

**U.S. Office of Personnel Management
Division for Human Capital Leadership & Merit System Accountability
Classification Appeals Program**

Chicago Field Services Group
230 S. Dearborn Street, DPN-30-6
Chicago, IL 60604-1687

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

Appellant: [appellant]

Agency classification: Customs Mail Specialist
GS-1897-9

Organization: Foreign Mail Branch/Entry Branch
Commercial Division
Port Operations
[city] Field Operations
Customs and Border Protection
Department of Homeland Security
[city and state]

OPM decision: (title at agency discretion)
GS-1897-9

OPM decision number: C-1897-09-01

/s/ Marta Brito Pérez

Marta Brito Pérez
Associate Director
Human Capital Leadership
and Merit System Accountability

May 12, 2005
Date

As provided in section 511.612 of title 5, Code of Federal Regulations (CFR), 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:

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Introduction

On May 12, 2004, the Chicago Field Services Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [appellant]. The appellant's position is currently classified as Customs Mail Specialist, GS-1897-9. He believes his position should be classified as Mail Specialist Team Leader, GS-1897-11. The appellant works in the Foreign Mail/Entry Branch, Commercial Division, Port Operations, [location] Field Operations, Customs and Border Protection (CBP), Department of Homeland Security (DHS), in [city and state]. On May 7, 2004, the appellant designated [union steward] of the National Treasury Employees Union (NTEU), Chapter [XXX], to represent him. We received the original agency administrative report (AAR) on September 13, 2004, and the complete AAR on November 10, 2004. This appeal was accepted and decided under the provisions of section 5112 of title 5, United States Code (U.S.C.).

To help decide the appeal, a representative of the Chicago Field Services Group conducted a telephone audit with the appellant, on December 2, 2004, and a telephone interview with his first and second line supervisors on December 7, 2004. We interviewed the second line supervisor about the relationship between the appellant's work in the Mail Branch and the work performed in the Entry Branch and the Commodity Team Branches because the immediate supervisor was new to the position. We also contacted local and agency headquarters officials for additional information about Customs international mail processing operations and related matters. In reaching our decision, we have reviewed all information furnished by the appellant and his agency, including his official Position Description (PD), which we incorporate by reference into this decision.

General issues

The appellant is assigned to PD number [XXXXXX]. The appellant's supervisors certified the accuracy of the PD, but the appellant did not. The appellant believes he has assumed the duties performed by the former Mail Branch Chief whose position was classified as Mail Specialist Team Leader, GS-1897-11. He refers to his request on July 30, 2002, and his supervisor's request on November 27, 2002, for desk audits to review the position for promotion based on a proposed PD. However, the classification of a position to which an employee is not officially assigned is also neither appealable nor reviewable (5 CFR 511.607).

A PD is the official record of the major duties and responsibilities assigned to a position by a responsible agency official, i.e., a person with authority to assign work to a position. A position is the duties and responsibilities that make up the work performed by an employee. Classification appeal regulations permit OPM to investigate or audit a position and decide an appeal based on the duties assigned by management and performed by the employee. We classify a real operating position, and not simply the PD. Therefore, this decision is based on the actual work assigned to and performed by the appellant.

The appellant says that similar mail processing work in [city and state], is performed by GS-11 CBP Officers (CBPO's). Implicit in the appellant's rationale is a concern that his position is classified inconsistently with other positions. By law, we must classify positions solely by

comparing current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). Since the comparison to standards is the exclusive method for classifying positions, we cannot compare the appellant's position to others as a basis for deciding the appeal.

Like OPM, the appellant's agency must classify positions based on comparison to OPM standards and guidelines. Section 511.612 of 5 CFR requires that agencies review their own classification decisions for identical, similar, or related positions to ensure consistency with OPM certificates. Thus, the agency has the primary responsibility for insuring that its positions are classified consistently with OPM appeal decisions. If the appellant considers his position so similar as to warrant the same classification, he may pursue the matter by writing to his agency headquarters Human Resources (HR) office. In doing so, they should specify the precise organizational location, classification, duties, and responsibilities of the positions in question. If the positions are found to be basically the same, the agency must correct their classification to be consistent with this appeal decision. Otherwise, the agency should explain the differences between his position and the others.

