

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:** Construction Representative  
GS-809-11

**Organization:** [location] Office  
Engineering and Construction Division  
US Army Engineer [location]  
US Army Corps of Engineers  
[location] Air Force Base [location]

**Claim :** Compensation for FLSA overtime  
for time spent traveling

**OPM decision:** Additional entitlement to compensation  
for travel time is due

**OPM decision number:** F-0809-11-01 (initailly issued as  
04-F0004)

//signed//

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

January 31, 2006

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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 Director

USAED Southwestern

Attn: Civilian Personnel Advisory Center

[location]

## **Introduction**

On July 23, 2003, we received a Fair Labor Standards Act (FLSA) claim for 13 hours of FLSA overtime from [name]. The claimant occupies a Construction Representative, GS-809-11, position in the [location] Office, Engineering and Construction Division, United States Army Engineer District [location]. His post of duty is [location] Air Force Base, [location]. He believes that he was entitled to compensation for time spent in travel status. We have accepted and decided his claim under section 4(f) of title 29 (FLSA), United States Code.

In reaching our FLSA decision, we have carefully reviewed all information furnished by the claimant and his agency, including information from interviews with the claimant and his employing agency's human resources staff.

## **General Issues**

The claimant's normal tour of duty is Monday through Friday, 7:00 a.m. to 4:00 p.m. He received travel orders to attend a training course outside of his duty station requiring overnight travel. Due to airline travel times and flight changes caused by ground holds, cancellation of flights, and airplane mechanical problems, he was required to travel as a passenger outside of his tour of duty for a total of 13 hours as follows:

- Sunday, June 8, 2003 from 11:00 a.m. to 12:00 p.m. (1 hour)
- Sunday, June 8, 2003 from 4:00 p.m. to 12:00 a.m. (8 hours)
- Monday, June 9, 2003 from 12:00 a.m. to 12:30 a.m. (½ hour)
- Saturday, June 14, 2003 from 4:30 a.m. to 7:00 a.m. (2 ½ hours)
- Saturday, June 14, 2003 from 11:00 a.m. to 12:00 p.m. (1 hour)

The claimant acknowledges that his agency has paid him for Saturday and Sunday overtime for hours that correspond with his normal working hours. However, he believes that he should be paid for the additional 13 hours illustrated above which are outside of his normal working hours and outside of his corresponding working hours on nonworkdays because they were administratively uncontrollable.

## **Position Information**

The claimant's position description (PD), #07574, reflects that the incumbent of the position conducts detailed inspections of construction activities for overall compliance with plans and specifications. He/she studies plans and specifications to obtain a thorough knowledge of construction requirements and design criteria. He/she makes decisions for lower graded inspectors and contractors on approval of construction and engineering techniques. He/she makes recommendations for changes in design and/or specifications as a result of changed conditions at the work site. He/she recommends changes in design, specified use of materials or construction materials. He/she has at-the-site authority to: (1) make controlling interpretations of intent of plans and specifications; (2) determine contractor's compliance with wage/hour, equal employment opportunity, or other labor laws and regulations; (3) determine if contractor is properly recording work accomplished and materials used; (4) organize, assign, and control the work of inspectors, representatives, technicians, and engineering aids at the

project sites; and, (5) determine the need for major changes and recommend their approval by the resident engineer.

By signed statement dated January 28, 2004, both the claimant and his supervisor certified as to the completeness and accuracy of the claimant's PD of record. We spoke to [name] of the claimant's human resources office, who verified that the claimant's PD does not have an evaluation statement. To gather additional information about the actual duties of the claimant's position, we interviewed him by telephone on three separate occasions.

The claimant explained that he is the construction representative on multi-million dollar projects. He ensures that projects are built according to the specifications listed in the contract by inspecting phases of construction and keeping his supervisor and resident engineer informed of construction status and issues. Most projects concern the building of parking lots, dormitories, or office buildings being constructed for the Army or Air Force. He participates from the design standpoint through the physical construction cycle until project completion. Some projects take as little as six months to complete while others take several years. Through weekly staff meetings, he keeps his supervisor, the resident engineer, and his co-workers apprised on progress on his assignments. Additionally, he updates a daily report via computer which Management can access.

