

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

Appellants: [names of 3 appellants]

Agency classification: Investigative Specialist
GS-1801-11

Organization: Special Surveillance Group
[name] Division
Federal Bureau of Investigation
U.S. Department of Justice
[city and state]

OPM decision: GS-1801-11
Title to be determined by agency

OPM decision number: C-1801-11-04

/s/ Jeffrey E. Sumberg

Jeffrey E. Sumberg
Deputy Associate Director
Center for Merit System Accountability

August 12, 2009

Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate which 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 the conditions and time limits specified in the *Introduction to the Position Classification Standards* (Introduction), appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

[name and address of 3 appellants]

[name]

Chief, Position Management Unit
Human Resources Division
Federal Bureau of Investigation
U.S. Department of Justice
935 Pennsylvania Avenue, NW, Room PA-540
Washington, DC 20534

Director, Human Resources
U.S. Department of Justice
JMD Personnel Staff, Room 1110, NPB
1331 Pennsylvania Avenue, NW
Washington, DC 20530

Introduction

On October 30, 2006, the Dallas Oversight and Accountability Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from Messrs. [names of appellants]. The appellants occupy identical additional positions (hereinafter referred to as position) currently classified as Investigative Specialist, GS-1801-11. The appellants do not dispute the position's title, but believe it should be classified to a different series and at the GS-12 grade level. The appellants' position is located in the Special Surveillance Group (SSG), [name] Division, Federal Bureau of Investigation (FBI), U.S. Department of Justice, in [city and state]. The appellants perform essentially identical duties and are assigned to the same official position description (PD), number [number]. We have, therefore, processed this case as a group appeal. We have accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.).

Background and general issues

The appellants and another co-worker, Mr. [name], sent an appeal request to OPM, dated October 23, 2006. OPM encountered several obstacles in adjudicating the classification appeal. Following is a brief synopsis of the more significant delays. We requested the agency's administrative report (AAR) on October 30, 2006, but the FBI declined to send the information until OPM officials with access to appeal-related materials obtained a security clearance appropriate for reviewing secret-level documents. In October 2007, a secret clearance was approved for the OPM adjudicator assigned to the appeal. FBI headquarters sent the AAR to their agency's Dallas field office (FO). On January 28, 2008, the OPM adjudicator reviewed, identified, and communicated a number of issues with the AAR to the FBI's point of contact (e.g., supervisors certifying to the accuracy of the wrong PD, missing PD accuracy statements, and the appellants not receiving a copy of the AAR for their review and comment).

On February 14, 2008, the FBI mailed the appellants' AAR to the [appellants' city] FO. The FO Security Officer, after reviewing the AAR, sent the report back to FBI headquarters with the request for documents to be properly marked as secret. However, the AAR was mistakenly sent to the Dallas FO, rather than [appellants' city], where the OPM adjudicator reviewed it on May 21, 2008. This version of the AAR was significantly redacted with pertinent documents missing. The OPM adjudicator communicated these concerns to the FBI contact, and a complete AAR was sent to the appellants and reviewed by them on July 31, 2008. Meanwhile, Mr. [name of one of the original appellants] resigned from the FBI in May 2008, and his appeal was cancelled as he no longer occupied the position under appeal.

The appellants requested an on-site audit, indicating a large volume of classified documents pertinent to their appeal would be available for review on-site. OPM agreed, scheduling an on-site audit with the appellants on September 23 and 24, 2008. Hurricane Ike damaged the [city] FO and the affected employees, including the appellants, were placed on administrative leave from September 15 – 25, 2008. Consequently, the on-site audit was postponed indefinitely. Another on-site audit was scheduled with the appellants for October 29 and 30, 2008, but officials at FBI headquarters directed the trip to be delayed until a date could be coordinated with

the FO's higher-level officials. OPM subsequently conducted an on-site audit on January 16, 2009.

The appeal was also affected by OPM's releasing the Job Family Standard (JFS) for Administrative Work in the Inspection, Investigation, Enforcement, and Compliance Group, 1800, on March 26, 2009. As stipulated in 5 U.S.C. 5107, we must make our decision by comparing the position's duties and responsibilities to current OPM classification standards and guidelines.

