

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



Atlanta Oversight Division  
75 Spring Street, SW., Room 972  
Atlanta, GA 30303

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

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

**Agency classification:** Criminal Investigator  
GS-1811-9

**Organization:** Police and Security Service  
Veterans Health Administration  
Department of Veterans Affairs

**OPM decision:** Criminal Investigator  
GS-1811-9

**OPM decision number:** C-1811-09-01

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Kathy W. Day  
Classification Appeals Officer  
1/26/99

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Date

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

**Decision sent to:**

[appellant's address]

[appellant's agency address]

Mr. Ronald E. Cowles  
Deputy Assistant Secretary for Personnel and  
Labor Relations  
Department of Veterans Affairs  
810 Vermont Ave., NW.  
Washington, DC 20420

## **Introduction**

On October 15, 1998, the Atlanta Oversight Division, U.S. Office of Personnel Management, accepted an appeal for the position of Criminal Investigator, GS-1811-9, Police and Security Service, Veterans Health Administration, Department of Veterans Affairs, [city\state]. The appellant is requesting that his position be changed to GS-1811-11.

The appeal has been accepted and processed under section 5112(b) of title 5, United States Code. This is the final administrative decision on the classification of the position subject to discretionary review only under the limited conditions and time outlined in part 511, subpart F, of title 5, Code of Federal Regulations.

## **Position information**

The appellant is assigned to [position number]. The appellant and his supervisor have certified the accuracy of the position description.

The primary purpose of the appellant's position is to investigate criminal activities and employee misconduct relating to alleged or suspected violations within the Department of Veterans Affairs Medical Center (DVAMC) jurisdiction. The work involves identifying the criminal acts, following leads and tips, developing a plan of action, gathering evidence, and preparing reports. Based on the circumstances, the appellant identifies issues and probable violations and prepares cases for courtroom testimony. The appellant investigates cases that include: assault, robbery, theft, fraud, drug violations, some sex crimes, and administrative employee misconduct violations. The appellant serves as coordinator for several programs within the DVAMC and operates databases used for criminal information.

The appellant receives work assignments from the Chief of Police and develops some of his own workloads. He works independently but keeps the supervisor informed. The supervisor is available for consultation and assistance on exceptionally difficult or sensitive cases. The investigative reports are reviewed by the supervisor for completeness, thoroughness, and soundness of conclusions supported by the evidence.

## **Series**

The agency placed the position in the GS-1811 series, and the appellant does not contest that determination. The Criminal Investigating Series, GS-1811, includes positions that involve 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 and related issues; the ability to recognize, develop, and present evidence; and skill in applying the techniques required to maintain surveillance, perform undercover work, and advise and assist the U.S. Attorney in and out of court.

The appellant's position requires knowledge and investigatory skills described in the GS-1811 series and is properly placed in that series.

### **Title determination**

The authorized title for nonsupervisory positions in the GS-1811 series is *Criminal Investigator*.

### **Standard determination**

Grade-Level Guides for Classifying Investigator Positions, GS-1810/1811, February 1972.

### **Grade determination**

The Grade-Level Guides for Classifying Investigator Positions, GS-1810/1811, uses two factors to distinguish between grade levels: *Complexity of Assignments* and *Level of Responsibility*.

Because of the wide variety of tasks and assignments normally carried out during the conduct of an investigation, the standard provides that classification of investigative positions be based on assignments that are typical and representative of the cases for which an investigator has primary responsibility over a period of time. Therefore, classification at a particular grade is based on performance at a specific level of difficulty over a period of time, and no one case can be the basis of the determination of a position's grade.

The appellant provided information on several of his investigative assignments, ranging from several days and weeks to over a year to investigate:

- (1) Case number ?, a felony involving 20 bomb threats made to the DVAMC, lasted over 1 year. This case involved record gathering and examination, video and audio surveillance, trap and tracing, and interagency coordination. No device was found, however, the offender was arrested and convicted.
- (2) Case number ?, a felony involving an alleged sexual assault. A patient accused a nurse of molesting him. The investigation included interviews, record gathering, consultations, use of interagency resources, a polygraph, and a crime lab forensic examination. This investigation took 2 months to solve. The accused was exonerated. The case attracted some local media attention.
- (3) Case number ?, a felony involving an auto theft. The appellant investigated a patient accused of auto theft and stealing other property. During the investigation, the patient confessed to cutting his girlfriend's throat and hiding the body. The body was found and the patient pled guilty to the crime. The appellant contends that his thoroughness of the case led to the homicide conviction and that this is an example of a case where an additional investigation grew from the original assignment.