When a contract is signed, the claimant attends a preparatory meeting with the contractor and reviews the particulars. For example, he assures that the plans are in compliance with appropriate Oklahoma State, as well as Base regulations. Safety issues are addressed. They review the required materials so that specifications are noted.

Once the physical construction begins, he regularly inspects the work being performed to ensure that it is being done in compliance with the drawings. He looks to see if the correct material is being installed properly. If he observes a problem, he contacts the contractor and the resident engineer. He indicated that he does not have the authority to stop the job. For instance, he noted that a steel column was left off of a building. He reported that to the resident engineer and the engineer wrote a letter to the contractor, ordering him to install the missing steel column.

When problems or disagreements occur on the work site, he attempts to resolve it informally with the contractors. For example, if a material being installed is the wrong color, he will bring this to the attention of the contractor. If the contractor disagrees, it will be elevated to higher levels. With more serious problems, the resident engineer will write to the general contractor to describe the problem, and negotiate a contract modification. Occasionally, the contractor will identify a problem not known at the time the contract was signed. This is described as a differing site condition and may result in a contract modification with more funding to the contractor. The claimant is not involved in contract modifications.

While his PD indicates that he "oversees the work of other inspectors," he does not do this. Occasionally, he is asked by his supervisor or the resident engineer to accompany an inspector to a work site. This occurs when an inspector lacks expertise in one of the trades. However, the claimant is not overseeing the work of the other inspector.

The claimant relies on other experts and technical support people in his organization to determine whether the contractor is adhering to the specifications. For instance, he calls upon mechanical and electrical engineers to review work and to ascertain whether it is in compliance with the contract.

When a phase of the work is completed, he examines it to determine whether it complies with the contract specifications. If it is, the next phase can begin. For instance, drywall is erected with certain kinds of metal studs and tape joints. If this has been accomplished according to the contract, the work can continue. Periodically, he will enlist the support of the mechanical or electrical engineer to inspect work that he is not familiar with. Examination of work that cannot be seen, such as foundations, loads, soil conditions, waste water plans, piers, etc., is completed by engineers and not by the claimant. With regard to the completion of the contract, higher level Corps employees and users attend the close-out meeting with the contractor to accept the work. While the claimant usually attends these meeting, he is not empowered to accept the work.

Based on our interviews with the claimant, we found other differences between the duties outlined in the PD and the actual operation of the position. For example, the position description indicates that the incumbent makes decisions for lower graded inspectors and contractor's field representatives on approval of construction and engineering techniques. The claimant advised that he provides input based on his findings, but does not have the authority to make changes from prescribed procedures without the approval of a supervisor or resident engineer. He has no authority to stop the contractor's work when a deviation from the contract is observed. He has very little discretion within prescribed procedures to adapt techniques. The position description indicates that the incumbent will organize, assign, and control the work of inspectors, representatives, technicians and engineering aids at the project sites. The claimant advised that this work is performed by others. Therefore, we conclude that PD overstates the difficulty and complexity of the work assigned to and performed by the claimant.

### *Evaluation of FLSA Coverage*

Sections 551.201 and 551.202 of title 5, Code of Federal Regulations (CFR) require that an employing agency may designate an employee FLSA exempt only when the agency correctly determines that the employee meets one or more of the exemption criteria. In all exemption determinations, the agency must observe the following principles. Each employee is presumed to be FLSA nonexempt. Exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption. The burden of proof rests with the agency that asserts the exemption. If there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be designated FLSA nonexempt. There are three exemption categories applied to Federal employees: executive, administrative, and professional.