Position information

Until very recently, the appellants' official PD was considered a secret classified document. However, in an effort to protect the agency's mission and avoid compromising the appellants' work, our decision avoids referencing specific work examples and other information obtained during the fact-gathering process. The following narrative is based on relevant agency and position information readily available to the public (e.g., on Web sites maintained by the FBI and other public sources) to paint an accurate picture of the appellants' position, rather than on information from the PD's more specific description of the position's duties and typical work methods, processes, and products.

The FBI's mission is to protect the United States from terrorist attacks, foreign intelligence operations, and cyber-based attacks and high-technology crimes; combat public corruption, international and national organized crime, major white-collar crime, and significant violent crime; protect civil rights; support law enforcement and intelligence partners; and upgrade the agency's technology. The appellants' position performs mission work for the [city] Division, which serves as the regional center for the area from the [two states] border to South [one state] and includes the cities of [7 larger cities], and other towns and municipalities. As one of the FBI's 10 largest, the [name] Division covers 40 counties and a population of approximately 16 million.

The Division's intelligence group is tasked with managing, executing, and coordinating intelligence functions for the regional office. Their purpose is to provide support to the Division's ongoing investigations through intelligence collection and analysis. Major career tracts include (1) surveillance specialist work involving conducting fixed surveillance duties supporting foreign counterintelligence and/or counterterrorism investigations, and (2) the investigative specialist work as performed by the appellants' position. The FBI's Web site describes the position as follows:

Investigative Specialists perform investigative support functions through physical surveillance operations. They support Foreign Counterintelligence and/or Counterterrorism investigations, and gather intelligence information of investigative interest. Investigative Specialists are responsible for all aspects of surveillance operations from planning through execution. Their responsibilities also include the collection, analysis and dissemination of intelligence data gathered during surveillance operations.

Two on-line articles are worth noting for their descriptions of the work performed by the appellants' organization. The first, an April 16, 2004, Columbia Broadcasting System news report discusses the FBI's surveillance programs, as follows:

The FBI has two main surveillance programs: the Special Surveillance Group, made up of non-agents who monitor foreign agents, spies and others not targets of a criminal investigation; and the Special Operations Group, made up of agents who deal with dangerous people such as terrorists or organized crime figures.

Both types of surveillance are extremely labor-intensive, requiring personnel to work in shifts for round-the-clock coverage of the target. They also must handle other types of criminal cases, including those involving the Mafia, public corruption and violent street gangs.

The second article, a July 5, 2008, National Public Radio report, titled *FBI Surveillance Team Reveals Tricks of the Trade*, discusses how the SSG organization for the New York City FO operates. An interviewee, name altered to protect the agency's mission, said:

"Everyday you just get a little piece of the puzzle; you don't have to get the puzzle all in one day," Tango says. "It's like something builds up to a very long story, if you will, like a soap opera more so as opposed to a cut-and-dry short story... And you build on it every single day."

The following is another excerpt discussing SSG's surveillance work techniques:

"We usually key on something, whether a bright color she has on or a particular item that might be unique," Bravo says. "We relay that to other team members so they can see her when she comes to the next corner, so they would be able to identify her."

Poppa chimes in. He says the team would set up some sort of "picket surveillance" in the surrounding area.

A picket surveillance would have the team covering all the subway entrances. They would be stationed at various corners. Bravo, who has been doing this for seven years, says the team would radio ahead with information.

SSGs have all kinds of techniques, and they all have catchy names like Picket and Web or Leapfrog. Leapfrog is kind of what it sounds like: SSGs will follow a target up to a certain point, then pass him off to another group up ahead, and then leapfrog to pick up the surveillance father down the street.

The appellants' official PD, number [number], and other material of record furnish much more information about the appellants' duties and responsibilities and how they are performed. The PD is adequate for classification purposes. To help decide this appeal, we conducted separate telephone audits with each appellant, using secure phone lines at the FBI's FOs, on

May 21, 2008; July 2, 2008; July 31, 2008; and with Mr. [name] on April 22, 2008, prior to his resignation. On January 16, 2009, we conducted an on-site audit with the appellants and interviews with the immediate supervisors, who occupy positions classified as Supervisory Investigative Specialist, GS-1801-12. In reaching our classification decision, we carefully considered all of the information gained from these interviews, as well as the written information of record furnished by the appellants and their agency.

