

**OFFICE OF PERSONNEL MANAGEMENT**  
**MERIT SYSTEMS OVERSIGHT AND EFFECTIVENESS**  
**DALLAS OVERSIGHT DIVISION**  
**CLASSIFICATION APPEAL DECISION**

Under section 5112(b) of title 5, United States Code

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**Appellant:** [appellant's name]

**Position:** Supervisory Criminal Investigator, GS-1811-14  
Position Number: HCBY9C

**Organization:** [appellant's activity]  
Immigration and Naturalization Service

**Decision:** Supervisory Criminal Investigator, GS-1811-14  
(Appeal denied)

**OPM Decision Number:** C-1811-14-01

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

12/2/96  
Date

**Copy of decision sent to:**

[appellant's name and address]

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## **Introduction**

The position is assigned to the [appellant's activity in the U.S. Immigration and Naturalization Service]. The position had previously been classified as a Supervisory Criminal Investigator, GS-1811-15, and was reclassified to the GS-14 grade level based on application of the General Schedule Supervisory Guide. The appellant does not agree with his agency's determination and filed an appeal with this office under the provisions of chapter 51 of title 5, United States Code. This is the final administrative decision of the Government, subject to discretionary review only under the conditions and time limits specified in sections 511.605 and 511.613 of the Code of Federal Regulations.

## **Position Information**

The appellant serves as the Assistant District Director for Investigations (ADDI). The Investigations Branch consists of six units, each headed by a GS-13 Supervisory Criminal Investigator. These units are responsible for the employer sanctions, anti-smuggling, and criminal alien functions, including agents assigned to the Organized Crime Drug Enforcement Task Force and violent gang and metro alien task forces. There are currently 53 nonsupervisory positions assigned to these units, i.e., 38 criminal investigators and 15 investigative support positions. In addition, the appellant provides program supervision and budgetary control of the investigative functions assigned to the [a city] sub-office and [a station]. These offices account for approximately 15 additional positions.

The position description, in combination with organizational and other information, is adequate for classification purposes.

## **Series and Title Determination**

Briefly, 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 is responsible for the operation and direction of criminal investigative activity of the District Office. He does not question the series or title of his position. We agree that the position is properly assigned to the GS-1811 series and titled Supervisory Criminal Investigator.

## **Grade Level Determination**

The General Schedule Supervisory Guide (GSSG) provides evaluation criteria for determining the grade level of supervisory positions in grades GS-5 through GS-15. This guide uses a factor-point method that assesses six factors: program scope and effect, organizational setting, supervisory and managerial authority exercised, personal

contacts, difficulty of typical work directed, and other conditions. The appellant's duties and responsibilities meet the criteria for coverage by this guide.

#### Factor 1 - Program Scope and Effect

a. Scope addresses the general complexity and breadth of the program directed and the work directed, the products produced, or the services delivered. The geographic and organizational coverage of the program within the agency structure is included under scope.

b. Effect addresses the impact of the work, the products, and/or the programs described under scope on the mission and programs of the customer, the activity, other activities in or out of government, the agency, other agencies, the general public, or others.

Level 1-3a discusses directing a program segment that performs technical, administrative, protective, investigative, or professional work. The program segment and the work directed typically have coverage which encompasses a major metropolitan area, a State, or a small region of several States.

At Level 1-3b, the activities, functions, or services accomplished directly and significantly impact a wide range of agency activities, the work of other agencies, or the operations of outside interests (e.g., a segment of a regulated industry), or the general public. At the field activity level (involving large, complex, multimission organizations and/or very large serviced populations comparable to the examples below), the work directly involves or substantially impacts the provision of essential support operations to numerous, varied, and complex technical, professional, and administrative functions.

The evaluation of this factor was not questioned and we will not discuss it in detail. The Investigations Branch is responsible for initiating, conducting, and completing to prosecution comprehensive investigations under the criminal and statutory provisions of the Immigration and Nationality Laws and/or in the discharge of the various administrative prosecution functions of the I&NS. The [appellant's] District's area of jurisdiction includes the north Texas area, encompassing the Dallas-Fort Worth metropolitan area and 122 counties, and the entire State of Oklahoma. This investigative work may affect other functions within the agency and is most often conducted in coordination and cooperation with other Federal, State, and local law enforcement agencies. We find this meets Level 1-3 for scope and effect. 550 points are credited.