- (4) Case number ?, a felony involving controlled substance fraud. An employee was suspected of obtaining controlled substances by forging DVAMC prescriptions. The investigation involved interviews, record gathering, handwriting samples, affidavits, and photo identification which took several weeks. The investigation led to the discovery that the subject forged prescriptions from private physicians as well. This case involved interagency coordination. The subject was arrested and charged. The appellant contends that this case is another example of an additional investigation growing from the original assignment.
- (5) Case number ? a purse theft which included check fraud.
- (6) Case number ?, a suicide which the FBI declined to investigate.
- (7) Case number ?, an embezzlement of \$4000 in government funds. The investigation involved reviewing accounting procedures. The FBI declined to investigate. The subject confessed.
- (8) Case number ?, a drug diversion investigation which took several months to investigate. The suspect was a DVAMC pharmacist who subsequently retired and was not prosecuted.
- (9) Case numbers ?, involving hate mail to the Chief of Police's home. Enough circumstantial evidence was developed through the "Link Analyses" flowchart to take administrative action against the offender/employee. This case took several months to investigate.
- (10) Case number ?, involving the use of forensic science crime lab examination which led to the arrest of car thieves.
- (11) Case number ?, involving a year long series of hospital thefts. The appellant set up a sting operation and the offender was caught, confessed, was arrested and convicted.

These cases are typical of the appellant's assignments. The position is evaluated as follows:

### ***Complexity of Assignments***

This factor measures the scope, complexity, and sensitivity of investigative assignments, including such elements as level of difficulty involved in resolving conflicting facts, the difficulty and complexity imposed by the subjects, the nature of matters that grow from the original assignment, the skill required to establish facts and evidence, the sensitivity of the assignment, and jurisdictional problems. Most or all of the elements must be present for a position to be evaluated at a particular grade.

#### **Element 1 - The levels of difficulty involved in resolving conflicting areas of facts or evidence.**

At GS-9, assignments typically involve subjects on which information is readily available and concern straight forward issues for which there is little or no conflicting evidence.

At GS-11, assignments typically involve conflicting testimony or evidence and require resourcefulness and initiative to develop sufficient information to support a legal or administrative decision within applicable criteria.

All of the investigative cases presented by the appellant meet the GS-9 level. The information and evidence needed to determine the facts of the cases were either provided or available in records, or the appellant was able to secure information through personal or phone surveillance which established the facts of the cases.

Although case numbers ? approach the GS-11 level, they do not meet the full intent. While gathering information, in some cases the appellant discovered information that brought another issue to light, i.e., forging prescriptions from private physician or confession of murder by the subject of investigation. However, at this level, difficulty relates to significant problems in identifying and locating persons involved, difficulty in securing evidence to support the investigation, and the possible expansion of the case. The cases the appellant investigated were not routinely complicated by such problems.

GS-9 level is credited for Element 1.

Element 2 - The difficulty and complexity imposed by the subjects of the investigations.

At the GS-9 level, assignments involve persons who are not controversial, whose activities have raised no particular issues, and whose careers or normal activities are not likely to be adversely affected by an investigation.

At the GS-11 level, assignments typically involve some complexity such as a suspected criminal operating independently or on the fringes of organized crime, an enterprise with a record keeping system which facilitates concealing illegal activity or an applicant for benefits or licensure with a questionable background.

The appellant's cases are most comparable to the GS-9 level. His assignments involve felonies performed typically by employees or visitors at the Medical Center. The majority of the cases handled by the appellant consist of determining if probable cause exists or if the totality of circumstances warrants criminal or administrative action.

According to the record, none of the appellant's cases involve the types of complexities that occur in investigating suspected criminals, organized crime, or the concealment of illegal activities through a business as described at the GS-11 level. Some of the difficulties typically facing the appellant include determining the priority level of his workload, what evidence to gather, and what resources are available, and developing a plan of action to conduct the investigation. He uses standard investigative methods and techniques to gather information. The subjects that the appellant investigates do not compare to those illustrated at the GS-11 level in the standard.

GS-9 is credited for Element 2.

Element 3 - The nature of separate investigative matters that grow from the original assignments.

The appellant disagrees with the agency's evaluation of Element 3. He identified case numbers ? as investigations that led to other assignments.

At GS-9, assignments involve few or no controversial issues or separate investigative matters growing from the original assignment. Assignments typically begin and end with the subject of an investigation.

At GS-11, assignments typically involve several investigative matters growing from a single assignment, such as additional investigation to uncover other persons involved in criminal activity who are indirectly related to the activity under investigation, or tracing street-level activity to a second-level pusher or distributor.

The cases identified by the appellant as supporting this element compare more favorably to the GS-9 level which does credit cases which have limited, i.e., few, separate investigative matters developing from the original assignment. Case number ? began as a car theft and after the investigation, the patient confessed to a homicide; case number ? involved forgery of DVAMC prescriptions which led to further investigation of forgery of prescriptions from a private physician; and case number ? was a purse theft which led to check fraud. Although an additional issue surfaced in each case, in each investigation the original subject remained the sole subject. The additional issue in case? and case ? was much like an extension of the original issue and did not complicate the investigation to the degree intended at the GS-11 level. In case ?, the patient confessed to murder during the course of the investigation, and the appellant reported the murder to the proper authorities.

The appellant's cases do not meet the intent of the GS-11 level. His investigations did not extend beyond the persons originally identified as the subjects, and they did not lead to multiple investigative issues developing from each single assignment.

GS-9 is credited for Element 3.

Element 4 - The skill required to establish facts and evidence in assigned cases.

At GS-9, assignments involve facts which are relatively easy to find, such as those in readily accessible records and documents. The interrelationship of facts is readily apparent.

