

U.S. Office of Personnel Management
Division for Human Capital Leadership and Merit System Accountability

Fair Labor Standards Act Program
Center for Merit System Compliance
1900 E Street, NW.
Washington, DC 20415-6000

Fair Labor Standards Act Decision
Under section 4(f) of title 29, United States Code

Claimant: [name]

Agency classification: Human Resources Specialist
GS-201-7

Organization: [name] Service Unit
[name] Area Office
Indian Health Service
Public Health Service
Department of Health & Human Services
[location]

Claim : Compensation for FLSA overtime
for time spent traveling

OPM decision: Overtime is due

OPM decision number: F-0201-07-01 (formerly 04-F0007)

//signed//

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

May 15, 2005

Date

As provided in section 551.708 of title 5, Code of Federal Regulations (CFR), this decision is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which the Office of Personnel Management administers the Fair Labor Standards Act. The agency should identify all similarly situated current and, to the extent possible, former employees, and ensure that they are treated in a manner consistent with this decision. There is no right of further administrative appeal. This decision is subject to discretionary review only under conditions and time limits specified in 5 CFR 551.708. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

Decision sent to:

[name and address]

[name]
Human Resources Officer
[name] Area Indian Health Service
[location]

Deputy Assistant Secretary for Human
Resources
Department of Health and Human Services
HHH Building
200 Independence Avenue, SW.
Room 536E
Washington, DC 20201

Introduction

On November 18, 2003, the Center for Merit System Compliance received a Fair Labor Standards Act (FLSA) claim from [name]. During the claim period, she occupied a Human Resources Specialist, GS-201-7, position with a duty station of Browning, Montana. She believes that she was entitled to compensation for time spent in travel status. We have accepted and decided her claim under section 4(f) of the FLSA as amended.

General Issues

The claimant's agency determined that her position is nonexempt from the overtime provisions of the FLSA and we concur. She believes that she is entitled to compensation for travel hours to attend authorized training outside of her duty station and requiring overnight travel on work days outside regular duty hours and on nonwork days between July 2002 and December 2002.

In reaching our decision, we have carefully reviewed all information furnished by the claimant and her agency. We received the agency administrative report on May 10, 2004. We obtained additional information from the agency and the claimant via electronic mail and telephone.

Evaluation

The claimant believes that she is entitled to 125 hours of overtime pay for time spent traveling on work days outside her regular working hours and on nonwork days to and from eleven separate agency-authorized training events in 2002. Her regular working hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. Her residence was a five minute walk from her place of employment. She requests the following additional compensation for time spent traveling:

- Seven hours on Sunday, July 7, from 8:00 a.m. to 3:00 p.m. MDT
- Five and one half hours on Thursday, July 11, from 4:30 p.m. to 10:00 p.m. MDT
- Eight hours on Sunday, July 21, 8:00 a.m. to 4:30 p.m. MDT
- Five hours on Friday, July 26 from 4:30 p.m. to 9:30 p.m. MDT
- Eight hours on Sunday, August 4 from 8:00 a.m. to 4:00 p.m. MDT
- Seven and one half hours on Sunday, August 18 from 8:00 a.m. to 3:30 p.m. MDT
- Six hours on Friday, August 23 from 4:30 p.m. to 10:30 p.m. MDT
- Seven hours on Saturday, September 7 from 8:00 a.m. to 3:00 p.m. MDT
- Seven hours on Sunday, September 15 from 8:00 a.m. to 3:00 p.m. MDT
- Six hours on Friday, September 20 from 4:30 p.m. to 10:30 p.m. MDT
- Eight hours on Sunday, September 29 from 8:00 a.m. to 4:00 p.m. MDT
- Four hours on Friday, October 4 from 4:30 p.m. to 8:30 p.m. MDT
- Seven and one half hours on Sunday, October 20 from 8:00 p.m. to 3:30 p.m. MDT
- Four and one half hours on Friday, October 25 from 4:30 p.m. to 9:00 p.m. MDT
- Seven hours on Sunday, October 27 from 8:30 a.m. to 3:30 p.m. MST
- Five and one half hours on Friday, November 1 from 4:30 p.m. to 10:00 p.m. MST
- Eight hours on Saturday, November 16 from 8:00 a.m. to 4:00 p.m. MST
- Eight hours on Sunday, December 8 from 8:00 a.m. to 4:00 p.m. MST
- Five and one half hours on Friday, December 13 from 4:30 p.m. to 10:00 p.m. MST

