

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

Claimant: [name]

Agency classification: Human Resources Specialist
GS-260-7

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

Claim: Reopening and Reconsideration Request
for Punitive Damages under the FLSA

OPM decision: Denied

OPM decision number: F-0201-07-01R (formerly 04-F0007 for
original case)

/s/

Kevin E. Mahoney
Deputy Associate Director
Center for Merit System Accountability

12/29/06

Date

This decision is issued pursuant to a request for discretionary review 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 and address]

[name]

Human Resources Officer

[name] Area Indian Health Service

[address]

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 accepted and decided her claim under section 4(f) of the FLSA as amended and the Office of Personnel Management's (OPM) implementing regulations under subpart G, part 551, of title 5, Code of Federal Regulations (CFR).

Our May 18, 2005, decision found the claimant was entitled to compensation under the FLSA for time spent driving as discussed in the body of the decision. We directed the agency to compute the FLSA overtime pay due the claimant for all time spent driving, plus interest, and stated if the chooses to accept back pay, the claimant must sign a waiver of suit when she receives payment.

Background

On October 3, 2006, we received a request to reopen and reconsider the claim decision from [name], Esq., whom the claimant designated in writing on September 21, 2006, as her official representative. The September 25, 2006, request states that pursuant to our decision, the claimant:

Received \$4,862.18 in overtime compensation but which failed to consider her request for punitive damages as provided for in 29 U.S.C. § 260(b)...I originally mailed this petition ...on March 20, 2006. I sent a follow-up inquiry...on July 21, 2006....You responded to that inquiry by your letter dated August 25, 2006, with which you returned the petition because it did not include authorization from Ms. Christian to represent her in this matter.

Based on receipt of the written designation as required under 5 CFR § 551.704, we are responding to this request.

Evaluation

The request for reopening and reconsideration is based on the representative's assertion our decision failed to consider the claimant's request for punitive damages and that absent a showing of good faith on the part of the claimant's employer, the claimant is entitled to liquidated damages in an amount equal to the amount we awarded as compensation for FLSA overtime for time spent traveling. He opines the employing agency did not serve the claimant with its intent to assert a "good faith" defense. In support of his rationale, he quotes the following from:

Bull v. U.S., 68 Fed. Cl. 212, 10 Wage & Hour Cas.2d (BNA 1687 (Fed. Cl. Sep 27, 2005)

An employer who has violated the FLSA "shall be liable" to employees affected for unpaid Overtime compensation...and an additional equal amount in liquidated damages." 29 U.S.C. § 260(b). The court, in its sound discretion, may mitigate or deny liquidated damages "if the employer shows to the satisfaction of

the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the [FLSA]. 29 U.S.C. § 260; see also Beebe, 640 F. 2d at 1295 (1981). [FN69] “The burden rests on the government to establish its good faith and the reasonable grounds for its decision.” Adams, 350 F.3d at 1226 (citing § 260) (footnote omitted); accord Laffey, 567 F.2d at 464-65 (describing this burden as “substantial”); Bankston, 60 F.3d at 1254 (“It is easier for a plaintiff to receive liquidated damages under the FLSA than it is to extend the statute of limitations for FLSA claims....”).

We addressed this issue in our August 25, 2006, response to the claimant’s representative, advising him of the requirement he be designated as the claimant’s representative in writing:

It appears [name] is seeking liquidated damages as provided for in the FLSA. Under 29 U.S.C. § 216, Federal courts have substantial discretion in fashioning remedies for violations of the FLSA, including liquidated damages. Unlike the courts, OPM’s administrative claims process derives its remedial authority from the Back Pay Act, codified as 5 U.S.C. § 5596. Under the Back Pay Act, a claimant can receive back pay and interest for FLSA overtime performed within the claim period. See also, 5 CFR part 550, subpart H). There is no provision in the Back Pay Act for liquidated damages.

As noted in the representatives own citation “The *court*, in its discretion, may mitigate or deny liquidated damages.” (Emphasis added). OPM’s regulations, which have the force of law, state in pertinent part (5 CFR. § 551.703(c)): “Nothing in this subpart limits the right of a claimant to bring an action in an appropriate United States Court. Filing a claim with an agency or OPM does not satisfy the statute of limitations governing FLSA claims filed in court. The authority of the court to grant liquidated damages in 29 U.S.C. §§ 260 and 216 does not extend to administrative claim decisions issued by OPM. Our regulations do not require an agency to “serve the claimant with its intent to assert a “good faith” defense.” Therefore, we will not address this issue further

The regulations governing the filing of an administrative claim (5 CFR. § 551.702(c)) also state in pertinent part: “If a claim for *back pay* (emphasis added) is established, the claimant will be entitled to pay for a period of up to 2 years (3 years for a willful violation) *back from the date the claim was received.*” Therefore, we conclude the claimant’s rationale with regard to liquidated damages is misplaced in that the FLSA claims administrative process does not provide for the awarding of liquidated damages.

Decision

The claimant’s request to reopen and reconsider her claim is denied for the foregoing reasons.