Series, title, and standard determination

The appellants disagree with the agency's assignment of the position to the GS-1801 series, which covers all classes of positions supervising, leading, or performing inspection, investigation, enforcement, or compliance work. Their appeal request to OPM, dated October 23, 2006, states:

We are requesting a change from the 1801 Series to a series which better matches the duties we perform and that recognizes the dangers faced in our duties, and provides for the ability to defend oneself, and the general public at large, and yet even the best prevention policies are on occasion insufficient, should a life threatening situation arise.

The 1800 Inspection, Investigation, Enforcement, and Compliance Group includes all classes of positions involving duties which are to advise on, administer, supervise, or perform investigation, inspection, or enforcement work primarily concerned with alleged or suspected offenses against the laws of the United States, or such work primarily concerned with determining compliance with laws and regulations. The appellants' primary duties flow from the FBI's mission and the function of the SSG organization to which they are assigned. Specifically, the appellants' primary duties involve conducting surveillance operations. This entails conducting initial research on the assigned target; analyzing information for its relevance, significance, and applicability to the assignment; and preparing reports on surveillance findings. To perform these duties, the work requires knowledge and skills pertaining to investigative fact-finding and reporting clearly aligned with the 1800 group.

In applying the new GS-1800 JFS to the appellants' position, we found similarities to a number of 1800 occupations. The Border Patrol Enforcement Series, GS-1896, covers work including maintaining international boundaries, traffic and transportation checks, and narcotics interdiction. Although clearly different from the appellants', GS-1896 work requires a similar skill set such as evaluating information rapidly, making timely decisions, taking prompt and appropriate actions under less than optimal conditions, and understanding foreign cultures and customs.

Regardless, the closest fit to the appellants' work is the Criminal Investigation Series, GS-1811. Like the appellants', GS-1811 work specifically requires knowledge of investigative techniques such as surveillance and undercover work, information sources and how to develop them, and electronic countermeasures and the latest technological advances. Despite these similarities, the appellants' position does not require applying the full scope of knowledge and skills, nor do they carry out the duties typical of positions classified in the GS-1811 series. The appellants' work is focused primarily on surveillance work. Unlike the appellants' work, a criminal investigator's

surveillance work is but one piece, a means to an end, to the much larger case management responsibilities involving the full gamut of putting a case together, organizing a case, deciding which leads to follow, developing facts or evidence, conducting interviews and interrogations, keeping adequate records, preparing and presenting a case to the prosecutor, testifying in court, etc. Consequently, the GS-1811 series is not appropriate for the appellants' position.

The GS-1801 series is appropriate when the position (1) is covered by two or more administrative occupations in the GS-1800 group and no one occupation predominates; or (2) is consistent with this group but not covered by an established series in the 1800 group. Since the appellants' position is appropriate in the 1800 occupational group but not in any of the established series, the position is appropriately classified to the GS-1801 series. This series does not have prescribed titles, so the agency may assign a title following the guidance in the *Introduction to the Position Classification Standards*.

The FBI's evaluation statement, dated April 1997, indicated applying the Position Classification Standard (PCS) for the GS-1801 series; the PCS for the Customs Patrol Officer, GS-1884; the Grade Level Guide for Classifying Investigator Positions, GS-1810/1811; and the Primary Standard. The GS-1800 JFS, issued in March 2009, abolished the occupational grade-level criteria applied by the agency. Consequently, we used the grading criteria in the GS-1800 JFS to evaluate the appellants' work.

Grade determination

The GS-1800 JFS uses the Factor Evaluation System format, under which factor levels and accompanying point values are assigned for each of the nine factors. The total is converted to a grade level by using the grade conversion table provided in each JFS. Under this system, each factor-level description demonstrates the minimum characteristics needed to receive credit for the described level. If a position fails to meet the criteria in a factor-level description in any significant aspect, it must be credited at a lower level unless the deficiency is balanced by an equally important aspect which meets a higher level.