Depending on the FLSA exemption status of an employee, time spent traveling may be considered compensable hours of work as described in title 5, Code of Federal Regulations (CFR), sections 550.112(g) and 551.422(a). Federal employees in FLSA nonexempt positions fall under the provisions of 5 CFR 551.422(a), which states that time spent traveling shall be considered hours of work if an employee is required to:

- (1) travel during regular working hours;
- (2) drive a vehicle or perform other work while traveling;
- (3) travel as a passenger on a one-day assignment away from the official duty station; or
- (4) travel as a passenger on an overnight assignment away from the official duty station during hours on nonwork days that correspond to the employee's regular working hours.

Both FLSA nonexempt and exempt employees covered by chapter 55, subchapter V, of title 5, United States Code, fall under the provisions of section 550.112(g). This section provides that time in a travel status away from the official duty station is hours of work if the travel:

- (1) is within an employee's regularly scheduled administrative workweek;
- (2) involves the performance of work while traveling;
- (3) is incident to travel that involves the performance of work while traveling;
- (4) is carried out under arduous and unusual conditions; or
- (5) results from an event that could not be scheduled or controlled administratively.

The phrase "could not be scheduled or controlled administratively" refers to the ability of an executive agency as defined in 5 U.S.C. § 105, to control the event that necessitates an employee's travel. The control is assumed to be the agency's whether the agency has sole control or the control is achieved through a group of agencies acting in concert, such as a training program or conference sponsored by a group of agencies, or sponsored by one in the interest of all, or through several agencies participating in an activity of mutual concern. When an institution outside the government conducts a training event, unless it is for the sole benefit of the government, it is an event that cannot be scheduled or controlled administratively. See Comptroller General Decision, B-193127, May 31, 1979; *Perry L. Golden and Wayne Woods*, 66 Comp. Gen. 620 (1987); *Morris Norris*, 69 Comp. Gen. 17 (1989).

Five CFR 551.411 (c) provides that bona fide meal periods are not considered hours of work, except for on-duty meal periods for employees engaged in fire protection or law enforcement activities who receive compensation for overtime hours of work under 5 U.S.C. 5545(c)(1), (2), or 5545(b).

The claimant was directed to attend a series of one-week on-the-job training sessions for human resources specialists held by her employing agency in [name]. Her agency authorized her to use her privately owned automobile to drive from her duty station in [name] to the training site in [name] other than one round trip when she was authorized to travel between her home in [name] and the [name] training site. Her [name] duty station was approximately 346 miles from [name]. The claimant submitted a copy of a plan of action that explained the tentative

dates, training topics, and the requirement to travel on Sunday so as to arrive at the training site each Monday by 8:30 a.m. It stated that trainees may leave each Friday at noon to return home.

Five CFR 550.112(g)(1) is not applicable as the claimant requests payment only for hours beyond those of her regular work week. Sections 550.112(g)(2), (3), and (4) are not applicable based on statements made by the claimant that work was not performed during these periods of travel, the travel was not incident to travel that involved the performance of work while traveling, and that the travel was not carried out under arduous or unusual conditions. Section 5550.112(g)(5) is not applicable with respect to the training events, because the agency sponsored them and the events fell within the administrative control of the agency.