The appellant also makes various other statements about his agency and its evaluation of his position. In adjudicating this appeal, our only concern is to make our own independent decision based on the proper classification of the position. Because our decision sets aside all previous agency decisions, the appellant's concerns regarding his agency's classification review process are not germane to this decision.

The appellant indicates that one of the biggest demands of the position involves the increase in the volume of work for which he is responsible. However, the issue of volume of work is listed as a factor which cannot be considered in determining the grade of a position (*The Classifier's Handbook*, chapter 5).

Position Information

The official PD states that the appellant's position is in the Foreign Mail Branch, Classification and Value Division, Port of [location], [location] District, U.S. Customs Service. The SF-50 of record, however, shows that the position reports to the Inspection Division, Port Operations, [location] Field Operations, CBP, DHS, in [city and state]. This change was made when the appellant's position was transferred from the U.S. Customs Service into the Department of Homeland Security on January 24, 2003. In addition, the record shows that while the appellant's position is organizationally under the Inspection Division, a management decision was made in 2003 to have the Mail Branch report administratively to the Entry Branch, whose Chief is a Supervisory Entry Specialist, GS-1894-13, who reports to the Director of the Commercial Division (formerly called the Classification and Value Division). The appellant was assigned to and reports complex entry matters, problems, or policy issues to his first line supervisor, a Supervisory Entry Specialist GS-1894-12.

The U.S. Postal Service delivers international mail from [across the border] to the CBP foreign mail facility for examination and processing for entry into the United States. The appellant spends 50 per cent of his time overseeing and performing the work of the Mail Branch. The mail is routinely processed by lower-graded employees, seasonal, or detailed employees as they work

the parcels of foreign mail by running packages through the X-ray machine on the primary line to determine if the merchandise needs additional examination. He is responsible for assigning daily operational work. This includes providing guidance and on-the-job training (OJT) to two Custom Aids, GS-1897-6, an Entry Specialist, GS-1894-11, two or three newly hired CBP Officers (CBPOs), GS-1895-5, and seasonal employees. However, neither the Entry Specialist nor the CBPOs is permanently assigned to the Mail Branch. The Entry Specialist is informally detailed to the mail facility pending resolution of an administrative matter. In addition, the trainee CBPOs is given an informal OJT rotation through the mail unit for two or three days a week for approximately two weeks until they can attend training classes at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. The seasonal employees only work during the peak December holiday season.

The appellant spends 25 per cent of his time in operational planning where he serves as point of contact (POC) with agency management, the Postal Service, importers, and the general public for matters dealing with international mail. He schedules maintenance and repair of equipment and orders supplies necessary to keep the main mail line open. The appellant is also responsible for preparing administrative reports once a month from various sources (Radiation Identification Isotope Identifier, Mail Entry System, Gamma Meter and an X-Ray machine) which are used to assist management in projecting staff for this geographic location during December when seasonal employees are hired to assist the staff examine and move the mail during the holiday rush.

The appellant spends 25 per cent of his time examining the contents of foreign mail parcels (usually 20-30 a day, but up to 50-60 during the holiday season) set aside from the main mail line for his review to determine admissibility, condition, and whether the merchandise is dutiable or free of duty. He performs these secondary examinations by opening them or running packages through the X-ray machine, and then assessing duty. This involves determining and reporting violations of the narcotics laws, Foreign Assets Control regulations, trademark and copyright laws, Customs and other marking requirements of the United States Department of Agriculture (USDA) and Federal Drug Administration (FDA) regulations, the Gun Control Act, the Gold Reserve Act, insuring compliance with laws and regulations of other agencies, and determining whether laboratory testing/analysis is necessary. He responds to protest complaints, telephonic informational requests from agencies and the general public, and he completes incident reports electronically, using Search and Seizure (SAS) Form 151, for legal and procedural requirements, and ensures that each case is routed to the proper destination within the time frames required by law. The appellant assesses unlimited duty in personal cases, up to \$2,000 in commercial cases, and \$250 in textile cases. He also serves as foreign mail liaison to other Federal agencies and management within CBP. The Mail Branch also receives protest and/or complaints from various stations in the sector covering such offenses as illegal commercial entry, false entry, document fraud, contraband, and drug smuggling. He handles approximately 5-10 calls a day from importers and the public concerning protests. He answers local protest letters during slack periods. He also handles 5-10 potentially hazardous waste situations (animal carcasses, human blood, etc.) each month assessing what is or is not considered hazardous material.

