant's address]

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## **Introduction**

On March 27, 2002, the San Francisco Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [the appellant]. We received the agency's administrative report on April 17, 2002. The appellant's position is currently classified as Injury Compensation Investigator, GS-1802-09. However, he believes his position should be classified as Criminal Investigator, GS-1811-11. Prior to appealing to OPM, [the appellant] filed a request for classification review with the Department of Defense Civilian Personnel Management Service (CPMS). In a letter dated January 18, 2001, CPMS found the position to be properly classified as Criminal Investigator, GS-1811-09. In a subsequent communication to the [appellant's organization], CPMS changed the decision to Injury Compensation Investigator, GS-1802-09, thus sustaining the agency decision. The appellant works in the [appellant's organization/location]. We have accepted and decided his appeal under section 5112 of title 5, United States Code (U.S.C.).

This appeal decision is based on a careful review of all information furnished by the appellant and his agency. In addition, to help decide the appeal, an Oversight Division representative conducted separate telephone interviews with the appellant and his supervisor. The appellant, his supervisor, and the Civilian Human Resources Office (CHRO) agree that the position description [number] accurately reflects his duties and responsibilities.

## **General issues**

The appellant compares his position to several other criminal investigator positions at other Naval installations, and makes various statements about his agency and its evaluation of his position. In adjudicating this appeal, our only concern is to make our own independent decision on the proper classification of his position. By law, we must classify positions solely by comparing their current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Since comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's position to others as a basis for deciding his appeal, and we have considered his statements only insofar as they are relevant to making that comparison.

## **Position information**

The appellant currently occupies a position designated as "Command Criminal Investigator" in the [appellant's organization] office. His position description indicates that he is responsible for conducting investigations in conjunction with worker's compensation claims, ethics violations, disciplinary matters, and fraud, waste, and abuse issues. It further indicates that these cases may result in a variety of penalties, both criminal and administrative, as well as those subject to the Uniform Code of Military Justice (UCMJ.) The position description also indicates that the appellant receives requests for investigative support or tips on potential subjects requiring further inquiry from the [appellant's organization], CHRO, the Office of the Inspector General (OIG), Ethics Counselor, Naval Criminal Investigative Service (NCIS), the Base Provost Marshall (PMO), the Criminal Investigation Division (CID), and the Marine Corps Community Service Directorate. Finally, his position description indicates that the appellant analyzes such requests,

tips, etc., identifies the issues and subjects of further inquiry, and proceeds with investigative work only when the issues are clearly susceptible to administrative resolution. Where other issues (i.e., those subject to potential criminal prosecution) are involved, the position description indicates that the appellant must refer these to the appropriate parties (PMO, CID, NCIS). When these organizations decline jurisdiction, the appellant may proceed to conduct the investigation or further inquiry, as determined necessary by the chain of command.

The appellant has indicated that he receives administrative supervision from the [appellant's supervisor], and technical supervision and guidance from him (on legal issues), and the OIG (on investigative policy and procedures).

Since this appeal was filed, the appellant has been assigned cases covering only actions involving minor criminal violations or administrative issues, and his inquiries have been limited to on base only. His supervisor and the CHRO indicate that this was done pending the outcome of the appeal. In addition, the supervisor and CHRO indicated that the appellant had not been assigned any workers' compensation cases for the last year and a half, because he had been so successful, in the past, in bringing such cases to prosecution that the number of complex, "high dollar" cases had diminished. They did add, however, that such cases on are on the increase, and they expect he will be assigned a normal workload of these in the near future. Since the type and complexity of cases is critical to the decision on assignment of both series and grade level, we decided to review past cases (prior to current limitations being imposed) as a part of his representative case work. This includes both Federal Employee Compensation Act (FECA) cases, as well as other cases involving potential criminal prosecution.

In his work involving potentially fraudulent FECA claims, the appellant relies on tips or personally screens long-term claims that meet a profile of possible fraud. The appellant then prioritizes these to focus on the cases that could involve substantial recovery. Generally, these cases involve establishing whether the claimant is exaggerating the severity of medical/physical injuries or limitations or is willfully failing to report income earned to the Office of Worker Compensation Programs (OWCP).