#### Executive Exemption Criteria

Under the executive exemption criteria, contained in 5 CFR 551.205, an executive is a supervisor or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and customarily and

regularly directs the work of subordinate employees. The claimant's work does not meet the definition of executive since it does not involve management or supervision of employees.

The executive exemption criteria were not met.

#### Administrative Exemption Criteria

Section 551.206 of the CFR contains the criteria governing whether the claimant's position should be exempt from the FLSA under the administrative exemption criteria. The work is exempt if it meets administrative exemption criteria (a)(1), (2), or (3), known as the primary duty test, and (b) through (d).

#### *Primary duty test.*

The primary duty test is met if the work meets criterion (a)(1), (2), or (3).

Criterion (a)(1) deals with work that significantly affects the formulation or execution of management policies or programs.

Work that affects the formulation or execution of management programs and policies recognizes that management policies and programs range from broad national goals expressed in statutes or executive orders to specific objectives of a small field office. Employees may actually make policy decisions or participate indirectly, through developing proposals that others act on. Employees who significantly affect the execution of management policies or programs typically are those whose work involves obtaining compliance with such policies by individuals or organizations, both within or outside the Federal Government, or making significant determinations in furthering the operation of programs and accomplishing program objectives. Administrative employees engaged in such work typically perform one or more phases of program management; i.e., planning, developing, promoting, coordinating, controlling, or evaluating operating programs.

The claimant is not engaged in formulation or execution of management policies or programs, e.g., evaluating operating programs of the organization. He is not obtaining compliance with program policies or determining the accomplishment of program objectives. In contrast, he is responsible for the regular inspection of the construction of a building, assuring that the work being performed by contractors is in compliance with the contract. Compliance and other major decisions are made by other positions in the claimant's organization. For these reasons, criterion (a)(1) is not met.

Criterion (a)(2) involves general management or business functions or supporting services of substantial importance to the organization serviced.

In addition to the difficult and complex analytical functions involved in general management, e.g., budgeting or financial management, general management or support services include services ranging from automated data processing to the procurement and distribution of supplies. Support may also entail providing expert advice in a specialized subject matter field; assuming facets of the overall management function; or, representing management in business functions, such as determining the acceptability of goods or services, or authorizing payments.

The organizational location does not change service functions into non-exempt production functions. To warrant exemption from the FLSA, such work must involve substantial discretion on matters of enough importance that the employee's actions and decisions have a noticeable impact on the effectiveness of the organization advised, represented, or serviced. The claimant does perform support services by overseeing contractor performed work. However, his authority to determine the acceptability of goods and services is limited as discussed previously. Therefore, we find that the claimant's work does not meet criterion (a)(2).

Criterion (a)(3) involves substantial participation in the executive or administrative functions of a management official.

Work involving participation in the functions of a management official includes employees, such as secretaries and administrative assistants, who participate in portions of the managerial or administrative functions of a supervisor whose scope of responsibility precludes personally attending to all aspects of the work. To support exemption, such assistants must have knowledge of the policies, plans, and views of the supervisor and must be delegated and exercise substantial authority to act for the supervisor. The claimant does not perform this type of work. Therefore, we find that the claimant's work does not meet criterion (a)(3).

Based on the preceding analysis, the claimant's work does not meet the primary duty test.

### *Nonmanual duty test.*

The nonmanual work test is met when the employee performs office or other predominantly nonmanual work which meets either criterion (b)(1) or (b)(2).

Criterion (b)(1) covers work that is intellectual and varied in nature.

Work of an intellectual nature requires general intellectual abilities, such as perceptiveness, analytical reasoning, perspective, and judgment applied to a variety of subject matter fields, or work involving mental processes which involve substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot rely on standardized procedures, or precedents, but must recognize and evaluate the effect of a continual variety of conditions or requirements in selecting, adapting or innovating techniques and procedures, interpreting findings, and selecting and recommending the best alternative from among a broad range of possible actions.