Series, title, and standard determination

The appellant believes his position should be classified at a higher grade and as a “lead” because he oversees the processing of the main mail line and provides on-the-job cross-training to two lower-graded employees, an Entry Specialist GS-1894-11 detailed to the branch to work mail, members of each newly hired class of CBPOs, and temporary employees hired during the holiday season to help with the rush of mail.

To be classified as a “lead,” the General Schedule Leader Grade Evaluation Guide (GSLGEG) states that at a minimum, the lead must lead three or more employees on a “regular and recurring basis.” Since responsibility for work assignments involving only one or two other persons is not sufficient to warrant being classified as “leader”, the Guide cannot be used to classify his position because in this case the detailed employee and the CBPOs are not officially assigned to the Mail Branch on a continuing basis, i.e., they are officially assigned to other organizations. The seasonal employees are short term and do not change the continuing functions of the appellant’s position, which is to lead the work of two employees assigned on a permanent basis. This situation meets Exclusion Number 3 under Part I of the GSLGEG. This exclusion covers “Employees who are responsible for work assignments requiring only one or two other workers. The positions of such employees have as their primary responsibility personal work accomplishment.”

Since the appellant’s secondary inspection and other more complex personally performed work requires specialized subject-matter knowledge and skills that are materially different than that required by his subordinates and the other people who work for him on a rotational or other temporary basis, the appellant’s personally performed work will determine the proper grade level of this position. *The Introduction to the Position Classification Standards* states that when the highest level of work is performed less than a majority of time, it may be grade controlling only if, as we have determined in this case, the work is officially assigned to the position on a regular and continuing basis, occupies at least 25 percent of the appellant's time, and requires knowledge and skills that would be needed in recruiting for the position if it became vacant.

The agency assigned the appellant’s position to the Custom Aid Series, GS-1897, titling it Custom Mail Specialist, and the appellant agrees. The GS-1897 series covers all classes of positions the duties of which are to supervise or perform work that is incidental or subordinate to entry, liquidating, appraising, examining, marine officer, or other technical customs work. We find this series determination appropriate. Exclusion Number 1 in the Import Specialist Series, GS-1889, position classification standard (PCS) stipulates that positions involved primarily in accepting and assessing customs duties on merchandise imported via international mail and entered informally should be classified in the Customs Aid Series, GS-1897. While the organization title of the appellant’s position has historically been Customs Aid or Customs Mail Specialist, there is only a flysheet published for the GS-1897 series with no official title prescribed, so the title of the position is left to the agency’s discretion

There are no published grade level criteria for the 1897 series. In such cases, the *Classifier’s Handbook* allows using a closely-related standard for making cross-series comparisons. The

1889 PCS again provides guidance, this time in exclusion 3 which applies here “where positions involved primarily in either (a) the final settlement of duties and taxes due on the importation of merchandise requiring lengthy or extensive arithmetic computations, acquisition of warehousing and merchandise manipulation documents, or reference to superseded tariff provisions and rates; or (b) the calculation of allowable drawback to be paid or tax-paid imported merchandise or substituted domestic merchandise requiring documentary tracking of imported products and their quantities from importation, through the manufacturing process, to ultimate exportation as part of finished articles or products. Such positions are classified in the Customs Entry and Liquidating Series, GS-1894.” Based on this occupational information, and the related and similar functions performed by the appellant, we find Part I of the GS-1894 PCS to be the best match for making a cross-series comparison evaluation of the appellant’s position.