#### Factor 2 - Organizational Setting

This factor considers the organizational situation of the position in relation to higher levels of management.

Level 2-2 is credited when a position is accountable to a position that is one reporting level below the first Senior Executive Service (SES), flag or general officer, or equivalent or higher level position in the direct supervisory chain. The appellant reports to the Deputy District Director. The instructions in the GSSG provide that a position reporting to a full deputy should be credited as if reporting directly to the chief. The District Director reports to the Regional Director for Operations, an SES position. Level 2-2 and 250 points are credited.

### Factor 3 - Supervisory and Managerial Authority Exercised

This factor covers the delegated supervisory and managerial authorities which are exercised on a recurring basis. To be credited with a level under this factor, a position must meet the authorities and responsibilities to the extent described for the specific level. Where authority is duplicated or not significantly differentiated among several organizational levels, a factor level may apply to positions at more than one organizational level.

Level 3-1 defines the basic requirements for coverage by the GSSG. Level 3-2 requires that, in addition to meeting level 3-1, the position must meet one of the paragraphs: a, b, or c. Paragraph a discusses production-oriented work and b describes situations where work is contracted out. Neither is appropriate for the appellant's position. At Level 3-2c, the position must have responsibility for carrying out at least three of the first four and a total of six or more of 10 authorities and responsibilities. The appellant is responsible for all 10 authorities at the 3-2c level.

Level 3-3 envisions the delegation of greater and more diverse supervisory and management authorities used in supervising a substantially greater workload, requiring use of multiple subordinate supervisors, team leaders, group leaders, etc., to help the manager direct and coordinate the work of the organization. To be credited at the 3-3 level, paragraph a or b must be met. Paragraph a describes exercising delegated managerial authority to set a series of long-range work plans and schedules, assuring implementation of goals and objectives by subordinate organizations. The positions are closely involved with high-level program officials in development of overall goals and objectives for assigned functions or programs. In the appellant's position, the managerial authority for determining overall goals and objectives and long-range planning is located at a higher level in the agency. Level 3-3a is not appropriate for the appellant's position.

Paragraph b may be credited when the position exercises all or nearly all of the delegated supervisory authorities and responsibilities described at the 3-2c level and, in addition, at least 8 of the following 15 responsibilities:

1. Using any of the following to direct, coordinate, or oversee work: supervisors, leaders, team chiefs, group coordinators, committee chairs, or comparable personnel; and/or providing similar oversight of contractors;
2. Exercising significant responsibilities in dealing with officials of other units or organizations, or in advising management officials of higher rank;
3. Assuring reasonable equity (among unit, groups, teams, project, etc.) of performance standards and rating techniques developed by subordinates or assuring comparable equity in the assessment by subordinates of the adequacy of contractor capabilities or of contractor completed work;
4. Direction of a program or major program segment with significant resources (e.g., one at a multimillion dollar level of annual resources);
5. Making decisions on work problems presented by subordinate supervisors, team leaders, or similar personnel, or by contractors;
6. Evaluating subordinate supervisors or leaders and serving as the reviewing official on evaluations of nonsupervisory employees rated by subordinate supervisors;
7. Making or approving selections for subordinate nonsupervisory positions;
8. Recommending selections for subordinate supervisory positions and for work leader, group leader, or project director positions responsible for coordinating the work of others, and similar positions;
9. Hearing and resolving group grievances or serious employee complaints;
10. Reviewing and approving serious disciplinary actions (e.g., suspensions) involving nonsupervisory subordinates;
11. Making decisions on nonroutine, costly, or controversial training needs and training requests related to employees of the unit;
12. Determining whether contractor performed work meets standards of adequacy necessary for authorization of payment;
13. Approving expenses comparable to within-grade increases, extensive overtime, and employee travel;
14. Recommending awards or bonuses for nonsupervisory personnel and changes in position classification, subject to approval by higher level officials, supervisors, or others;

15. Finding and implementing ways to eliminate or reduce significant bottlenecks and barriers to production, promote team building, or improve business practices.