According to the claimant, a large percentage of his work is based on standardized procedures or precedents. He is required to conduct inspections of construction activities and determine that the work is in overall compliance with contract specifications and Oklahoma State and Base building codes. He selects from among prescribed solutions when problems are encountered. He is able to provide input based on his findings, but does not have the authority to make changes from prescribed procedures without approval of a supervisor or the resident engineer. He has no authority to stop the contractor's work when a deviation from the contract is observed, and he has very little discretion within prescribed procedures to adapt techniques or be innovative.

The claimant's work does not meet criterion (b)(1).

Criterion (b)(2) covers work of a specialized or technical nature that requires considerable specialized training,

Work meeting criterion (b)(2) requires specialized knowledge of a complex subject matter and of the principles, techniques, practices, and procedures associated with that subject-matter field. This knowledge characteristically is acquired through considerable on-the-job training and experience in the specialized subject-matter field, as distinguished from professional knowledge characteristically acquired through specialized academic training.

The position requires experience in the construction of buildings, knowledge of building materials, and design requirements. This necessitates a practical understanding of the principles of building construction. The in-depth practical knowledge would typically come from several years of on-the-job training and experience. Accordingly, we find the position meets criterion (b)(2).

#### ***Discretion and independent judgment test***

Work meeting this test (criterion (c)) requires the employee to frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work. The exercise of discretion and independent judgment involves interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. Decisions made as the result of independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decisions are subject to review, and may be revised or reversed, does not mean an employee is not exercising discretion and independent judgment of the level required for exemption.

The claimant works independently. However, he does not have the opportunity to exercise independent judgment in terms of analyzing and interpreting the situation, considering a variety of possibilities, and then deciding what should be done. He applies approved procedures and has very little discretion within those approved procedures. The work performed by the claimant involves the use of skills and the application of known standards or established procedures, as distinguished from work requiring the exercise of discretion and independent judgment. Therefore, the claimant's work fails to meet criterion (c).

#### ***Criterion (d)***

In addition to the primary duty criterion, GS employees in positions classified at the GS-5 or GS-6 grade level must spend 80 percent or more of the work time in a representative work week on administrative functions and work that is an essential part of those functions. Because the claimant's position is classified above these grade levels, this criterion does not apply to the claimant's work.

The administrative exemption criteria are not met.

## Professional Exemption Criteria

5 CFR 551.207 contains the criteria governing whether the claimant's work should be exempt from the FLSA under the professional exemption criteria. The work is exempt if it meets professional exemption criteria (a)(1), (2), or (3), known as the primary duty test and (b) through (d) in section 551.207.

### ***Primary duty test***

The primary duty test is met if the work meets professional exemption criteria (a)(1), (2), or (3).

Criterion (a)(1) deals with work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field.

To meet criterion (a)(1), the claimant must perform work comparable to that performed by professional employees on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field. Our interviews with the claimant disclosed that the construction representative work that the claimant performs is not like that done by professional employees and does not require the level of theoretical knowledge comparable to that applied by professional engineers gained through a bachelor's degree in engineering. Rather, the claimant's knowledge is a reflection of the many years of experience applying basic principles and in-depth practical knowledge in the construction field. His practical knowledge was gained through many years of on-the-job and classroom training provided by the Army Corps of Engineers. As further indicated by the claimant, theoretical knowledge and that of related disciplines and new developments in the field is applied by engineering professionals involved in structural changes and designs and not by him as part of his work. The claimant does not meet (a)(1).

Criterion (a)(2) concerns work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee. The claimant's work is not in a field of artistic endeavor. Therefore, the claimant's work does not meet (a)(2).

Criterion (a)(3) deals with work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering or other similar work in the computer software field. The work must consist of one or more of the items listed under 5 CFR 551.207(a) (3). The claimant's work is not in the computer software field and, therefore, does not meet (a)(3).

Based on the preceding analysis, the claimant's work does not meet the primary duty test.