Grade determination

The secondary examination of merchandise performed by the appellant is substantially more complex and demanding than the primary review made by the Customs Aids in processing the mail on the main x-ray line. The appellant’s personally performed work is more closely related to the GS-1894 work performed by entry officers on individual formal entries. However, the key difference between Mail Specialists, GS-1897, like the appellant, and Entry Officers, GS-1894, is that a Mail Specialist is involved primarily in accepting and assessing customs duties on merchandise imported via international mail and entered **informally**, while an entry officer reviews **formal** entries and is involved primarily in the final settlement of duties and taxes due on the importation of merchandise requiring lengthy or extensive arithmetic computations. Furthermore, the Mail Specialist examines contents of foreign mail parcels to determine admissibility, condition, and whether the merchandise is dutiable or free of duty. Although this work involves insuring compliance with laws and regulations of Customs and other agencies, it is clearly less complex than work performed by an entry officer who must pass upon a full range of formal entries, with responsibility for estimating the amount of customs duties and applicable internal revenue taxes to be deposited and the amount of the bond to be furnished by the importer, pending final liquidation of the entry. Therefore, our application of the GS-1894 PCS to the appellant’s work must consider this difference.

The basic duties of all entry officer positions are described in Part I of the Explanatory Statement in the 1894 PCS. In addition, the benchmarks provide narrative descriptions of entry work at the stated grade levels. In the 1894 PCS, two work situations exist at all grade levels up through the GS-9 grade level of the narrative benchmarks. Situation A positions are located at ports which, because of their geographical location, serve limited industrial and/or commercial areas and receive limited varieties of imports. Situation B positions are located at ports which, because of their strategic geographical location, regularly receive a great variety of importations from many countries and from numerous sources (manufacturers, producers, and sellers) within those countries, and serve large industrial and commercial areas as import gateways. While the Port of [location] is considered a major port, the majority of mail received is from [location], so Situation B is not met because the types of importations are limited simply by definition. Therefore, we will use the Situation A descriptions of work from the benchmarks to evaluate the work of the appellant’s position in the Mail Branch.

All entry officers in the 1894 series (with the exception of those occupying trainee positions) have essentially the same nature, scope, and degree of authority and responsibility for decisions and conclusions. The difficulty and complexity of decisions involved in the exercise of this authority and responsibility, however, vary among the positions at different grade levels in relation to the technical determinations required by the nature and complexity of the entry and classification problems encountered. Generally, the entry officer's acceptance or rejection of entries and his determination as to the right to make entry are final for entry purposes, unless protested, i.e., a request for disposition or analysis of claims is made by importers and their representatives against the decision of an Entry Officer/Customs Mail Specialist. For every entry officer, the initial classification of imported merchandise (as distinguished from advisory classification and statutory classification) is accomplished at the time the entry is presented. Determination of the initial classification of imported merchandise requires a general technical knowledge of grade, quality, construction, condition, and use of merchandise, together with the method of manufacture or production, as well as thorough knowledge of the Tariff Act of 1930, as amended, the Customs Simplification Acts, and applicable administrative and court decisions governing the importation of merchandise. On the basis of these determinations, customs entry officers either accept or reject each entry.

Our analysis of the appellant's position follows.

Factor 1, Nature and purpose of work

This factor measures the nature and extent of information or facts that a worker must understand to do acceptable work, such as the steps, procedures, practices, rules, policies, theories, principles, and concepts, and the nature and extent of the skills needed to apply this knowledge.

At the GS-9 level, the entry officer in this kind of position completes the entire entry process on all entries received over the counter, but is expected to request advice and help from an entry officer in higher grade who reviews the work carefully and assumes responsibility for the more difficult entries. While the employee in this type of position performs the same kind of duties as other entry officers in higher grades, his duties are less difficult and responsible since he receives more supervision and, consequently, does not have as great a degree of accountability for independent judgment or decision.