We find credit appropriately given for ten responsibilities, i.e., 1, 2, 3, 4, 5, 6, 8, 13, 14, and 15. The District Director retains selection authority for all positions and the appellant has authority to make recommendations on serious disciplinary actions and grievances beyond the first step. Responsibilities 7, 9, and 10 are not creditable. While the appellant does have control of a budget that includes training funds, the examples of training requested and approved do not include nonroutine or controversial training for investigative or support staff, as in responsibility 11. Responsibility 12 is not applicable as there is no contractor performed work that is an integral part of the basic mission.

To be credited at the 3-4 level, both 3-3a and 3-3b must be met in addition to the authorities described at the 3-4 level. Level 3-3b is credited for 775 points.

#### Factor 4 - Personal Contacts

This is a two-part factor which assesses the nature and purpose of personal contacts related to supervisory and managerial responsibilities.

#### Subfactor 4A - Nature of Contacts

This subfactor covers the organizational relationships, authority, or influence level, setting, and difficulty of preparation associated with making personal contacts involved in supervisory and managerial work. To be credited, the level of contacts must contribute to the successful performance of the work, be a recurring requirement, have a demonstrable impact on the difficulty and responsibility of the position, and require direct contact.

Level 4A-2 describes contacts with members of the business community or the general public; higher ranking managers, supervisors, and staff of program, administrative, and other work units and activities throughout the field activity, installation, or major organization level of the agency; representatives of local public interest groups; case workers in congressional district offices; technical or operating level employees of State and local governments; etc.

The 4A-3 level describes frequent contacts with high ranking military or civilian managers, supervisors, and technical staff at bureau and major organizational levels of the agency; with agency headquarters administrative support staff; or with comparable personnel in other Federal agencies; key staff of public interest groups (usually in formal briefings) with significant political influence or media coverage; journalists representing city or county newspapers or comparable radio or television coverage; congressional committee and subcommittee staff assistants below staff director or chief counsel levels;

etc. Contacts include those which take place in meetings and conferences and unplanned contacts for which the employee is designated as a contact point by higher management. They often require extensive preparation of briefing materials or up-to-date technical familiarity with complex subject matter.

At the 4A-4 level, there are frequent contacts with influential individuals or groups from outside the agency such as executive level contracting and other officials of major defense contractors; key staff of congressional committees and principal assistants to senators and representatives; elected or appointed representatives of State and local governments; journalists of major metropolitan, regional, or national newspapers, magazines, television, or radio media; SES or Executive level heads of bureaus and higher level organizations in other Federal agencies. Such contacts may take place in meetings, conferences, briefings, speeches, or oversight hearings and may require extemporaneous response to unexpected or hostile questioning. Preparation typically involves briefing packages, requires extensive analytical input by the employee and subordinates, and/or involves assistance of a support staff.

The appellant's contacts are multiple. He must consult with and advise other district officials on matters of concern. He must maintain good working relationships with the Border Patrol operations staff; officials of other Federal, State, and local law enforcement agencies, including the Federal Bureau of Investigation, Drug Enforcement Administration, U.S. Customs Service, Central Intelligence Agency, the offices of the U.S. Attorney, foreign law enforcement officials; and civil and social service organizations. In March 1993, the appellant initiated an employer sanctions program in the [his] District named Operation Jobs. Its purpose is to fill job vacancies prior to the removal of the illegal alien workforce. The [appellant's] Employer Sanctions unit received the Vice President's Hammer Award in 1994 and the program has since become a national initiative. The program has received a grant from the Ford Foundation and the appellant has been asked to speak to various organizations concerning the program and provide assistance in service-wide implementation. The appellant has been asked to serve in an advisory capacity to the President's Committee on Immigration Reform, as the spokesperson for [his] District. He is a member of Congressman Joe Barton's Congressional Advisory Committee, providing input and recommendations regarding immigration law. Through his work with this committee, he has been asked to provide input to House and Senate congressional committees on immigration matters. He serves as the I&NS' principal representative for the criminal alien program to the International Association of Chiefs of Police (IACP) and represents the enforcement program of the District in contacts with the media. The appellant also played a major role within the I&NS in the development and coordination of the strategic deployment of I&NS resources and in coordinating and implementing enforcement strategies with Federal, State, local, and foreign law enforcement agencies during the recent world cup soccer competition in nine U.S. cities.