Our analysis refrains from citing specific work examples, terminology, equipment used, work processes, etc., other than those particulars obtained or reasonably inferred from information readily available to the public (e.g., FBI's Web sites, Internet articles, and vacancy announcements).

Factor 1, Knowledge Required by the Position

This factor measures the nature and extent of information or facts an employee must understand to do acceptable work (e.g., steps, procedures, rules, policies, etc.) and the nature and extent of skills necessary to apply that knowledge.

At Level 1-7, the position requires knowledge of, and skill in applying, a wide range of complex inspection, investigation, enforcement, and/or compliance principles, concepts, and practices; criminal and case law precedents; administrative and legal procedures; requirements of various legal jurisdictions; a broad range of advanced investigative techniques, research methodologies,

and statistical and financial analyses; and business practices common to regulated entities and parties sufficient to perform duties such as: coordinate investigative activities with Federal, State, and local law enforcement officials; conduct sophisticated surveillance; ensure criminal cases are supported by evidence; develop supportable cases for presentation and/or prosecution; conduct inspections and investigations where significant difficulties are encountered; select, adapt, and apply investigation and negotiation techniques; recognize and resolve discrepancies and/or inconsistencies among findings; obtain and/or reconstruct missing or withheld documents and information; overcome obstacles to gather and interpret evidence; collect and confirm information from a variety of sources and methods such as court records, databases, the Internet, newspapers, periodicals, and financial reports; and prescribe corrective action or remediation in difficult and complex work assignments.

At Level 1-8, the position requires mastery of, and skill in applying, laws and regulations to inspection, investigation, enforcement, and/or compliance work. At this level, work involves developing new techniques, legal processes and approaches, and requires mastery of advanced principles and concepts of a field sufficient to: develop agency-wide policies, procedures, and strategies; provide expert technical advice, guidance, and recommendations to agency management and other senior agents, officers, or inspectors on critical operations; make recommendations which change the interpretation of laws, lead to new case law decisions, or influence the development and modification of significant policies or programs; plan the requirements for, set up, and manage large-scale and/or multi-jurisdictional investigations where methods are subject to changing legal admissibility; collect and analyze operational and strategic intelligence from wide-ranging sources including Federal, State, and local law enforcement agencies, military departments, foreign governments, financial institutions, and technology companies; develop new approaches in response to identified weaknesses and vulnerabilities of ongoing operations; or solve problems demanding technologically advanced methods and innovative approaches.

The knowledge required by the appellants' position meets Level 1-7. As at this level, the appellants exercise skill in collecting, consolidating, evaluating, and analyzing a variety of seemingly unrelated facts, events, and occurrences from their surveillance work. They conduct mobile surveillance, on foot or in a vehicle, to support the Division's foreign counterintelligence or counterterrorism investigations work. The appellants prepare for an operation by reviewing previous surveillance reports on the target, if any, and conducting site surveys which to some extent help overcome the unpredictability of their work. During on-site surveys, they scope out the target's known locations by studying the area for street activity, police activity, restaurant and park locations, car activity, street lights, etc. Comparable to Level 1-7, the appellants' work requires knowledge of a wide range of advanced investigative techniques to conduct sophisticated surveillance. For example, they use various communications, photographic, video, and other surveillance equipment while observing the characteristics, habits, and movements of the subjects and their companions over a period of time.

The knowledge required by the appellants' position does not meet Level 1-8. Their position requires the knowledge of laws, regulations, and court decisions pertaining to surveillance, invasion of privacy, rules of evidence, etc.; ability to gather information under difficult circumstances; ability to communicate verbally and in writing; ability to operate surveillance

equipment; and ability to multitask (e.g., simultaneously drive, communicate with team members, and observe target). The work also requires the knowledge of behaviors, values, rituals, languages, and social customs of foreign countries to determine, for instance, which language is being spoken, prayer times, and holidays. However, the appellants are not applying this wide variety of knowledge and skills for the purpose of developing new techniques or legal processes and approaches, or managing the complex, large-scale, and/or multi-jurisdictional investigations supportive at Level 1-8.