At the GS-10 level, (1) importations are regularly received from at least several highly industrialized producing countries, (2) many of the countries from which importations are received have continuing fluctuations in currency, multiple currencies, or involved changes in tax structures, (3) importations are received from a large number of sources (manufacturers, producers, or sellers) within those countries, and (4) an extensive variety of merchandise, items, grades, and qualities is dealt with. The work is characterized by frequent occurrence of complex problems requiring extensive application of various entry and classification principles and techniques to new situations and the development of new technical knowledge.

The GS-10 grade level is not met. Illustrative of work described in the GS-9 benchmark, the appellant determines the initial classification of imported merchandise and this requires a general technical knowledge of grade, quality, construction, condition, and use of merchandise

requirements. The appellant's personally performed work requires the appellant to understand the method of manufacture and production, as well as a thorough knowledge of the Tariff Act of 1930, as amended, the Customs Simplification Acts, pertinent trade agreements and treaties, and the legal application of present classification definitions. This extensive knowledge is applied in preparing documentation for the review of a protest, which is a request of a disposition or analysis of claims made by importers and their representatives against an Entry Officer/Customs Mail Specialist's decision. Similar to work described by Situation A in the GS-9 benchmark, the appellant handles moderately complex problems requiring application of various entry and classification principles by examining contents of foreign mail parcels to determine admissibility, condition, and whether the merchandise is dutiable or free of duty. While the incumbent in this type of position performs the same kind of duties as other entry officers in higher grades, his duties are less difficult because they involve informal entries. Even though the appellant works with less supervision and has a greater degree of accountability for independent judgment as described here, his accountability is restricted by the very nature of the routine type of merchandise entered through the mail from a single country such as [location]. This closely matches the description of work in Situation A, and therefore, this factor is credited at the GS-9 level.

Factor 2, Nature of supervisory control exercised over the work

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 the GS-9 level, the entry officer continues to receive advice and instruction from his supervisor concerning applicable laws, regulations, and precedents. The work is reviewed closely to insure proper application of methods and techniques and correct interpretation of guides. As the Entry Officer demonstrates increased competence, this review is lessened, although the officer is required to discuss new and unusual problems with the supervisor or with other entry officers in higher grade.

At the GS-10 level, entry officers work under the general supervision of another entry officer who makes an occasional spot check of their work. The entry officers discuss with their supervisors only the more difficult, complex, doubtful, or novel problems, or potentially precedent-setting interpretations. In addition, the supervisor provides advice on changes in regulations, statutes, procedures, and policies.

The GS-10 level is not met. Descriptive of entry work at the GS-9 level, the appellant works independently based on his proven competence. The appellant's personally performed work includes the full range of mail specialist duties with responsibility for making final decisions concerning taxes and duties. His actions and decisions are not reviewed except if protested. This is in contrast to the GS-10 level entry officer who must independently handle a wide range of complex formal entries requiring difficult calculations for determining the proper duties and taxes due. The appellant is not required to handle such complex formal entries. While the appellant exhibits exceptional independence and responsibility, his authority is limited by the very nature of his work which is restricted by the routine informal entries encountered on the mail line. He does not and cannot perform duties described at the GS-10 level of work because it

is outside the scope of his duties and responsibilities. He also works under general supervision of a Supervisory Entry Specialist GS-1894-12. This factor matches the Situation A level described in the GS-9 benchmark. Therefore, this factor is classified at the GS-9 level.

Factor 3, Nature of available guidelines

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

In both Situations A and B, the work is governed by the basic guidelines described under General Criteria in the Explanatory Statement.

In Situation A at the GS-9 level, the entry officer must keep informed of frequent changes, recognize the need for research, and quickly locate applicable precedents, decisions, and orders. Judgment and resourcefulness are required in applying and interpreting various guides in the light of facts presented in such diverse problems as those concerned with legality of documents; acceptability of signatures; sufficiency of bonds; designation of packages to be examined; and classification of merchandise which involves questions of adequacy of the description of merchandise given and the correctness of the cited paragraph and rate, particularly when more than one Tariff Act paragraph seems applicable.

