

Date: December 10, 2002

Claimant: [name]

File Number: 02-0016

OPM Contact: Deborah Y. McKissick

The claimant is a former [position] with the Department of the Army. He is requesting \$200.02 back pay, plus interest, for 18.25 hours of overtime in 2001 for which he believes he was not properly compensated. The Office of Personnel Management (OPM) received the claim on February 15, 2002, and received the agency administrative report on October 10, 2002. For the reasons discussed herein, the claim is denied.

The claimant believes that, as a first-line supervisor, his overtime that was converted from compensatory time should be paid at the rate equal to one and one-half times the hourly rate of his basic pay, in accordance with DoD 7400.14R, paragraph 071203. The guidance states, "*Overtime Computation*. For an employee who occupies a non-managerial position, the overtime rate of pay is an amount equal to one and one-half times the hourly rate of that employee's basic pay." The claimant notes that the non-managers are nonexempt and the managers and supervisors, including the claimant, are exempt from the Fair Labor Standards Act (FLSA).

In the agency administrative report, the agency agrees with the claimant that he was exempt from the FLSA during the claim period. The agency placed the claimant in the exempt category in accordance with section 551.205 of title 5, Code of Federal Regulations (CFR). The agency calculated the claimant's overtime at the rate of GS-10, step 1.

The claimant, as an FLSA exempt employee, is eligible for title 5 overtime pay in accordance with section 5541(2) of title 5 of the United States Code (U.S.C.). The rate of basic pay for overtime is fixed by law in 5 U.S.C. § 5542. As a GS-11, the claimant's basic pay rate exceeded the minimum rate of the basic pay for GS-10. Under 5 U.S.C. § 5542 as amended, the claimant's overtime hourly rate of pay should be an amount equal to one and one-half times the hourly rate of the minimum rate of basic pay for GS-10. See 5 CFR 550.113(b).

According to 5 CFR 178.105, claims are settled on the written record and the claimant has the burden of proving the liability of the Federal government and his or her right to payment. OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. See *Frank A. Barone*, B-

229439, May 25, 1988. Where the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. See, e.g., *Jimmie D. Brewer*, B-205452, Mar. 15, 1982, as cited in *Philip M. Brey*, *supra*. We are required to settle claims only in accordance with the applicable laws and regulations. Accordingly, the claim is denied.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.