Within their assigned groups, the appellants rotate team leader responsibilities. This work entails making decisions on where to stage team members, whether to stop surveillance if exposed, whether to separate the team to follow multiple subjects, the accuracy and adequacy of surveillance logs and reports, etc. By means of surveillance reports, the appellants make recommendations to case agents which may significantly advance their investigations. For example, the appellants may recommend recruiting a surveillance target with financial difficulties as an informant. While these recommendations may significantly impact the agent's case, their sections of the cases themselves are substantially more limited than the large-scale and/or multi-jurisdictional investigations managed at Level 1-8. The appellants provide advice on only a discrete segment of the overall case and how it is conducted. The impact of their surveillance reports is not equivalent to making decisions or recommendations changing the interpretation of laws, influencing the development and modification of significant policies or programs, or any equivalent outcome to the extent described at Level 1-8.

Level 1-7 is credited for 1,250 points.

Factor 2, Supervisory Controls

This factor covers the nature and extent of direct or indirect controls exercised by the supervisor, the employee's responsibility, and the review of completed work.

At Level 2-4, the supervisor outlines overall objectives and available resources; discusses projects and timeframes with the employee; and determines the parameters of the employee's responsibility. The employee determines the most appropriate avenues to pursue; decides the practices and methods to apply in all phases of assignments including the approach to take, and the depth and intensity needed; interprets policy and regulations and resolves most conflicts as they arise; coordinates projects or cases with others as necessary; and keeps the supervisor informed of progress and potentially controversial matters. The supervisor does not normally review the methods used but reviews completed work for soundness of overall approach; effectiveness in producing results; feasibility of recommendations; and adherence to requirements.

At Level 2-5, the supervisor provides general administrative direction for assignments in terms of broad program objectives and agency resources. The employee is responsible for a significant program, project, or investigation; independently plans, organizes, and carries out the work to be done; and analyzes objectives or interprets policies promulgated by senior authorities and determines their effect on the agency's programs. The supervisor reviews the work for potential impact on broad agency policy objectives and program goals; usually evaluates the employee's

recommendations for new systems, methods, projects, or program emphasis in light of the availability of funds and personnel, equipment capabilities, and agency priorities; and normally accepts work as technically authoritative and rarely makes changes to the employee's work.

The appellants' supervisory controls meet Level 2-4. Like this level, the appellants are responsible for independently planning and carrying out surveillance operations, determining the approach to be taken and methodology to be used. The immediate supervisor, case agent, or other higher-level official is responsible for assigning work, setting overall objectives, determining resources available, etc. The appellants' work receives the type and extent of review typical of Level 2-4.

The appellants' supervisory controls do not meet Level 2-5. This level reflects work performed with only administrative supervision under a full delegation of technical authority. This level of authority is typically accompanied by exclusive responsibility for a significant program or function. In contrast, the appellants' position is neither delegated full technical authority nor responsible for a significant program. The immediate supervisor, case agent, or other higher-level official provides a summary of case goals, objectives, mission tasking, surveillance priorities, and basic information on the subject. The appellants' assignments and the directions provided are more specific (e.g., conduct surveillance on John Doe for one week) than at Level 2-5. The appellants typically complete two written reports for each surveillance operation; one is a log of the basic facts (e.g., subject enters store at 9:00 a.m.) and the other is a narrative of subjective findings (e.g., subject acted nervous) and recommendations (e.g., focus surveillance on nighttime activities). The immediate supervisor or other higher-level official maintains program control and guidance, reviewing the work products for clarity, brevity, spelling, and grammar. This level of review is contrary to Level 2-5, where work is reviewed from the standpoint of its potential impact on broad agency policy objectives.

Level 2-4 is credited for 450 points.

Factor 3, Guidelines

This factor covers the nature of guidelines and the judgment employees need to apply them.

At Level 3-3, employees use a variety of guidelines, manuals, and standard reference materials; however, they are not completely applicable to the work or have gaps in specificity. The employee uses judgment in interpreting, adapting, applying, and deviating from guidelines, analyzing the results of such adaptations and recommending changes in established methods and procedures.

At Level 3-4, employees use administrative policies and precedents which are applicable but stated in general terms. Guidelines for performing the work are scarce or of limited use. The employee uses initiative and resourcefulness in deviating from established methods to address specific issues or problems; identify and research trends and patterns; develop new methods and criteria; or propose new policies and practices.