While the appellant has some regular contacts that are comparable to those identified in Level 4-4, the GSSG stipulates “frequent” contacts. In general, frequent contacts within the meaning of the GSSG are those that occur several times a week. Contacts which occur at longer intervals, i.e., monthly, quarterly, are considered to be infrequent unless they typically involve extensive preparation consuming large portions of a position’s work time. In our discussions with the appellant, he indicated his contacts with the President’s Committee are approximately on a monthly basis, and Congressional committees every two or three months. He has made six speeches this past year to the IACP class sessions throughout the country and has assisted in program planning for FY 97. This program is run by a grant from the Department of Justice. We find the appellant’s contacts are probably not typical of most ADDI positions. We do find that, at this time, his contacts are appropriately credited at the 4A-4 level. 100 points are credited.

#### Subfactor 4B - Purpose of contacts

This subfactor covers the purpose of the personal contacts credited in 4A, including the advisory, representational, negotiating, and commitment making responsibilities related to supervision and management.

Level 4B-2 indicates the purpose of contacts is to ensure that information provided is accurate and consistent; to plan and coordinate the work directed with that of others outside the subordinate organization; and/or to resolve differences of opinion among managers, supervisors, employees, contractors, or others.

Level 4B-3 states the purpose of contacts is to justify, defend, or negotiate in representing the organizational unit directed; in obtaining or committing resources; **and** in gaining compliance with established policies, regulations, or contracts. At this level, contacts usually involve active participation in conferences, meetings, hearings, or presentations involving problems or issues of considerable consequence or importance to the program managed.

Level 4B-4 indicates the purpose is to influence, motivate, or persuade persons or groups to accept opinions or take actions relating to advancing the fundamental goals and objectives of the program or segments directed, or involving the commitment or distribution of major resources, when intense opposition or resistance is encountered due to significant organizational or philosophical conflict, competing objectives, major resource limitations or reductions, or comparable issues. At this level, persons contacted are sufficiently fearful, skeptical, or uncooperative that highly developed communications, negotiation, conflict resolution, leadership, and similar skills must be used to obtain the desired results.

We find the purpose of the appellant's contacts are most comparable to the 4B-3 level. The most frequent contacts are to obtain cooperation, coordinate, and resolve problems across organizational lines, both within the service and with other agencies. He is authorized in his role with the interagency task forces to commit I&NS resources to cases and projects. He represents the I&NS enforcement program, providing information and negotiating for cooperation and commitment of other agencies and organizations in obtaining compliance with immigration law for the mutual benefit of all parties. While he must exercise skill in dealing with parties with different perspectives concerning the immigration programs, we do not find those contacts involve the intense opposition, resistance, or the uncooperativeness described at the 4B-4 level. Level 4B-3 and 100 points are credited.

#### Factor 5 - Difficulty of Work Supervised

This factor measures the difficulty and complexity of the basic work most typical of the organization directed, as well as other line, staff, or contracted work for which the supervisor has technical or oversight responsibility, either directly or through subordinate supervisors, team leaders, or others. This work must characterize the nature of the basic (mission oriented) nonsupervisory work performed and constitute 25 percent or more of the workload (not positions or employees) of the organization. The instructions indicate that trainee level positions are credited at the full performance level.

The subordinate nonsupervisory workforce includes approximately 66 percent GS-12 criminal investigators. There are three nonsupervisory GS-13 investigators with the remainder of the workforce being investigative support positions at the GS-5, 6, and 7 levels. The GS-12 workload comprises 25 percent or more of the workload of the organization, as required in the guide. Level 5-7 is credited for 930 points.

#### Factor 6 - Other Conditions

This factor measures the extent to which various conditions contribute to the difficulty and complexity of carrying out supervisory duties, authorities, and responsibilities. Conditions affecting work for which the supervisor is responsible may be considered if they increase the difficulty of carrying out assigned supervisory or managerial duties and authorities. To apply this factor, the highest factor level definition that the position fully meets may be credited.