Once a case had been established for further review, the appellant initiated record checks to obtain background information on financial and medical history, arrest or criminal activities, property ownership, or business licenses obtained. The appellant often conducted surveillance of claimants to document whether they were performing physical activities incompatible with their stated medical/physical limitations. This necessitated observing the claimant's activities at and away from home, as well as at any establishments of subsequent employment, reported or not. The appellant often interviewed the claimant's family members, friends, business partners, or others having some knowledge of the claimant's physical condition or activities. In most instances, these interviews would first involve the appellant establishing a pretext for seeking the information, usually by posing as a potential employer or customer. Some examples of these types of cases are as follows:

- After review of a long-term claim with few medical bills, the appellant was able to determine that the claimant had left the state, was working in a mobile home park in another state, and was no longer eligible for OWCP. In addition, the appellant determined that the claimant

had also been involved in apparent insurance fraud, which was subsequently referred to the U.S. Attorney. This case resulted in recovery of claim, as well as administrative action.

- After review of a long-term claim with few medical bills, the appellant conducted surveillance, interviewed the subject and others having knowledge of the subject's activities, and established that the claimant was selling appliances from his home and not reporting income. In addition, the appellant conducted a pretext visit with the appellant's son, acting as an interested buyer and obtained information that led to prosecution for theft (of appliances) by the U.S. Attorney's Office.
- After tips from informants, the appellant conducted surveillance of the subject playing softball, interviewed the subject and others, and gained a confession by the subject that he was physically fit and thus ineligible for continued benefits. This case resulted in recovery of fraudulent claim.

Numerous other claims of similar complexity were investigated by the appellant and generally resulted in administrative action and recovery of fraudulent claims. In addition to these types of cases, where administrative actions would normally result, the appellant has also been involved in cases where there were allegations of probable criminal activity. These cases may have arisen in conjunction with the inquiry into potential FECA fraud, or have come to the appellant's attention as a result of tips from civilian or military employees or residents of the surrounding community. In any event, the appellant would either be working in support of other law enforcement/criminal investigation groups or have cleared his participation with the NCIS. Two such cases are described as follows:

- Based on complaints received by base unit commanders, OIG, and other base enforcement organizations, the appellant conducted multiple surveillances, interviewed subjects and others having knowledge of the subject's operations, and documented that the subject (an off-base civilian) was running a scam involving illegal towing of automobiles, exorbitant charges for towing/storage fees, and subsequent illegal sales of autos when victims could not pay. The case involved coordination with local (non-Federal) law enforcement authorities and was subsequently prosecuted in Municipal Court.
- Based on a long-term claim with few medical bills, the appellant conducted multiple surveillances, interviewed the subject and others having knowledge of subject's activities, and made a pretext contact as a potential "customer" with subject. The appellant was able to document that the claimant was conducting a construction business, had obtained fraudulent loans to purchase homes, and was remodeling the homes for resale. In addition, the appellant found evidence that the claimant was involved in fraudulent tax returns. The OWCP claim was terminated, claim recovery was assessed, and case was referred for criminal prosecution. The appellant also obtained warrants for arrest of several subjects.

As noted earlier, the appellant has been recently assigned cases involving minor criminal offenses, ethics violations, and UCMJ violations, where follow-up inquiries are limited to those that can be conducted on base. Some typical examples follow:

- From surveillance at a Commissary and interviews with the subject and fellow employees, the appellant documented that the individual was stealing items and then reselling them. Administrative action was taken.
- Based on complaints filed with OIG, the appellant reviewed computer files and documentation, interviewed the subject and others, and established that the subject was downloading from pornographic Web sites and sending images to other employees, friends, etc. Administrative action was taken.
- Based on complaints from an informant, surveillance of the work site, and interviews with the subject and other employees, the appellant established that the employee was using government equipment to conduct contract work with other employers. Administrative action was taken.
- Based on a tip from informant, interviews with the subject and others having contact with him, the appellant was able to document that the subject (a Family Advocacy Center counselor) was sharing confidential information obtained in his work and was illicitly providing this information to third parties. Administrative action was taken.

At least 30 other cases of similar complexity and magnitude were handled during the period from January 2001 to present.

### **Series and title determination**

The agency determined the appealed position is covered under the Compliance Inspection and Support Series, GS-1802, and used the grade level criteria in the classification standard for the U.S. Marshal Series, GS-082, to determine the grade level. The appellant contends that the position should be allocated to the GS-1811 Criminal Investigating Series at the GS-11 grade level.

The GS-1810 General Investigating 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 the 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.