Guidelines applicable to the appellants' position meet Level 3-3. Their guidelines include a wide range of established regulations, precedents, court decisions, and implementing procedures applicable to surveillance work, rules of evidence, trespassing issues, privacy, ethics, etc. As part of their formal training, the appellants completed and received training manuals from the mandatory six-week course on topics including, but not limited to, tactical emergency vehicle operation, defensive driving, map reading, photography, and practical exercises. They interpret, adapt, and apply these guidelines to the specifics of each case at hand. Other guidelines include standard operating procedures covering mostly administrative topics such as completing travel vouchers, writing surveillance logs and reports, uploading reports into the system, and vehicle maintenance.

Guidelines applicable to the appellants' position do not meet Level 3-4. Unlike Level 3-4, the appellants' guidelines are more detailed and applicable to specific aspects of their work than the guidelines envisioned at the higher level, which are described as scarce, vague, or of limited use.

Level 3-3 is credited for 275 points.

Factor 4, Complexity

This factor covers the nature, number, variety, and intricacy of tasks, steps, processes, or methods in the work performed; the difficulty in identifying what needs to be done; and the difficulty and originality involved in performing the work.

At Level 4-4, work consists of a variety of assignments involving many different and unrelated procedures to resolve situations and problems. The employee analyzes data from a variety of sources, considering the impact, interrelationships, and complex patterns; confirms the accuracy and authenticity of information, and resolves issues of contradictory, missing, or inconclusive data; or resolves unusually complex jurisdictional issues through extensive coordination efforts. The employee exercises judgment in planning and prioritizing the sequence, direction, and progress of the work. The employee must evaluate and interpret information from various sources and vary the approach to each assignment by adapting established practices and precedents.

At Level 4-5, work consists of the most significant and complex issues in areas of changing and/or conflicting policy or program requirements. The employee makes decisions and recommendations in situations complicated by uncertainty in approach, methodology, and/or interpretation due to extreme sensitivity (e.g., subjects of an investigation may be well-recognized, high profile individuals or organizations); the existence of few or no precedents to follow; significant unresolved legal or regulatory issues; intense and widespread public, media, or congressional interest; emerging and innovative methods and patterns of non-compliant or criminal activity; sophistication of networks involved; and/or issues of multi-jurisdictional authority. The employee must develop innovative strategies, approaches, or methods to serve as precedents or models for similar situations in the future.

The appellants' position meets Level 4-4. Similar to this level, the appellants' work involves different and unrelated procedures to resolve situations and problems. For example, surveillance

requests generally provide minimal information such as the subject's name, date of birth, addresses, and picture. The appellants, as described at Level 4-4, plan the operation by analyzing data from different sources to verify or obtain further information on the subject, e.g., they verify home and work addresses, study maps, conduct site surveys to pinpoint the best observation point and optimal angles from different locations, etc. Assignments dictate the tactics to be used, so the appellants must be flexible in adapting and modifying their approaches based on quickly assessing the ever-changing surveillance setting. Mobile surveillance is more unpredictable than fixed surveillance and requires resourcefulness and skill in blending into the environment. For example, after observing the subject with a companion, the appellants will quickly modify tactics by documenting information on the companion's physical appearance for possible identification, deciding whether to follow the unidentified individual, and determining which SSG team member will follow the person after separating from the target.

The appellants' position does not meet Level 4-5. Their position is constricted by the SSG's work control structure; they are assigned specific surveillance operations with overall responsibility for the case, its objectives, and boundaries controlled elsewhere by the appellants' immediate supervisors, case agents, or other higher-level officials. Within these preset parameters, the appellants are responsible for exercising judgment in analyzing information from surveillance observations to determine its relevance, significance, and applicability to the investigation. However, this work does not allow them to develop innovative strategies, approaches, or methods to serve as precedents or models for future use for the broader criminal case as expected at Level 4-5.

Level 4-4 is credited for 225 points.

Factor 5, Scope and Effect

This factor measures the relationship between the nature of the work and the effect of work products or services inside and outside the organization.

