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-1811-12-07, 10/10/97 PH:OD:97-13

[Appellant's name and 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 of the Code of Federal Regulations (CFR) 511.602 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 US. Customs Service Deputy Special Agent in Charge [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 and an interview with your supervisor, [supervisor's name] on September 4, 1997; and, other pertinent classification information provided by your agency at our request.

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 of March 24, 1997, you requested your position be reclassified to GS-1811-13. Your letter included an outline showing your capabilities and supporting your request for reclassification to the position of GS-1811-13 (Senior Special Agent). You included three case synopses that you believed substantiated your request for reclassification. You also submitted information on more current cases received in this office on September 15, 1997.

Your outline stated you have been employed as a criminal investigator for the U.S. Customs Service since August 1987. Most of your experience involved the investigation of complex organizations who import and export narcotics and launder the proceeds. In May 1990, you received training that entitled you to become a cross-designated agent of the Drug Enforcement Administration (DEA), empowered to thoroughly investigate crimes involving narcotics and money laundering. From 1990 through 1992 you were assigned to the [airport] narcotics smuggling group where you were the case agent on hundreds of investigations. Many subjects of your investigations were foreign nationals who controlled members of their organizations both in the United States and in foreign countries. The targets of the investigations are members of organized groups who are responsible for the transportation, importation, and distribution of illicit drugs to the United States.

From 1992 through the present, you have been assigned to the North Jersey Regional HIDTA task force. This group includes Federal, state, and local law enforcement agencies. You stated the mission of the HIDTA task force is to find, identify, and dismantle organized groups importing and distributing heroin in the [location] area. Through your participation in the HIDTA task force, you have developed, and have been recognized, for your expertise in the investigation of heroin imported by West African nationals.

Your submissions have raised several procedural issues that warrant clari-fication. All positions subject to the Classification Law contained in title 5, U.S.C., must be classified in conformance with published position classification standards (PCS's) of the U.S. Office of Personnel Management (OPM) or, if there are no directly

applicable PCS's, consistently with PCS's for related kinds of work. Therefore, other methods or factors of evaluation, such as comparison to other positions, e.g., the classification of Organized Crime Drug Enforcement Task Force (OCDETF) and HIDTA positions occupied by other employees, are not authorized for use in determining the classification of a position because there is no assurance the other positions have been classified correctly. The classification appeal process is a de novo review that includes an official determination as to the duties and responsibilities assigned to your position and performed by you, and constitutes the proper application of published PCS's to those duties and responsibilities. Thus, any actions previously taken by your agency concerning your position are not germane to our de novo review.

The information you submitted in support of your appeal included a description of major cases in which you were the case agent. The following is a summary of those cases.

OPERATION HIGHWIRE

In February 1992 an American female at [airport] was arrested for attempting to smuggle 1.5 kilograms of cocaine to London. This arrest ultimately led to the arrest of five additional accomplices. Witness interviews, analysis of financial records, telephone tolls, airline information and other documentation led to the identification of an international heroin, cocaine, and currency smuggling organization centered in the [assigned] area. This West African organization was responsible for the importation of considerable quantities of heroin into the United States and Canada from Bangkok, Thailand, Korea, Ghana and Nigeria and exported cocaine from the United States to the United Kingdom. A Federal Title III (wiretap) order was obtained by you for a residential telephone and a pager used by the principal of this organization. This was the first West African wiretap in the DSAC/[appellant's] office. You coordinated the work of "dozens" of Federal, state and local investigators who participated in this investigation. The 24 hour wiretap portion of this investigation continued for 76 days and resulted in the execution of 12 Federal search warrants in [location] and [location], and the indictment, arrest and subsequent convictions of seven defendants in [location]. Two other conspirators, including the main participant, were arrested in the United Kingdom and Curacao, pursuant to Provisional Arrest Warrants you obtained. Seven defendants pled guilty to a variety of charges, including conspiracy, money laundering and immigration violations, and an eighth defendant was convicted of heroin conspiracy charges during a jury trial in [location].

Intelligence gathered in this case led to the arrest of 32 individuals employed by this organization in New Jersey, New York, Hawaii, Michigan, Massachusetts, Illinois,

Maryland, Canada, Curacao, Korea and the United Kingdom. Seven kilograms of cocaine, nine kilograms of heroin, $125,000 and four vehicles were seized.

The organization was linked directly to a money laundering operation centered in New Jersey, Maryland, and Illinois. A legitimate business was used to launder 2.1 million dollars in heroin proceeds for transfer to Ghana, Korea, Thailand, Canada and the United Kingdom. Three principals of the legitimate business were convicted at a trial in Baltimore from the information gathered in your investigation.