At GS-10 level, the work of the entry officer is governed by the basic guidelines described under General Criteria of the Explanatory Statement where the proportionately higher incidence of entry and classification problems exist and the application and interpretation of appropriate guides are more difficult and require a high degree of knowledge, judgment, and resourcefulness.

GS-10 level is not met. The appellant's position closely matches the GS-9 level Situation benchmark. While the appellant's personally performed work requires him to possess an extensive knowledge of the Tariff Act of 1930, as amended; Customs Regulations, Customs Manual, Customs circulars and rulings, Treasury Decisions, Tariff Schedules of the United States Annotated, applicable regulations of other government agencies, currency quotations of the Federal Reserve Bank, reference books, office records and files, and listings of prohibited, restricted, and other special categories of merchandise, this does not exceed the guidelines described by that GS-9 benchmark. Rather, he interprets guides in terms of the merchandise examined, i.e., merchandise from a limited market such as [across the border] which is illustrative of work at the GS-9 level. Therefore, this factor is credited at the GS-9 level.

Factor 4, Nature and purpose of personal work contacts

This factor covers the nature and purpose of personal contacts ranging from factual exchanges of information to situations involving significant or controversial issues and differing viewpoints, goals, and objectives. This involves face-to-face contacts and telephone and radio dialogue with persons not in the supervisory chain.

At the GS-9 level, in both Situations A and B, the incumbent has continual contacts with importers, and with brokers and other importers' representatives, to secure and furnish information and to explain customs requirements.

At the GS-10 level, the entry officer deals directly with importers, brokers, and the importing public, advising them on appropriate forms of entry, and explaining or interpreting legal and procedural requirements.

The GS-10 is not met. Situation A does not exist at grade 10. As at the GS-9 level, the appellant's contacts are with addressees and importers, representatives of the U.S. Postal Service, other governmental agencies, and employees in the mail facility and other offices in Customs. He provides assistance and informational interpretation to the importing public on Customs requirements relative to the limited mail importations from [across the border]. Therefore, this factor is classified at the GS-9 level.

Factor 5, Nature and scope of conclusions and decisions

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 the GS-9 level, judgment and resourcefulness are required in solving problems in the initial classification of merchandise, and in searching for and applying statutes, regulations, orders, and precedents. The entry officer's acceptance or rejection of entries and the determination as to the right to make entry are for the most part accepted as final, but the authority and responsibility for conclusions and decisions and technical decisions are relatively less difficult and are made with respect to relatively less varied types of commodities and smaller numbers of sources.

The GS-10 level is not met. The entry and classification problems handled by the appellant are not equivalent to the large variety of imports described at the GS-10 level where a more complex type of international mail merchandise is imported from several countries from many different manufactures. As at the GS-9 level, the appellant's acceptance or rejection of entries and his determination as to the right to make entry are for the most part accepted as final. The complexity comes from the variety of merchandise he must examine. While the variety of mail handled in Detroit is quite broad, it is of the more traditional type as described by Situation A, being less complex than the range of importations reviewed at other areas of the port, particularly in comparison to the complex entries handled by positions in the GS-1894 occupation. The appellant performs some duty assessment and assists in some enforcement activities, but does not provide advisory services. Therefore, this factor is classified at the GS-9 grade level.

Summary

In summary, the appellant's work closely matches the threshold of work described in Situation A of the GS-9 benchmark from Part 1, Entry, of the 1894 PCS. Because the knowledge requirements of the position are limited to approving only informal entries, and all formal entries for importation of complex merchandise and commodities involving classification and tariff identification must be reported to his superior and referred to either the Entry Branch or to an import specialist in the Commodity Team Branch, the position cannot be evaluated above the GS-9 grade level.

Decision

The appellant's position is properly classified as GS-1897-9, with the title at agency discretion.