At Level 5-4, work involves planning and conducting multi-agency, multi-state, or international studies, reviews, or investigations; developing operational criteria, plans, and bulletins; or investigating or analyzing a variety of unusual situations. Work efforts result in the disruption of large-scale organized illegal activity and/or in changes to business practices or procedures promoting the health, safety, or fair treatment of a large group or whole class of people. Work may also result in improved planning and operational aspects of agency programs.

At Level 5-5, work involves planning, organizing, and performing assignments addressing the most complex problems or initiatives crossing a range of program areas. Work efforts result in the detection and resolution of threats or challenges to the well-being of substantial numbers of people, cause changes in business practices of large important institutions, or serve as the basis for changes in the direction of major agency initiatives or in longstanding agency practices.

The appellants' position meets Level 5-4. Like this level, their position is responsible for planning, executing, coordinating, and documenting surveillance operations which are unpredictable and require dealing with constantly changing conditions. Their work directly

impacts the Division's investigations. The appellants document their findings in surveillance logs and reports, which are provided directly to case agents making decisions on the conduct and outcome of the Division's investigations. Surveillance reports are also shared with other divisions and governmental agencies, as appropriate, to advance round-the-clock collaborative information sharing.

The appellants' position does not meet Level 5-5. Their work assignments do not involve dealing with the most complex problems or initiatives crossing a range of program areas. The JFS provides an illustration for a criminal investigator position credited at Level 5-5, where the work involves coordinating investigations including surveillance aircraft and undercover agents to gather evidence on illegal activity. In this illustration, surveillance work is one of many responsibilities which also include acting on tips received from informants; reviewing property records to identify money laundering assets; tracking large cash deposits to launder money through multiple countries and financial institutions using sources developed in the commercial banking industry; and coordinating with other Federal, State, and foreign law enforcement officers for arrest and prosecution. Any of the duties, alone, would not warrant crediting at Level 5-5, where work involves more than a single program area. Rather, it is the combination of duties and responsibilities which supports crediting the illustrated position at Level 5-5.

Level 5-4 is credited for 225 points.

Factors 6 and 7, Personal Contacts and Purpose of Contacts

These factors measure the contact with persons not in the supervisory chain and the reasons for the communication and the environment in which it takes place. The factors are interdependent; the contacts selected for crediting Factor 6 must be used to evaluate Factor 7.

Personal Contacts

At Level 3, contacts are with individuals or groups from outside the agency in moderately unstructured settings and on a non-routine basis. The extent of each contact is different. Typical contacts are with investigators from other agencies, district attorneys, witnesses, informants, claimants, public interest groups, and the news media.

At Level 4, contacts are with high-ranking officials outside the agency at national or international levels in highly unstructured settings (e.g., officials may be relatively inaccessible or each contact may be conducted under different ground rules). Typical contacts are with members of Congress, leading representatives of foreign governments, presidents of large national or international firms and organizations, State governors, mayors of large cities, or nationally recognized representatives of the news media.

The appellants' regular and recurring contacts include the general public; special agents, language specialists, intelligence analysts, and other FBI personnel; and Federal, State, and local law enforcement personnel. The contacts are established on a non-routine basis and may take place in a variety of settings. This meets Level 3.

The appellants' contacts do not meet Level 4. They are not regularly in contact with members of Congress, high-level foreign government representatives, State governors, or equivalent contacts in highly unstructured settings as expected at Level 4.

Purpose of Contacts

At Level c, the contacts' purpose is to influence, persuade, interrogate, or control people or groups. The people contacted may be fearful, skeptical, uncooperative, or dangerous. The employee must be skilled at approaching the individual or group to obtain the desired effect, such as gaining compliance with established policies and regulations by persuasion or negotiation, or gaining information by establishing rapport with a suspicious informant.

At Level d, the contacts' purpose is to justify, defend, negotiate, or settle matters involving significant or controversial issues and/or problems. Work usually involves active participation in conferences, meetings, hearings, or presentations about problems or issues of considerable consequence or importance. People contacted typically have diverse viewpoints, goals, or objectives which require the employee to achieve a common understanding of the problem and a satisfactory solution by convincing them, arriving at a compromise, or developing suitable alternatives.

