

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

Dallas Oversight Division
1100 Commerce Street, Room 4C22
Dallas, TX 75242-9968

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

Appellant: [appellant's name]

Agency classification: Supervisory Criminal Investigator
GS-1811-14

Organization: [appellant's district]
U.S. Marshals Service
Department of Justice
[city, state]

OPM decision: Supervisory Criminal Investigator
GS-1811-14

OPM decision number: C-1811-14-02

/s/

Bonnie J. Brandon
Classification Appeals Officer

May 30, 2000

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:

[appellant's name and address]

Agency:

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Introduction

The Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a classification appeal on October 6, 1999, from [the appellant]. He is an employee of the [appellant's district] of the U.S. Marshals Service (USMS), Department of Justice, in [city, state]. [The appellant's] position is presently classified as Supervisory Criminal Investigator, GS-1811-14. The agency uses an organizational title of Chief Deputy U.S. Marshal for the appellant's position. [The appellant] believes that he shares equally the responsibilities of the U.S. Marshal of the [appellant's district] and, therefore, his position should be classified at the same grade level as the U.S. Marshal's position, GS-15. We accepted and decided this appeal under the authority of section 5112, of title 5, United States Code.

In reaching our classification decision, we carefully considered all of the information in the written record. That information was supplemented by telephone interviews with the appellant and his supervisor and with on-site interviews with the appellant and his supervisor on March 24, 2000. Discussions were also held between OPM officials and the USMS's Deputy Director and human resource personnel regarding the organizational structure and responsibilities of the U.S. Marshal and Chief Deputy U.S. Marshal positions nationwide.

General issues

The appellant is assigned to position description number [number], a standardized description of duties for a Chief Deputy to a GS-15 U.S. Marshal position that the agency classified as Supervisory Criminal Investigator, GS-1811-14. Information in the appeal record shows that there is a second standard position description, number [number], describing identical duties to [the previously mentioned standard position description] that are classified as Supervisory Criminal Investigator, GS-1811-15. This GS-15 position may serve as a Chief Deputy to a U.S. Marshal position that occupies a senior-level allocation. Both position descriptions contain the following statements: "This position is located in a Federal judicial district that includes one of the largest metropolitan centers consisting of high density population areas with people of diverse socioeconomic backgrounds and in which a relatively large number of Federal judges and Federal magistrates are located. There is a correspondingly high volume of cases, many of which are complex, unusual, and precedent setting." The basis for the difference between the grade levels for the two standard position descriptions cannot be determined solely from a reading of these two documents, but the history of these positions, and the way they operate today, must also be understood.

The way U.S. Marshal positions are filled directly affects the grade level of the deputy chief positions. U.S. Marshals are appointed by the President with the advice and consent of the Senate. In May 1992, OPM granted senior-level position allocations to the Department of Justice for some U.S. Marshal positions based on the complexity of their district along with the increase of law enforcement and seized asset management responsibilities assigned to the USMS. [Senior-Level (SL) positions are generally positions classified above GS-15 that do not meet the executive criteria characteristic of the SES nor do they involve the fundamental research and development responsibilities that are characteristic of the Scientific and Professional (ST) pay system. Positions in the SL pay system are gradeless and separate from

the General Schedule and, therefore, are not subject to the same classification criteria as positions covered by the Classification Act of 1949.] While OPM recognized that the number of employees supervised was not an absolute indication of level of executive management responsibility, it approved senior-level allocations for U.S. Marshal positions that manage districts with a combined staff of 80 or more full-time permanent employees and contract staff. In addition to the number of staff, other factors such as the complexity of cases typically handled within the district and the scope and impact of the district's operations were to be considered when classifying senior-level positions.

Presently, 26 of the 94 district offices within the USMS are headed by U.S. Marshals whose positions are allocated as Senior Level positions. The U.S. Marshal positions in the other district offices are currently classified at the GS-15 level. The USMS is responsible for determining which U.S. Marshal positions require a senior-level designation and which positions can be filled at the GS-15 level. Consequently, deputy positions are graded as GS-14 or GS-15, depending on the level of the U.S. Marshal position.

Because the current position descriptions for deputies at grades GS-14 and GS-15 are identical, the agency must review and revise these position descriptions to ensure the duties are reflective of the actual work environment for the assigned locations.

Position information

Information in the appeal record shows that the [appellant's organization] is one of the smaller districts in the U.S. Marshals Service. Both the appellant and his supervisor agree the [appellant's district] is among the smaller districts within the system. The [appellant's district] is one of three within [the state]. The other two districts are located in [two cities]. The [appellant's district includes] an area of 4,030 square miles with a population of 689,163. This district provides service and support for three District Judges and three Federal Magistrates.