As previously noted, the primary purpose of the appealed position is to conduct investigations of FECA claimants to determine whether individuals are currently entitled to full benefits claimed or have claimed benefits under false pretenses. While some of these cases may also involve investigation of major offenses or violations of specialized laws of the United States, the substantial majority does not. The majority of such cases has involved recovery of improperly received benefits and included the imposition of administrative penalties/resolutions. The appellant's work requires investigative knowledge similar to that needed by the GS-1810 positions and subject matter knowledge of compensation benefits payable under 5 U.S.C. chapter 81 (Compensation for Work Injuries). The appellant conducts interviews, searches records (medical, employment, licensure, financial, arrest) and carries out surveillance activities, which are similar to tasks associated with GS-1810 investigative work. However, the Grade-Level Guides for Classifying Investigator Positions (GLGCIP) clearly notes that there are many occupations outside of the GS-1810/1811 series that engage in such activities and require similar knowledge. The GLGCIP notes that in order to be assigned to the GS-1810 or the GS-1811 series, a position must involve the *full range* of investigator knowledges, skills, and tasks. This is not the case with the appealed position. For example, the appellant's position does not require knowledge of decisions relating to national security; subversive organizations and their methods of operation; current internal security issues; specialized industrial, commercial, or agency accounting or recordkeeping practices; or specialized investigative devices and equipment. While the appellant does conduct surveillance, it does not generally involve the use of teams or specialized surveillance or communication technology as envisioned by the GLGCIP. With few exceptions, the appellant's FECA assignments are generally completed within a shorter timeframe and primarily involve the use of interviews and surveillance of claimants. The GLGCIP indicates that cases conducted by positions in the GS-1810/1811 series involve complexities requiring development over longer periods of time. Consequently, this position is properly excluded from the GS-1810 series.

The GLGCIP emphasizes that many law enforcement and other series include duties and knowledges also associated with the investigator positions that the GLGCIP describes. It further states that to be assigned to the GS-1811 series, the purpose and context of the position must substantially meet the elements contained in the series definition, the occupational information, and the grade-level criteria described in the GLGCIP. Further, more recent guides and standards that contain additional, pertinent information must be considered for comparison to complete the analysis and final assignment of series and grade to the appellant's position. While the appellant's work has involved investigations of actions that involved alleged statutory violations (or violations of the UCMJ), the recent cases involved relatively minor infractions, centering on the activities of a single individual or relatively few individuals where the scope of investigatory tasks occurred on base. In addition, such cases generally focused on interviews and surveillance of individuals, rather than on the full range of investigator duties, knowledges, and skills. The Grade Evaluation Guide for Police and Security Guard Positions, GS-083/GS-085, published in



April 1988, 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 noted, the appealed position specifically limits the appellant to “investigations (that) will result in administrative actions and includes workers’ compensation claims, ethics violations, disciplinary matters, and fraud, waste, and abuse.” While the investigation may result in criminal prosecution, the appellant must present all such potential cases to the NCIS or CID for review and assumption, unless specifically requested to continue the case. Department of the Navy instructions (SECNAVINST 5520.3B) additionally limit the use of “command investigators” to minor criminal offenses. The instruction contains a provision for formalizing the referral of some investigations of major offenses to command investigators, through the use of a written agreement between NCIS and local commands. No such agreement exists between [the appellant's organization] and the NCIS. The incidence of the appellant’s involvement in the investigation of major criminal offenses, either as separate cases or in conjunction with a FECA investigation, has been low. Without substantial indication (e.g., through the position description, statements from management, written agreement with NCIS) that this type of case is an essential purpose for the establishment of the position and would be regularly assigned to the appellant, it would be improper to allocate this position to the GS-1811 series. The variety, scope, and complexity of the appellant’s cases do not rise to the criminal level as illustrated for positions in the GS-1811 series.

Many of the appellant’s recent assignments and some in the past, in conjunction with some FECA cases, have been similar to the higher levels of detective work described in the GS-083 series. Detectives conduct investigations that involve interviewing suspects and witnesses, conducting surveillance, and writing follow-up reports. However, the GS-083 series also includes positions with duties that involve the preservation of peace and public order, assistance to the general public in emergencies, and the apprehension and arrest of perpetrators. Such duties are not typical of the appellant’s position, are not recognized in his position description, and are not a focus of his organization. Therefore, the appellant’s position is properly excluded from the GS-083 series.