Five CFR 551.422(a)(1) is not applicable as the claimant requests payment only for hours beyond those of her regular work week. Section 551.422(a)(2) is applicable to all travel periods because the claimant was authorized by her agency to drive her privately owned vehicle between her duty station in Browning, or her home in Poplar and the training site in Billings. Section 551.422(a)(3) is not applicable based on statements by the claimant that these were not one day assignments away from her official duty station. Section 551.422(a)(4) is not applicable because she drove and did not travel as a passenger on an overnight assignment away from her official duty station during hours on nonwork days that correspond to her regular working hours. The time that an employee would have spent in normal commuting must be deducted from any hours of work outside the regularly scheduled workweek or outside corresponding hours on a nonworkday that may be credited for travel time.

Five CFR 551.411(c) is applicable to some travel periods based on statements by the claimant that she stopped for meal periods.

Sunday, July 7

The claimant left her residence in [name], at 8:00 a.m. to drive to [name]. She arrived at 3:00 p.m. MDT. The time spent driving is compensable under 5 CFR 551.422(a)(2). Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to six and one half hours compensation under the FLSA for time spent traveling.

Thursday, July 11

The claimant left [name] on Thursday, July 11 at 3:00 p.m. to return home to [name]. She arrived at 10:00 p.m. MDT. The claimant was paid for an eight hour day, which included time spent driving during her regular working hours. The time spent driving after her regular working hours meets the criteria under 5 CFR 551.422(a)(2). The claimant was authorized to drive between the training site and her residence. Her normal commuting time of five minutes is de minimis and will be compensated. Therefore, the five and one half hours are considered hours of work.

Sunday, July 21

The claimant left her residence in [name], at 8:00 a.m. to drive to [name]. She arrived at 4:30 p.m. MDT. The time spent driving is compensable under 5 CFR 551.422(a)(2). Her normal

commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to eight hours compensation under the FLSA for time spent traveling.

Friday, July 26

The claimant left Billings on 2:30 p.m. to return home to [name]. She arrived at 9:30 p.m. MDT. The claimant was paid for an eight hour day, which included time spent driving during her regular working hours. The time spent driving after her regular working hours meets the criteria under 5 CFR 551.422(a)(2). The claimant was authorized to drive between the training site and her residence. Her normal commuting time of five minutes is de minimis and will be compensated. Therefore, the five hours are considered hours of work.

Sunday, August 4

The claimant left her residence in Browning, Montana at 8:00 a.m. to drive to [name]. She arrived at 4:00 p.m. MDT. The time spent driving is compensable under 5 CFR 551.422(a)(2). Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to seven and one half hours compensation under the FLSA for time spent traveling.

Sunday, August 18

The claimant left her residence in [name] at 8:00 a.m. to drive to [name]. She arrived at 3:30 p.m. MDT. The time spent driving is compensable under 5 CFR 551.422(a)(2). Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to seven hours compensation under the FLSA for time spent traveling.

Friday, August 23

The claimant left [name] at 3:30 p.m. to return home to [name]. She arrived at 10:30 p.m. MDT. The claimant was paid for an eight hour day, which included time spent driving during her regular working hours. The time spent traveling after her regular working hours meets the criteria under 5 CFR 551.422(a)(2). The claimant was authorized to drive between the training site and her residence. Her normal commuting time of five minutes is de minimis and will be compensated. Therefore, the six hours are considered hours of work.

Saturday, September 7

The claimant left [name] at 8:00 a.m. to return home to [name]. She arrived at 3:00 p.m. MDT. The time spent driving is compensable under 5 CFR 551.422(a)(2). Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to six and one half hours compensation under the FLSA for time spent traveling.

Sunday, September 15

The claimant left her residence in [name] at 8:00 a.m. to drive to [name]. She arrived at 3:00 p.m. MDT. The time spent driving is compensable under 5 CFR 551.422(a)(2). Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to six and one half hours compensation under the FLSA for time spent traveling.

Friday, September 20

The claimant left Billings at 3:30 p.m. to return home to [name]. She arrived at 10:30 p.m. MDT. The claimant was paid for an eight hour day, which included time spent driving during her regular working hours. The time spent driving after her regular working hours meets the criteria under 5 CFR 551.422(a)(2). The claimant was authorized to drive between the training site and her residence. Her normal commuting time of five minutes is de minimis and will be compensated. Therefore, the six hours are considered hours of work.