The appellant's duties include assisting management officers in the evaluation of operational programs of district offices; assisting in special projects at the direction of headquarters management officers; and serving as assistant execution officer to the U.S. Marshal, coordinating and directing the day-to-day operations of the district. The appellant is responsible for the instructions given to the administrative and operational workforce. In the absence of the U.S. Marshal, the appellant exercises full responsibility for all activities of the district. These responsibilities include the safe and economical transport of Federal prisoners; conferring with Federal judges, magistrates, and other court personnel in connection with the logistics, security, and conduct of hearings and trials; and directing the service of civil and criminal writs and warrants. He provides expertise on legal procedures applicable to the variety of district office functions; plans and directs activities related to security and protection of government witnesses and/or their families; and maintains liaison with other Federal law enforcement agencies. The appellant also assures that financial and property transactions are properly executed and accounted for, and he serves as the Assistant Disbursing Officer.

Series and title determination

The GS-082 United States Marshal Series covers positions involving a range of law enforcement responsibilities. These include serving a variety of civil writs and criminal warrants issued by Federal courts, tracing and arresting persons wanted under court warrants, seizing and disposing of property under court orders, safeguarding and transporting prisoners, providing for the physical security of court facilities and personnel, providing for the physical security of jurors and key government witnesses and their families, preventing civil disturbances or restoring order in riot and mob violence situations, and performing other special law enforcement duties as directed by court order or by the Department of Justice.

The GS-1811 Criminal Investigating Series includes positions involved in planning and conducting investigations relating to alleged or suspected violations of criminal laws. These positions require primarily a knowledge of investigative techniques and a knowledge of the laws of evidence, the rules of criminal procedure, and precedent court decisions relating to admissibility of evidence, constitutional rights, search and seizure development of evidence, etc.

The appellant supervises the work of the [appellant's district] staff of 12 operational and administrative employees. Nine of those employees perform a mixture of GS-1811 and GS-082 work. The agency has found the GS-1811 work to be predominant, and we accept this determination. The appellant does not question the series of his position. We find the position is properly assigned to the GS-1811 Criminal Investigating Series and titled *Supervisory Criminal Investigator*.

Standard determination

The primary function of the appellant's position is supervisory and related managerial work of the level covered by the General Schedule Supervisory Guide (GSSG). The instructions for application of this guide state that the evaluation criteria contained in this guide are not designed to be applied directly to deputy or "assistant chief" supervisory positions. The grade of a full deputy should normally be set one grade lower than the grade of the supervisory duties of the position to which it reports. However, the appellant believes his position should be the same grade as the U.S. Marshal position to which he reports.

The GSSG anticipates that a chief position, which has a deputy, is in charge of a staff of substantial size and, often, multiple subordinate units. Such chief positions require deputies who act in their stead because of the decisions that must be made, the employees who must be supervised, and the volume of work which is produced. The GSSG defines "deputy" as a position that serves as an alter ego to a manager of high rank or level and either fully shares with the manager the direction of all phases of the organization's program and work, or is assigned continuing responsibility for managing a major part of the manager's program when the total authority and responsibility for the organization is equally divided between the manager and the deputy. A deputy's opinion or direction is treated as if given by the chief. Our fact-finding confirmed that the appellant and his supervisor do share in the supervision and management of the district program in a manner consistent with the GSSG's definition of deputy positions.

The appellant's position does not include any significant nonsupervisory duties. Therefore, we based our evaluation on the supervisory/managerial responsibilities of the position.

Grade determination

As previously mentioned, the U.S. Marshals within the USMS are appointed by the President with the advice and consent of the Senate. There are currently 26 districts that are headed by a U.S. Marshal whose position has been determined to be allocated as a senior-level position, with the remainder classified at the GS-15 level. These senior-level allocations were granted by OPM based on the complexity of district positions along with the increase of law enforcement and seized asset management responsibilities assigned to the USMS. It has been the USMS's responsibility to determine those U.S. Marshal positions that require an SL allocation, and those which can be filled at the GS-15 level.

According to our findings, the appellant's position operates in the typical manner of a full deputy to a U.S. Marshal. The appellant assists the U.S. Marshal in all operational and administrative areas and relieves him of much of the burden of supervising day-to-day operations. Although the appellant exercises full responsibility in the absence of the U.S. Marshal, the U.S. Marshal retains full authority for managing his district's organization and is fully responsible for all phases of the organization's work.

Based on our interviews with the appellant, his supervisor, and other officials of the USMS, the U.S. Marshal position for the [appellant's district] equates to the GS-15 level. We do not find any unusual circumstances in the appellant's position that would justify treating the classification of the appellant's deputy position differently from the normal pattern of grading the deputy one grade lower than the chief's position. The absence of unusual restrictions or freedom from supervision on the appellant's activities reinforces our conclusion that this position should be treated in the normal way. Since the appellant serves as a full deputy to the GS-15 U.S. Marshal, the appellant's position is graded at the GS-14 level.

Decision

The appellant's position is classified as Supervisory Criminal Investigator, GS-1811-14.