UMENYILI

In August 1995, an investigation of a West African heroin smuggling organization operating in the [location] area was initiated when an informant identified a Nigerian National (Umenyili) as an importer/distributor of heroin. The Umenyili organization was responsible for the transportation of multiple kilograms of heroin to the United States. A DEA source purchased an eleven gram sample of heroin from Umenyili in [appellant's location] with $1,800 in U.S. Customs funds. Subsequent meetings and telephone conversations between the source and Umenyili resulted in the introduction of an undercover (U/C) FBI/[apellant's location] agent. The U/C agent met with Umenyili where he said he was a heroin importer who paid a group of predominantly female couriers $10,000 per trip. He also stated there were female couriers in India awaiting the arrival of Nigerians who would bring them heroin. You requested and the Court approved, a wiretap on Umenyili's cell phone and pager. Umenyili requested the U/C agent provide a white female courier to travel to India and retrieve the heroin. Just before a controlled delivery was set up, you learned the heroin source had been arrested in India for unrelated immigration violations.

A package was seized containing approximately 380 grams of heroin in the United Kingdom. The package arrived in London via Bangkok, Thailand, destined for Umenyili in [appellant's location]. A controlled delivery of this heroin was arranged by you resulting in the arrest and ultimate indictment of Umenyili on importation and possession charges. This investigation is continuing. It is anticipated the U.S. Attorney's Office, District of [location] will modify the initial indictment to include others and will issue additional arrest warrants. You coordinated and directed the DEA/India office and the Indian law enforcement agencies, in conducting surveillance of the supply source in India. The investigation culminated in the arrests of the main targets. The Indian authorities, for the first time, allowed narcotics to leave their jurisdiction by means of a controlled delivery. In addition, this was the first time Indian law enforcement officials identified a Nigerian heroin smuggling organization operating in their country.

NUNEZ

In January 1997, an informant provided information identifying a Dominican/ Asian organization that imports and distributes multiple kilogram quantities of cocaine and heroin in New Jersey, New York, Pennsylvania, and Florida. You directed a DEA/[appellant's location] U/C agent in meeting with Nunez and members of his organization. The U/C agent received 345 grams of heroin from three individuals. At that time, the organization had access to seven kilograms of Southeast Asia heroin. You requested, and the Court approved, wiretaps on a total of seven telephones in [location] and [location]. This investigation resulted in Federal indictments and arrest warrants for 18 individuals in [location] and [location]. In July 1997, 13 individuals were arrested pursuant to warrants charging them with conspiracy to distribute heroin. You coordinated and supervised the execution of the search and arrest warrants and prepared affidavits with the information developed during your investigation.

The organization used legitimate businesses to conduct its illicit activities. Surveillance tactics at a [location] restaurant revealed the customer traffic did not justify the number of telephone calls emanating from the establishment. Additional surveillance units under your direction in [cities and states] observed little traffic at four Chinese restaurants owned and operated by the heroin supplier, yet telephone information showed calls to mainland China, Vietnam, Cambodia, and Canada. You stated this investigation was unique in that it involved a Chinese national who distributed to Cuban and Dominican nationals. Previous intelligence showed these groups worked in-dependently of each other, and the language barriers and cultural differences further insulated the groups from discovery by law enforcement. Ultimately, the organization was destroyed as the top level organizers, (the Chinese importers) the mid-level financial backers and distributors, and the lower level street distributors were all arrested. This investigation is ongoing in an effort to determine the methods used to import the heroin into the United States.

SULLEY AND OSMAN GARBA

In October 1995 you received a telephone call from a INTERPOL/Washington contact identifying Akinpeloye as a cocaine smuggler arrested in Germany. Akinpeloye departed the United States with cocaine from the [airport]. As a result, you planned and supervised a search of Akinpeloye's residence that produced stolen credit cards, checks, and telephone books linking Akinpeloye to other currency and heroin cases you were investigating. Sulley Garba, a Ghanian male, whom you arrested in 1993, lived in this apartment with his cousin Osman. An informant who lived in the apartment was recruited by you at that time. The informant's participation in this investigation led to the eventual arrest, indictment, and conviction of five

heroin smugglers through a controlled delivery. A total of 12 individuals were indicted, arrested, and/or convicted of cocaine, heroin, or currency trafficking in the United States, London, Germany, and Nigeria.

