

U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeal and FLSA Programs

Atlanta Oversight Division
75 Spring Street, SW., Suite 972
Atlanta, GA 30303-3109

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

Claimant: [Claimant]

Position: Electronics Technician
GS-856-11

Organization: Department of the Navy

Claim: Nonexempt. Owed payment for
overtime.

OPM decision: Exempt. No payment due.

OPM decision number: F-0856-11-03

/s/

Kathy W. Day
FLSA Claims Officer

3/30/01

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 OPM administers the Act. The agency should identify all similarly situated current and, to the extent possible, former employees, ensure that they are treated in a manner consistent with this decision, and inform them in writing of their right to file an FLSA claim with the agency or OPM. There is no further right of administrative appeal. This decision is subject to discretionary review only under conditions specified in 5 CFR 551.708 (address provided in 5 CFR 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

Decision sent to:

[Claimant]

Human Resource Department
S.W. Region, NATEC
525 B Street, Suite 600
Code 516
San Diego, CA 92101-4418

Human Resources Office
Navy Region Southwest
Code N00CPN
Coronado Complex
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Office of the Deputy Assistant Secretary
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Employment Opportunity)
Nebraska Avenue Complex
321 Somer Court, NW., Suite 40101
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Chief, Classification Appeals
Adjudication Section
Department of Defense
Civilian Personnel Management
Service
1400 Key Boulevard, Suite B-200
Arlington, VA 22209-5144

Introduction

On July 3, 2000, the Atlanta Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [claimant]. On August 15, 2000, the claim was suspended to allow the agency an opportunity to get the information they needed from the claimant who is on a temporary overseas assignment. On October 27, 2000, the administrative report was received and the claim was reactivated. The claimant believes that her FLSA status should be nonexempt. She works in the [Command], Department of the Navy, [geographical location]. We have accepted and decided her claim under section 4(f) of the FLSA as amended.

General Issues

The claimant occupies an Electronics Technician, GS-856-11, position. She requests that her FLSA status be changed to nonexempt. She believes that her position is identical to an Engineering Technician, GS-802-11, position that was found to be FLSA nonexempt. However, each FLSA decision relates to the circumstances of a specific position and may not provide an appropriate basis for extrapolation to other positions. We must make exemption decisions by comparing the actual duties performed by the claimant to criteria and guidance in FLSA regulations, laws, and guidelines. We cannot compare the claimant's position to others as a basis for determining her exemption status.

In reaching our decision, we have carefully considered all information furnished by the claimant and her agency, including the position description of record.

Job Information

The claimant provides technical advice, instruction, and assistance to Fleet commands on the maintenance and repair of a group of loosely defined navigational systems on the S-3 aircraft. She provides both formal and on-the-job training for personnel engaged in the operation, installation and maintenance of the assigned complex electronic systems. She directs and monitors techniques and procedures, evaluates performance, determines future training needs, troubleshoots problems, and personally performs maintenance and repair work on some occasions. She reviews procedures and technical data, revises procedures to meet Navy requirements and for ease of interpretation, and develops new procedures as required. She prepares technical reports on subjects such as evaluation of equipment and safety-of-flight conditions, recommends solutions to problems, and reviews and revises technical reports prepared by contractors. She performs special project assignments such as incorporating a new sub-system or component into an existing system to increase or redefine the capability of the system.

The claimant is under the administrative and operational control of the Officer-in-Charge. However, assignments are in the form of overall objectives and the claimant works independently. Her work is not subject to review except for adequacy of results.

Evaluation

To be exempt from the overtime provisions of the FLSA, the employee must meet the executive, administrative, or professional exemption criteria in sections 551.205 through 551.207 of 5 CFR. The agency determined that the claimant's duties do not meet the executive or administrative exemption criteria, and the claimant does not contest that determination. We agree. The agency determined that the claimant's duties are exempt based on the professional exemption criteria, and the claimant disagrees.

Professional Exemption Criteria

Under the professional exemption criteria, contained in 5 CFR 551.206, a professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

- (a) The employee's primary duty consists of –
 - (1) 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; or
 - (2) 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; or
 - (3) 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).
- (b) The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance.
- (c) The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.
- (d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS-5 or GS-6 (or the equivalent in other systems), must spend 80 percent or more of the work time in a representative workweek in professional functions and work that is an essential part of those functions.

The claimant's position meets (a)(1).

To meet (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. The agency states that the claimant performs work comparable to professional work requiring specialized education or training and experience, theoretical and practical knowledge, and knowledge of new developments in the field. The equipment being worked on by the claimant is complex, state-of-the-art electronic equipment. Her knowledges, skills and abilities are far beyond those necessary to fine tune equipment, make minor adjustments, or perform simple repairs. The requirement for theoretical knowledge about the fields of electricity, electronics, and physics which enables the technician to understand how and why a specific electronic device or system works is characteristic of positions in the GS-856 series. The claimant must have in-depth knowledge of the electronics, electrical, and mechanical operation of the equipment and the theoretical background to guarantee its efficient operation at a high level of availability and reliability. She must combine the theory of electronics and related disciplines with an expert knowledge of specific equipment systems to determine the cause of the problem, devise a long-term solution, and train others to do the same. She provides technical advice and assistance on the acceptance, installation, operation, and/or maintenance of complex navigation and flight control systems components installed in the S-3 aircraft.

The claimant's position does not meet (a)(2).

The claimant's work is not in a field of artistic endeavor.

The claimant's position does not meet (a)(3).

The claimant's work is not in the computer software field.

The claimant's position meets (b).

Work of an intellectual nature requires general intellectual abilities, such as perceptiveness, analytical reasoning, perspective, and judgment, or work involving mental processes which require substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot solely rely on standardized procedures or precedents, but must recognize and evaluate the effect of a 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. She prepares technical reports, trains employees and reviews their work, recommends solutions to correct problems and determines the need to plan and conduct technical investigations. She resolves problems using judgment based on her in-depth knowledge of both theoretical and practical aspects of complex electronic systems and how they interrelate. The claimant works independently on the technical aspects of her job, as well as in determining what classroom and hands-on instruction to provide. The claimant must make critical decisions and

recommendations based on comparing alternatives such as repair, replace, or modify equipment. The supervisor states that the claimant analyzes problems on the aircraft systems, evaluates what must be done, determines the method of accomplishment and the technical approach to be taken, interprets and applies the necessary guidelines to ensure the electronic systems are repaired and maintained properly, develops procedures as necessary, and evaluates the skills and abilities of employees. The claimant's position is intellectual and varied in nature, requiring knowledge of electronic theory and techniques. Manual dexterity and skill, while needed, is not the paramount requirement of the position.

The claimant's position meets (c).

Established OPM guidance is that the exercise of discretion and independent judgment involves comparing and evaluating possible courses of conduct, 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. The "decisions" made as a result of the exercise of independent judgment may consist of recommendations for action rather than the actual taking of action.

The claimant works independently. She exercises a high degree of initiative and independent judgment to assess complex electronic equipment, and her technical decisions are critical. She must analyze problems associated with highly sophisticated and interrelated systems, consider several possibilities and the resulting consequences of each, and decide what must be done (e.g., whether to repair, modify, or replace). She determines the ability level of the technicians she is training and decides what additional knowledge and skills must be developed in order for them to maintain the systems themselves.

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

Decision

The claimant's position meets the professional exemption criteria. Therefore, the position is exempt, i.e., not covered by the provisions of the FLSA.