At GS-11, assignments require considerable skill in establishing the interrelationship of facts or evidence in such situations as resolving issues of fact in the face of denials, indirect relationships, or subtle indications of untruthfulness of witnesses.

The appellant's assignments compare to the GS-9 level. The majority of the appellant's cases involve situations where documentary evidence is readily available and basic investigative techniques are applied to determine wrongdoing. For example, he is skilled in the areas of reviewing police reports, gathering physical and documentary evidence, and conducting background checks.

The GS-11 level is not met. The appellant does not resolve issues of fact complicated to the extent described at this level. While the appellant is responsible for a variety of cases, these cases normally involve such problems as locating people and verifying information which can be handled with basic investigative techniques and skills. He is not typically faced with the subtleness, indirect relationships or denials associated with cases at the GS-11 level; and therefore, does not typically apply the level of advanced investigative skill described.

GS-9 is credited for Element 4.

Element 5 - The sensitivity of assignments.

At GS-9, assignments rarely involve sensitive issues or matters of interest to the news media, organized groups, or the public.

At GS-11, assignments involve such matters as investigations of locally prominent individuals which could potentially embarrass the agency, or the success of the investigation depends on not disclosing the existence of the investigation and shutting off the possibility of getting evidence or information.

The appellant's cases compare to the GS-9 level. The majority of the cases investigated by the appellant involved persons who are relatively unknown in their community or the public. The cases are internal and do not normally get the attention of the media.

The GS-11 level is not met. According to the appellant, case number ? received some media attention and involved a sensitive issue that could have caused some liability and litigation to the agency. This was, however, only one instance and not typical of the appellant's cases.

GS-9 is credited for Element 5.

Element 6 - The jurisdictional problems involved in case assignments.

At GS-9, assignments involve few jurisdictional problems and normally involve the willing exchange of factual information and testimony.

At GS-11, assignments involve jurisdictional problems on matters within the purview of another agency and require close coordination with the other agencies to exchange information or to otherwise cooperate in furthering investigations under other jurisdictions.



The appellant meets the GS-9 level. According to the supervisor, most of the appellant's cases involve testifying in court where the appellant appears as a witness providing factual information.

The GS-11 level is not met. The appellant's cases do not usually involve investigations being conducted by other jurisdictions. The appellant does have contact with other agencies for routine exchange of information bearing on the investigation and to occasionally discuss strategy, with Federal and State personnel to discuss prosecution, and with the crime lab for processing evidence. These contacts, however, do not pose jurisdictional problems as described at this level.

GS-9 is credited for Element 6.

GS-9 is credited for all elements under Complexity of Assignments.

### ***Level of Responsibility***

This factor measures the kind and extent of supervision that is given to the investigator and the degree of resourcefulness required in finding and verifying information pertinent to the assigned cases.

At the GS-9 level, assistance is available to the appellant at all stages of his assignments. Typically, on assignments that are similar to those he has carried out before, he works independently in planning and conducting his work. On assignments that involve unfamiliar issues or unusual techniques, the supervisor gives direction and guidance, including advice on problems he may encounter. The supervisor reviews the work completed for technical accuracy and adequacy and for compliance with operating instructions, guides, rules and regulations. Assignments at the GS-9 level typically involve clear-cut application of an investigator's operating guidelines and instructions, e.g., manuals, handbooks, policy statements. The appellant seeks advice when he encounters situations that require significant deviation from instructions and operating procedures.

At the GS-11 level, the appellant either receives assignments from his superiors or initiates them himself, e.g., from informant tips or leads on cases he is investigating. The appellant is expected to develop and follow leads, e.g., moving from the suspect or subject to his associates, acquaintances, neighbors and fellow workers, without periodic supervisory guidance. If additional manpower is needed, e.g., for surveillance, extensive record checks, etc., arrangements are made through his superiors. New points of law or regulations are explained. His completed work is reviewed for overall adequacy, accuracy, completeness, and accomplishment of objectives. Because of conflicts in statements from witnesses, the appellant develops more information to resolve the conflicts. Records examined are harder to find, so that the investigator must have the initiative and resourcefulness to reconstruct information from other sources, e.g., interviews with family members, employment agencies, classmates, etc., despite lack of cooperation from such individuals and organizations.

The appellant's responsibilities meet the GS-9 level. The appellant follows established investigative techniques and procedures in independently planning and conducting his investigations. Most of the

cases are similar to others previously investigated and do not require significant deviations from established practices and guidelines. The supervisor stated that the appellant's work is reviewed for thoroughness and completeness.

While the appellant initiates some of his own assignments from tips or leads and makes arrangements for surveillance, the full intent of the GS-11 level is not met. His cases rarely require the resourcefulness and initiative associated with the kind of complexity described at this level, e.g., conflicting evidence, records that are hard to find or a lack of cooperation.

GS-9 is credited for Level of Responsibility.

### **Summary**

Both *Complexity of Assignments* and *Level of Responsibility* are evaluated at the GS-9 level for all cases representative of the appellant's workload, and GS-9 best represents the overall grade of the position.

### **Decision**

The position is correctly classified as Criminal Investigator, GS-1811-9.