This case was complicated by several factors: this group was involved in various types of criminal activities, i.e., importing heroin, exporting cocaine, money laundering, immigration fraud, check fraud and use of fictitious identifications. Surveillance was extremely difficult as both Sulley and Osman Garba had previously been arrested and were conscious of the methods used by law enforcement, including undercover agents. Due to your investigation of the Garbas in [location] and links to cocaine importations in London, they now face additional charges in London. In your appeal, you characterize the prosecution phase of the Garbas as unique. Both Garbas were considered "career offenders" (two prior heroin arrests) and were facing life imprisonment. You prepared the necessary documents that were presented to the sentencing judge for use in his deliberations.

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

The Grade-Level Guides for Classifying Investigator Positions (GLGIP), GS-1810-1811 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 repre-sentative of the cases for which the investigator has primary responsibility over a period of time, 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 in-vestigator, 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.

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

At the GS-12 level, cases typically involve several principals for whom suspicion is initially aroused by circumstantial evidence, e.g., word of mouth, tips, observations, rather than by directly verifiable evidence, e.g., paid bills, passports, licenses, testimony. Evidence is fragmentary or cold. Improper development of the case could cause significant repercussions, e.g., cause public embarrassment for the agency involved or the principals under investigation.

In contrast, GS-13 level cases are of extreme complexity and scope. For example, the assignments involve investigations of legal or illegal organizations that are very complex in structure with a large number of primary and secondary activities, e.g., several principals of organized crime or subversive groups that are officially recognized in law enforcement as national threats to the peace and stability of the nation. Investigations are of major interregional dimensions or are nationwide in origin or coverage with occasional international implications. There are typically actual or potential threats or challenges to major segments of the national welfare or security, e.g., threats to the fabric of society caused by the previously described large scale drug or other illegal items distribution conspiracies; the potential threat of large scale terrorist or other multi-cell integrated organizations. The results, effects, or consequences of the investigation, to a major degree, constitute deterrents to crimes or violations, and may often influence changes in laws or future court actions.

The GS-13 investigator typically must piece together evidence that comes from other investigators stationed throughout several States or the nation. From this evidence, the investigator 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. This complicates the case because the investigator must at the same time avoid entrapment of the suspects, as at the lower grade levels of the occupation, who are more prominent and numerous and engage in more complex and serious activities. Similarly, the GS-13 investigator must be more aware of the implications of precedent court decisions over a broader area; i.e., in more judicial and law enforcement jurisdictions.

We find the cases forming the core of your appeal rationale reflect aspects of the GS-13 level in that the evidence must often be pieced together from various parts of the country or from foreign countries and, by your responsibility in instructing separate investigators or units of investigators working on segments of these cases. For example, in Highwire you were responsible for interviewing witnesses in Federal, state and international prisons in Texas, Baltimore, New York, New Jersey, Illinois, Massachusetts, London, Canada, Curacao, and Thailand. Liaison between you and special agents of the DEA in these cities had to be established and maintained to gather this evidence. However, we find this evidence gathering relates to cases that do not fully meet the extreme complexity or scope of investigation as described above at the GS-13 level.

Your cases involve several principals for whom suspicion is initially aroused by circumstantial evidence, e.g., word of mouth, tips, observations, rather than by directly verifiable evidence. The information you gather from your informants enables you to trace threads of directly and indirectly related criminal activity both nationally and internationally. The groups you have penetrated have a limited number of primary and subsidiary activities, i.e., primarily the importation and exportation of drugs and subsequent money laundering of the proceeds from these activities, as described above at the GS-12 level. Your cases cross into other regions due to the relationships among principals involved, in parallel schemes, e.g., Umenyili and Chijioke, with operations in Nigeria, India, Thailand, the United Kingdom, and also New Jersey, New York and North Carolina. However, these organizations do not entail the range and variety of activities of potential harm to national security, nor do they involve the extremely complex structure and diversity of interest of organizations found at the GS-13 grade level. We find the drug distribution and money laundering conspiracies in your cases are limited in terms of organizational sophistication, mix of legal and illegal activities and in operational scale. The intent of GS-13 “international implications” is inextricably linked to the scope and complexity of the or-ganizational structure under investigation. Accordingly, this element is credited at the GS-12 grade 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., which are 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, at the GS-13 level, subjects 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 difficulty and complexity of your investigations, e.g., Highwire and Umenyili, imposed by compartmentalization of the organizations, i.e., different levels of the organization remaining well insulated from each other, are reflected in the GLGIP at the GS-12 level. The GLGIP describes a principal or financial backer in an organization consisting of separate manufacturers, distributors and transporters of illegal drugs, who normally do not know each other or the overall backer. Also, described at the GS-12 level is the use of legitimate businesses to cover up illegal activities. In Nunez, the organization was using several restaurants as a “front” for their illegal activities. It was only through your surveillance and ultimate request and approval of a wiretap was the scope of this investigation determined and the Federal indictments and arrests of 18 individuals effected. In addition, the GS-12 level of the GLGIP discusses the target of these investigations as a prominent figure in organized crime or subversion. The principals of these organizations were the