Because the primary duty test is not met, the claimant's work does not meet the professional exemption criteria of the FLSA. Therefore, we will deal with the remaining criteria in a more abbreviated fashion.

Criterion (b) deals with work that is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance. Work of an intellectual nature requires general intellectual abilities, such as perceptiveness, analytical reasoning, perspective, and judgment applied to a variety of subject matter fields, or work involving mental processes which involve substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot rely on standardized procedures, or precedents, but must recognize and evaluate the effect of a continual variety of conditions or requirements in selecting, adapting or innovating techniques and procedures, interpreting findings, and selecting and recommending the best alternative from among a broad range of possible actions. As discussed under the administrative exemption criteria, a large percentage of his work is based on standardized procedures or precedents. He selects from among prescribed solutions when problems are encountered. He is able to provide input based on his findings, but does not have the authority to make changes from prescribed procedures without supervisory (or resident engineer's) approval. He has no authority to stop the contractor's work when a deviation from the contract is observed and he has very little discretion within those prescribed procedures to adapt techniques or be innovative. Therefore, criterion (b) is not met.

Criterion (c) is the discretion and independent judgment test. An employee frequently exercises discretion and independent judgment under only general supervision, in performing the normal day-to-day work. As discussed previously, established OPM guidance is that the exercise of discretion and independent judgment involves interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. The work must involve sufficient variables as to regularly require discretion and judgment; the employee must have the authority to make determinations or take action; and the decisions must be significant. Employees who perform work requiring primarily skill in applying standardized techniques or knowledge of established procedures, precedents or other guidelines which specifically govern their actions would not meet this element. In addition, deciding whether a situation does or does not conform to clearly applicable criteria would not be considered making significant decisions. The claimant works independently. However, he does not have the opportunity to exercise independent judgment in terms of analyzing and interpreting the situation, considering a variety of possibilities, and then deciding what should be done. He applies approved procedures. He has very little discretion within those approved procedures. The work performed by the claimant involves the use of skills and the application of known standards or established procedures, as distinguished from work requiring the exercise of discretion and independent judgment. Therefore, criterion (c) is not met.

Criterion (d) is not applicable to the claimant's position.

### **Decision on FLSA Coverage**

Based on the above analysis, the claimant's position did not meet the criteria for executive, administrative, or professional exemption and is, therefore, properly covered by the overtime provisions of the FLSA.

## Evaluation of Overtime Claim

The claimant requests 13 hours of overtime on Saturday, Sunday, and Monday which were outside his corresponding hours on nonwork days (Saturday, Sunday) and outside regular working hours (Monday) because of airline travel times and flight changes caused by ground holds, cancellation of flights, and airplane mechanical problems uncontrolled by his office. The claimant writes "I was not compensated for all of my travel related time even though some of the hours were outside my normal work day time frame. This is where my agency had no administrative control over my travel situations nor did I...."

Compensation for time spent traveling is described in both 5 CFR 551.422(a) and 5 CFR 550.112(g).

Section 551.422(a) states that time spent traveling is 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
- (4) travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours

Based on 5 CFR 551.442(a), the requested overtime hours described by the claimant cannot be considered hours of work since they do not meet any of the stipulated regulatory criteria.

Section 550.112(g) 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
- (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 course, 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). Based on 5 CFR 550.112(g), the requested overtime hours described by the claimant cannot be considered hours of work (4:00 p.m. to 12:00 a.m. on Sunday, June 8, 2003; 12:00 a.m. to 12:30 a.m. on Monday, June 9, 2003; and 4:30 a.m. to 7:00 a.m. on Saturday, June 14.