As previously stated, the primary purpose of the appellant’s position is to conduct inquiries/investigations of FECA claimants to determine whether eligibility is no longer present, or deception was involved in establishing/continuing benefits. The appellant has also been involved in investigations of minor criminal or civil offenses involving ethics violations, fraud, waste, and abuse. This involved such activities as reviewing financial, employment, and other records, conducting surveillance of subjects, interviewing subjects and others with knowledge of the subject, and preparing final investigatory reports. These activities are comparable to those described in the Compliance Inspection and Support Series, GS-1802. Positions included in this series perform work assuring compliance with or enforcement of Federal law, regulations, or other mandatory guidelines, not classifiable to other, more specific occupational series. The work requires knowledge of prescribed procedures, established techniques, directly applicable guidelines, and pertinent characteristics of regulated items or activities. Such positions 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. This work includes such activities as obtaining background information on subjects of investigations by means of record searches, structured interviews, and automated

information retrieval; compiling final investigative reports; and maintaining required administrative reports. Consistent with positions allocated to this series, the majority of the appellant's work, and the stated purpose of his position, involve examining records and investigating former or current Federal employees suspected of violating OWCP requirements through fraudulent claims or misstating the severity of their work-related injuries, as well as similar assignments in response to minor offenses of a statutory or regulatory nature. 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 (dated October 1980) 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 (dated June 1973) 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 persons; and expertise in the use of surveillance and detection techniques.

While we determined that the GS-082 standard is appropriate for establishing grade level, we did not find it to be an appropriate series for the appealed position. For positions in the GS-082 series, the service of process and execution of orders issued by the Federal courts and the Board of Parole must be a regular and recurring part of the position. Law enforcement positions that do not involve the service of process are excluded from the 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*

The GS-9 level is the highest described in the standard. Such positions involve the complete range of assignments, including those where unusual difficulties are anticipated. Assignments exceed the GS-7 level because of the more complex person-to-person relationships required, the

critical nature and scope of the decisions required, and the lack of clearly defined guidelines. Typical assignments at this level include planning for, locating, and making arrests of subjects who are evasive and potentially dangerous, through a series of leads that the employee builds through astute questioning and deduction. The GS-9 employee reviews criminal records and interviews friends, relatives, employers, and others with knowledge of the subject to gain information about the subject's background, living habits, temperament, and other characteristics that could predict reaction to the likelihood of arrest. The employee must put together bits of information from these many, disparate sources to establish a cohesive, reasonable case. In many cases, the gathering and assessment of information is complicated by the unwillingness of persons to cooperate and the efforts of some to conceal information or to deliberately give misleading information.

The appellant's range and complexity of assignments and the manner in which he performs them are comparable to the GS-9 level. The appellant's assignments include a wide range of cases, some arising from potential fraudulent claims made under workers' compensation programs, others involving minor criminal and administrative infractions of both public laws/regulations and the UCMJ. Similar to positions at the GS-9 level, the appellant reviews a wide variety of source documents for information, builds cases based on information that often is conflicting, and gains the confidence of uncooperative or evasive persons who have some knowledge of the subject. The appellant's work is made difficult by the lack of direct guidance on methods and strategies for conducting some inquiries. In such instances, the appellant must rely on personal experience and methods used for past assignments. The nature of the appellant's assignments does not exceed the intent of the work described at the GS-9 level.

#### *Level of responsibility*

The GS-9 level is the highest described in the standard. GS-9 deputy marshals work independently, or they serve as senior members on small teams. Regardless of assignment, they have great independence and authority to make a broad range of decisions, once cases are assigned.

The GS-9 employee keeps the supervisor informed of key details in specific cases, particularly those with potential repercussions involving the supervisor or the agency. The GS-9 employee rarely seeks advice and usually makes decisions based on past training and seasoned judgement developed through experience, over time. The employee at this level makes significant decisions without prior review. In planning their approach, GS-9 employees must review all information from a wide variety of sources (including informants), perceive potential problems and/or resolve conflicts in data, and develop an appropriate strategy. Once planning is completed, the GS-9 employee is free to take appropriate action.

The appellant works with the same level of independence and limited supervision as described for the GS-9 level. He independently develops cases, which may come from [his supervisor], PMO, NCIS, or other enforcement programs at [the installation], or, more directly, from tips provided by commanders, employees, or others, on and off the base. Once the appellant has been cleared to accept a case that is subject to review prior to assignment (i.e., those with potentially major criminal activities), he is free to plan, investigate, and bring to the point of

resolution any case he handles. His casework is reviewed, upon completion, only for overall adequacy in meeting objectives, primarily from a legal or regulatory perspective. The appellant's level of responsibility fully meets but does not exceed the GS-9 level as described in the GS-082 standard.

*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.