ultimate targets in your cases and not the underlings or persons who are operating on the fringes of organized crime. The assignments presented as representative of your work do not entail the range and variety of activities of potential extreme harm to national security, nor do they involve the extremely complex structure and diversity of interests of organizations found at the GS-13 level. Accordingly, this element is credited 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, at the GS-13 level, suspected violators 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.

In Highwire, the arrest of a cocaine courier at [airport] resulted in the eventual execution of 12 Federal search warrants, and 7 arrest warrants in [appellant's location]. These arrests then led to the indictments and subsequent convictions of seven defendants in [location]. Other co-conspirators were arrested in the United Kingdom and Curacao, pursuant to Provisional Arrest Warrants obtained by you in [location]. Seven of these defendants pled guilty to offenses including conspiracy to import heroin and cocaine, money laundering, immigration violations, and wire fraud. An eighth defendant was convicted of heroin conspiracy charges during a jury trial. In Umenyili, through your investigative efforts you were able to identify Chijioke as the heroin source capable of transporting ten kilograms of heroin from India to the United States at any given time. You were also able to inform the New Delhi Narcotics Control Bureau of the potential damage and danger the Nigerians posed

as they operated as heroin sources in their country. These cases, and others representative of your assignments, result in the type and scope of additional investigative matters found at the GS-12 grade level. They reflect the piecing together of evidence and information from interviews, surveillance, documentary examinations, and informants, that allows you to penetrate an organization from the courier, as in Highwire, to the principals/organizers of the largest West African heroin smuggling organization neutralized by the DSAC/[appellant's] office.

The separate investigative matters that evolve from your cases do not meet the great scope and complexity envisioned at the GS-13 level. You were the leader and coordinator of teams of investigators, from U.S. Customs Service as well as other agencies and state and local law enforcement, in tracing leads and gathering information. This type of coordination is discussed at the GS-13 grade level under this element. However, as recognized under Element 1, the groups you investigate and the separate investigative matters that result do not meet the scope or complexity of the highly organized crime groups as envisioned in the GLGIP at the GS-13 level. The limited nature of these criminal enterprises do not reflect the highly complex interweaving of legitimate and criminal activities, or the scale of raids and seizures envisioned in dealing with GS-13 level criminal activities. Accordingly, this element is credited 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 a intermediary or organization, requiring the use of such techniques as sur-veillance, 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 sec-tions 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 valuable at the GS-12 level.

The cases forming the core of your appeal rationale parallel the difficulty in-volved in establishing the relationships of facts or evidence at the GS-12 level. The principals in your organization are difficult to identify in that they are separated by compartmentalization. That is, the upper level members are well insulated from the lower level members. By insulating the upper and lower individuals with mid-level members, the upper-level members avoid detection and/or arrest by law enforcement. Your requests and subsequent approval for Federal Title III wiretaps for various communication devices by a United States District Judge are significant in that you must prove to the Judge you have exhausted all normal investigative procedures, or these procedures are unlikely to be successful, or would be too dangerous, **and** you have probable cause to believe these devices are being used to conduct illegal activity. As this is the most invasive type of surveillance, you must exercise careful judgment and skill regarding civil rights, invasion of privacy and entrapment in establishing facts and evidence. This level of skill is described at the GS- 12 level.

Your cases, while they entail the investigation of businesses engaged in a mixture of legal and illegal activities, e.g., the P&C Printing company in Garba, the First African Forex Bureau in Highwire, the Chinese restaurants in Nunez, and the use of fictitious names, addresses, and documents, do not reflect the complex construct of activities carried on throughout wide sections of the country found at the GS-13 grade level. In addition, at the GS-13 level, the principals of the investigations deal exclusively through subsidiaries and holding companies and are clearly separated from the illegal activities under investigation. The principals in your cases, e.g., Umenyili, discussed the illegal activities with other members of the organizations, i.e., distributors and your own U/C agent, thereby providing evidence, intercepted by you and your team, that ultimately led to his indictment and subsequent conviction. As discussed previously in this decision, the very structure and scale of the criminal activities in these cases fall short of the GS-13 level. In addition, the record does not support the conclusion that each major segment of these cases fully equates to cases of GS-12 level difficulty. Accordingly, this element is credited at the GS-12 level.