Sunday, September 29

The claimant left her residence in [name] at 8:00 a.m. to drive to [name]. She arrived at 4:00 p.m. MDT. The time spent driving is compensable under 5 CFR 551.422(a)(2). Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to seven and one half hours compensation under the FLSA for time spent traveling.

Friday, October 4

The claimant left Billings at 1:00 p.m. to return home to [name]. She arrived at 8:30 p.m. MDT. The claimant was paid for an eight hour day, which included time spent driving during her regular working hours. The time spent driving after her regular working hours meets the criteria under 5 CFR 551.422(a)(2). The claimant was authorized to drive between the training site and her residence. Her normal commuting time of five minutes is de minimis and will be compensated. Therefore, the four hours are considered hours of work.

Sunday, October 20

The claimant left her residence in [name] at 8:00 a.m. to drive to [name]. She arrived at 3:30 p.m. MDT. The time spent driving is compensable under 5 CFR 551.422(a)(2). Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to seven hours compensation under the FLSA for time spent traveling.

Friday, October 25

The claimant left Billings at 2:00 p.m. to return to [name], where she owns a home. She arrived at 9:00 p.m. MDT. The distance between [name] and [name] is 328 miles. The claimant was paid for an eight hour day, which included time spent driving during her regular working hours. The time spent traveling after her regular working hours meets the criteria under 5 CFR 551.422(a)(2). The claimant was authorized to drive between the training site and

her residence in Poplar. Her normal commuting time of five minutes is de minimis and will be compensated. Therefore, the four and one half hours are considered hours of work.

Sunday, October 27

The claimant left [name], at 8:30 a.m. to drive to [name]. She arrived at 3:30 p.m. MST. The time spent driving is compensable under 5 CFR 551.422(a)(2). All time spent traveling on a nonwork day during the corresponding hours must be compensated. Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to six and one half hours compensation under the FLSA for time spent traveling.

Friday, November 1

The claimant left [name] at 3:00 p.m. to return home to [name]. She arrived at 10:00 p.m. MST. The claimant was paid for an eight hour day, which included time spent driving during her regular working hours. The time spent driving after her regular working hours meets the criteria under 5 CFR 551.422(a)(2). The claimant was authorized to drive between the training site and her residence. Her normal commuting time of five minutes is de minimis and will be compensated. Therefore, the five and one half hours are considered hours of work.

Saturday, November 16

The claimant left [name] at 8:00 a.m. to return home to [name]. She arrived at 4:00 p.m. MST. The time spent driving is compensable under 5 CFR 551.422(a)(2). Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to seven and one half hours compensation under the FLSA for time spent traveling.

Sunday, December 8

The claimant left her residence in [name] at 8:00 a.m. to drive to [name]. She arrived at 4:00 p.m. MST. The time spent driving is compensable under 5 CFR 551.422(a)(4). Her normal commuting time of five minutes is de minimis and will be compensated. Since she stopped for a lunch break, the claimant is entitled to seven and one half hours compensation under the FLSA for time spent traveling.

Friday, December 13

The claimant left [name] at 2:00 p.m. to return home to [name]. She arrived at 10:00 p.m. MST. The claimant was paid for an eight hour day, which included time spent driving during her regular working hours. The time spent driving after her regular working hours meets the criteria under 5 CFR 551.422(a)(2). The claimant was authorized to drive between the training site and her residence. Her normal commuting time of five minutes is de minimis and will be compensated. Therefore, the five and one half hours are considered hours of work.

Decision

The claimant is entitled to compensation under the FLSA for time spent driving as discussed previously in this decision.

Compliance Instructions

The agency is directed to compute the FLSA overtime pay due the claimant for all time spent driving as discussed in this decision. If she chooses to accept back pay, the claimant must sign a waiver of suit when she receives payment. It should be completed by the agency and the claimant, and a copy returned to OPM's Philadelphia Field Services Group.

The agency should pay the claimant the total amount owed, plus interest. If the claimant believes that the agency has computed the amount incorrectly, she may file a new FLSA claim with this office.