The purpose of the appellants' contacts meets Level c. As at this level, the appellants regularly deal with individuals who may be uncooperative, evasive, hostile, afraid, and/or dangerous. They must be extremely skilled at selecting the methods and techniques used to collect information from people. The appellants, in dealing with law enforcement officials while out on surveillance operations, must be extremely skilled at responding to questions and providing plausible explanations so as not to arouse suspicion. In addition, they must be familiar with techniques used by individuals to commit various types of crimes, thereby increasing their ability to anticipate the actions of their surveillance subjects. If, for example, targets are observed shopping in an electronics store, the appellants carefully approach and interview salespeople, who may be reluctant to provide information, to identify the potentially suspicious purchases made by the subject.

The purpose of the appellants' contacts does not meet Level d. Unlike this level, their work does not require justifying, defending, negotiating, or settling matters involving significant or controversial issues. These responsibilities are vested with other positions in their organization.

The combined factors are credited at Level 3c and credited 180 points.

Factor 8, Physical Demands

This factor covers the requirements and physical demands placed on the employee by the work assignment. This includes physical characteristics and abilities and the physical exertion involved in the work.

Level 8-3, the highest level in the JFS, describes work requiring considerable and strenuous physical exertion such as long periods of standing, walking, and running over rough, rocky, uneven, and hazardous terrain; crawling in restrictive areas; climbing fences, walls, and freight

train ladders; and driving all-terrain vehicles cross country and over rough terrain. Employees must be prepared to protect themselves or others from physical attacks at any time and without warning.

The appellants' position meets but does not exceed Level 8-3. They are responsible for surreptitiously observing the activities of an assigned subject by following them, on foot or in a vehicle, for long periods of time. Whatever the situation dictates, the work, as at Level 8-3, may require prolonged periods of standing, walking, running, sitting confined in their vehicles, or driving on different types of terrain and conditions (e.g., day or night, inclement weather, extreme temperatures, etc.). The appellants must be in good physical condition to work under demanding circumstances. Nighttime surveillance also requires making acute visual observations with very little light. They must be able to defend themselves or others from physical attacks associated with their line of work.

Level 8-3 is credited for 50 points.

Factor 9, Work Environment

This factor considers the discomfort and risk of danger in the employee's physical surroundings and the safety precautions required.

Level 9-3, the highest level in the JFS, describes work with high risk of exposure to potentially dangerous and stressful situations such as high-speed vehicle pursuits or boarding moving trains and vessels; involvement in physical altercations or the use of lethal weapons while attempting to arrest suspects; assignments alternating between extremely cold, mountainous terrain and extremely hot, arid deserts; or risk of falling from rooftops, or exposure to fires, explosions, and noxious gases.

The appellants' position meets but does not exceed Level 9-3. Similar to this level, the appellants' work involves high risk of exposure to a variety of potentially dangerous situations or unusual environmental stresses. Most of their time is spent in the field, performing clandestine surveillance during all hours of the day and night. The targets, by frequenting high crime areas, expose the unarmed appellants to potentially armed and dangerous aggressors from neighborhood inhabitants or surveillance subjects if the operation is exposed. The appellants' work requires driving in dangerous conditions (e.g., in high speeds, heavy traffic, nighttime, or inclement weather) while following their targets. [FO city] is located approximately 50 miles from the Gulf of Mexico, contributing to the very humid subtropical climate. The appellants contend with this and regular 100-plus degree temperatures while following targets on foot or in their vehicles for prolonged periods of time. They work long hours and adapt their schedules on very short notices when situations needing their attention arise.

Level 9-3 is credited for 50 points.

Summary

<i>Factor</i>	<i>Level</i>	<i>Points</i>
1. Knowledge Required by the Position	1-7	1250
2. Supervisory Controls	2-4	450
3. Guidelines	3-3	275
4. Complexity	4-4	225
5. Scope and Effect	5-4	225
6. & 7. Personal Contacts and Purpose of Contacts	3-c	180
8. Physical Demands	8-3	50
9. Work Environment	9-3	<u>50</u>
<i>Total</i>		2,705

A total of 2,705 points falls within the GS-11 range (2,355 to 2,750) on the JFS's grade conversion table.

Decision

The appellants' position is properly classified as GS-1801-11. The title is at the agency's discretion.