<u>Element 5</u> - 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.

In the Highwire case, a Ghanian national who played soccer for the national team in the 1980's was identified as an organizer who arranged the shipment of multiple kilograms of heroin, cocaine and marijuana from various countries and throughout the United States. Because of the prominence of this athlete, you stated this case received worldwide media attention, and was reported on television in Ghana. Two confidential informants who were testifying in this case were fearful of retribution and were placed in the Federal Witness Protection Program. This level of sensitivity is described at the GS-12 level, where the witnesses are fearful of becoming involved due to the prominence of the subject and the scope of the investigation. In addition, the subject of the investigation is often the subject of major news media and any investigation is likely to result in publicity that would cast suspicion on the reputation of the subject, prejudice the investigator’s case in court, or complicate subsequent administrative decisions. The protection afforded your informants and agents planted to infiltrate these various enterprises also reflects the caution necessary to penetrate the multiple level organizations investigated at the GS-12 level. The scope of your investigations and the subject’s financial involvements do not reflect the impact on the national economy or the depth and breadth of potential governmental discredit and/or agency functional impact found at the GS-13 level. The news media attention afforded your cases falls short of sustained and widespread major news media coverage typical of GS-13 case figures, and scope and scale of criminal activities. Accordingly, this element is credited at the GS-12 grade 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; forgery; and alleged drug use, traffic and smuggling; forgery; 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, at the GS-13 level, cases 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.

As discussed previously, our fact-finding revealed you were the primary case agent and coordinated the multi-jurisdictional aspects of your investigations. In the cases forming the core rationale of your appeal, your suspects were engaging in activities concerning several local, county, State, and Federal agencies, e.g., drug use, traffic and smuggling and forgery. For example, in the Highwire case, you used contacts in federal agencies from the U.S. Customs Service, DEA, the Federal Bureau of Investigation, Immigration and Naturalization, Service, [location] State Police, Prosecutor's Office Investigators from [counties]. In addition, you formed liaisons between the DEA and the U.S. Customs Foreign Offices in London, Aruba, Curacao, Thailand, Korea, and Canada. These types of jurisdictional problems and involvement described in your appeal rationale approach the level described at the GS-13 level. However, the information you provided does not suggest the cases entailed the use of suspects in double or triple capacities, and as discussed above in Element 1, your cases do not meet the breadth and depth of complexity envisioned at the GS-13 level necessitating the use of these techniques to penetrate GS-13 level wide scale criminal conspiracies. Therefore, although you may approach the GS-13 level in terms of jurisdictional issues, we cannot credit this element at that level.

In addition, at the GS-13 level, undercover and surveillance work involves serving as a key person or coordinator in assignments with complex, dangerous or delicate elements, e.g., penetration of closely knit groups on assignments of GS-13 level complexity, where discovery on assignment would not only result in great injury or death to the investigator, but would cut off information linking the evidence together

and thus jeopardize or destroy a critical case that the Federal government had been developing for months or years, involving a network of State, local, and other Federal agents and informers. Your surveillance work, despite the use of undercover agents and informers, does not meet the intent of the GS-13 level in that the cases involved are not of the scale and complexity envisioned at that level. Accordingly, 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, at the GS-13 level, investigators 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 the form of 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.

We find that you operate with a high degree of independence and authority. As we discussed above, you generate your own case assignments through informants, tips and observations. You receive little instruction from your supervisor and only consult the group supervisor to recommend the coordination and/or commitment of resources to a case as described at the GS-12 level. Evaluation of this factor to the GS-13 level is dependent upon, among other criteria, the investigative position performing assignments that create conditions warranting the delegation of authority and the development of breakthrough investigative methods, approaches and techniques, Your recommendations for investigative resources or additional lines of inquiry, e.g., wiretap requests, OCDETF proposals, are approved and supported by the appropriate designated bodies. Although a Federal III wiretap is extremely difficult to get approved by the Court and involves the application of experience and expert skill to manage once implemented, it does not constitute a breakthrough in investigative approaches, techniques and policies described at the GS-13 level. You are expected to initiate and terminate cases, or recommend such action, based on a comprehensive knowledge and appreciation of technical investigative considerations and knowledge of governing policies, procedures and practices. Your work is reviewed in terms of effective and efficient accomplishment within guidelines and policies. Accordingly 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/ 10/10/97

Robert D. Hendler
Classification Appeals Officer

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