Under 5 CFR 551.411(c), bona fide meal periods are not considered hours of work; therefore, the agency did not pay the claimant for the one-hour periods between 11:00 a.m. to 12:00 p.m. on Sunday, June 8, 2003, and Saturday, June 14, 2003. The claimant wrote that due to flight changes, ground holds, and flight cancellations, he was unable to take a lunch break on Sunday, June 8 and Saturday, June 14. He further wrote he was waiting on aircraft plans from the airlines and he did not know for sure when his flights or what flights might be departing. His time was very hectic during the rescheduling of his flights. He advised that he had cleared security and did not want to depart to try to find lunch. He wrote that his original flight itinerary on Sunday, June 8, showed his departing Oklahoma City to Chicago to Norfolk. This was changed by the airlines to Oklahoma City to Atlanta to Norfolk. He wrote that his original flight itinerary on Saturday, June 14 showed his departing Norfolk to Chicago to Oklahoma City. This plan was changed by the airlines to Norfolk to Charlotte to Chicago to Denver to Oklahoma City. This plan was then changed again by the airlines to Norfolk to Philadelphia to Chicago to Oklahoma City. We find the claimant's argument about his inability to take lunch breaks on Sunday, June 8, and Saturday, June 14, to be reasonable.

The claimant wrote that his agency paid him for overtime that occurred during his corresponding working hours on nonwork days. In our analysis of the time sheets submitted by his agency, the record shows that the claimant was paid 5 ½ hours of overtime for Sunday, June 8, and 2 ½ hours of overtime for Friday, June 13. The record does not indicate any overtime paid for Monday, June 9, and Saturday, June 14.

### **Decision on Overtime Claim**

#### ***June 8, 2003***

The claimant's time spent traveling on Sunday, June 8, 2003, during hours that correspond to his normal working hours (7 am. to 4:00 p.m.), meets the applicable provisions of 5 CFR Section 551.422(a)(4). Since the record indicates that the agency paid him 5 ½ hours overtime, incurred from 10:15 a.m. to 4:00 p.m., the claimant is entitled to ¼ hour overtime since he took no lunch period.

#### ***June 13, 2003***

The record indicates that the claimant was compensated for 8 regular hours and 2 ½ hours overtime on Friday, June 13, 2003. The agency advised that the 2 ½ hours overtime were paid for hours that the claimant spent waiting in an airport outside his normal work hours. This does not meet the applicable provisions of 5 CFR 551.422(a) as compensable hours of work. Therefore, he is not entitled to the 2 ½ hours overtime that he was paid.

#### ***June 14, 2003***

The claimant's time spent traveling on Saturday, June 14, 2003, during hours that correspond to his normal working hours (7:00 a.m. to 4:00 p.m.), meets the applicable provisions of 5 CFR Section 551.422(a)(4). The claimant states that he was paid the hours corresponding to his normal working hours. However, the record indicates that the agency did not pay the claimant for those hours. The agency must compensate the claimant for all hours spent traveling that correspond to his normal working hours. The record indicates that he traveled from 7:00 a.m.

to 3:00 p.m. without a lunch break. Therefore, the claimant is entitled to 8 hours of overtime for the period of 7:00 a.m. to 3:00 p.m.

The claimant's time spent traveling outside of his normal work hours and outside of his corresponding work hours on nonwork days does not meet the applicable provisions as compensable hours of work. Therefore, the claim for 8 hours overtime from 4:00 p.m. to 12:00 a.m. on Sunday, June 8, 2003; ½ hour overtime from 12:00 a.m. to 12:30 a.m. on Monday, June 9, 2003; 2 ½ hours overtime from 4:30 a.m. to 7:00 a.m. on Saturday, June 14, 2003 is denied.

The claimant is entitled to interest on back pay under title 5 United States Code 5596, and 5 CFR 550, subpart H.

### **Compliance Instructions**

The agency must pay the claimant the total amount owed, plus interest, offsetting overtime improperly paid for Friday, June 13, 2003. Guidance on computing interest on back pay can be found on the OPM website at <http://www.opm.gov/oca/PAY/backpay/backpay.htm>. If the claimant believes that the agency has computed the amount incorrectly, he may file a new FLSA claim with this office.