Factor Level 6-5a indicates that supervision and oversight requires significant and extensive coordination and integration of a number of important projects or program segments of professional, scientific, technical, managerial, or administrative work comparable in difficulty to the GS-12 level. Supervision at this level involves major recommendations which have a direct and substantial effect on the organization and

projects managed. For instance, the supervisor makes major recommendations in at least three of the areas listed below:

- significant internal and external program and policy issues affecting the overall organization, such as those involving political, social, technological, and economic conditions, as well as those factors cited in the first item of Factor Level 6-4a;
- restructuring, reorienting, recasting immediate and long-range goals, objectives, plans, and schedules to meet substantial changes in legislation, program authority, and/or funding;
- determinations of projects or program segments to be initiated, dropped, or curtailed;
- changes in organizational structure, including the particular changes to be effected;
- the optimum mix of reduced operating costs and assurance of program effectiveness, including introduction of labor saving devices, automated processes, methods improvements, and similar;
- the resources to devote to particular programs (especially when staff-years and a significant portion of an organization's budget are involved);
- policy formulation, and long-range planning in connection with prospective changes in functions and programs.

Level 6-5b describes supervision of work at the GS-13 level or above involving extreme urgency, unusual controversy, or other comparable demands due to research, development, test and evaluation, design, policy analysis, public safety, public health, medical, regulatory, or comparable implications. This level is not appropriate for the appellant's position.

Level 6-5c describes managing work through subordinate supervisors who each direct substantial workloads comparable to the GS-11 level. Such base work requires similar coordination to that described at Factor 6-4a for first line supervisors.

At the 6-6a level, supervision and oversight requires exceptional coordination and integration of a number of very important and complex program segments or programs of professional, scientific, technical, managerial, or administrative work comparable in difficulty to the GS-13 or higher level. Supervision and resource management at this level involves major decisions and actions which have a direct and substantial effect on the organizations and programs managed. Supervisors at this level make

recommendations and/or final decisions about many of the management areas listed under 6-5 or about comparable areas. This level is not appropriate for the appellant's position.

At 6-6b, they manage through subordinate supervisors and/or contractors who each direct substantial workloads comparable to the GS-12 or higher level. Such base work requires similar coordination as that described at 6-5a for first line supervisors.

The appellant is a second level supervisor, supervising work with a base level of GS-12. The appellant does directly supervise the work of six investigative units and has program responsibility for two suboffice units. Priorities and goals are determined by headquarters and the funding allocated through the region to the districts. Operational planning is done at the District level as to how to meet the service's priorities and operational goals within those funding levels. We understand that while the District Director maintains the ultimate responsibility, the appellant has considerable discretion in determining the program activities to meet those goals. He has merged the fraud and anti-smuggling units, established a second employer sanctions unit, and can generally shift manpower as needed for special projects such as Operation Texas Two Step. This was a joint initiative with five district offices combining with Texas DPS, State Probation and Parole, and the U.S. Marshals Service to apprehend more than 250 criminal aliens. He can determine which investigative cases to continue or drop and what resources can be used, but he cannot change the priorities set by headquarters. Although he did initiate a project that has become a nationwide initiative, the position is not charged with regularly providing major recommendations in the areas of policy formulation and long-range planning.

The GSSG describes at the 6-5 level, “. . . significant and extensive coordination and integration of a number of important projects or program segments . . . .” The appellant is involved only with the investigations program activities. The GSSG also describes “. . . major recommendations which have a direct and substantial effect on the organization and projects managed” and provides the examples previously listed. Review of the appeal record indicates the District Director is responsible for the execution of the various programs at the district level in line with broad program objectives and policies established at central and regional office levels. He is charged with determining program priorities and making adjustments and adaptations in district operations needed to accomplish program objectives. The District Director makes recommendations to the regional commissioner for changes or revisions in agency policies or procedures, realignment of manpower, and other such measures as may be required to ensure effectiveness and economy of operations at the district level. While the appellant certainly provides input, he cannot be credited with fully meeting the requirements of Level 6-5a; therefore, Level 6-6b cannot be credited. Level 6-5c is the highest level fully met. 1225 points are credited.

There is a total of 3930 points which falls into the point range for the GS-14 grade level (3605 - 4050).

**Decision:** The position is properly classified as Supervisory Criminal Investigator, GS-1811-14.