

**Compensation Claim Decision**  
**Under section 3702 of title 31, United States Code**

**Claimant:** [name]

**Organization:** [agency component]  
Department of the Navy  
[city & State]

**Claim:** Title 5 compensatory time for training

**Agency decision:** Denied

**OPM decision:** Denied

**OPM file number:** 08-0115

//Judith A. Davis for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
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4/7/2009

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Date

The claimant is currently employed in a [position] in the [agency component]; Department of the Navy; in [city & State]. He seeks to file a claim for compensatory time for mandatory evening sessions while he attended a labor negotiations seminar. He requests the U.S. Office of Personnel Management (OPM) direct his agency to provide him with 20 hours of compensatory time for work in excess of eight hours in a day for April 30, 2007, (four hours), May 1, 2007, (four hours), May 2, 2007, (five hours), and May 3, 2007, (seven hours). We received the claim on October 22, 2007, and the agency administrative report (AAR) on December 17, 2008. For the reasons discussed herein, the claim is denied.

During the period of the claim, the claimant occupied a [position] in the [agency component]. The claimant and agency agree regarding the facts of the case. The claimant was informed by his supervisor on February 7, 2007, that the claimant was to attend the aforementioned labor negotiation training seminar which would involve evening sessions. The claimant states:

I requested to be excused from this training because I was **unwilling** to commit to the extended hours as set forth in the course description. My request was denied and I was ordered to attend [sic] stating this was required for my PD (Ref B). I cannot find any where in my position description that I will be a Chief Negotiator for the Command.

The claimant's rationale is: (1) he was ordered to attend training in excess of eight hours in a day and 40 hours in a week, (2) the training constituted work and therefore, is compensable, and, (3) OPM Training Policy Handbook states that work in excess of 8 hours for training is compensable. He bases his rationale 5 U.S.C. § 6101 which limits the non-overtime work day to no more than eight hours. He cites 5 CFR 551.401, which defines all time spent by an employee performing an activity for the benefit of and under the control or direction of the agency as hours of work. He asserts the course he attended was for the benefit of the agency. The claimant points to 5 CFR 551.423(a)(2), which provides for time spent outside regular working hours being considered hours of work if an employee is directed to participate by the agency and the purpose of the training is to improve the employee's performance of the duties and responsibilities of his or her current position, and asserts this section is applicable to his situation. The claimant cites to OPM's Training Policy Manual and states: "The title 5 prohibition on payment of overtime for training does not prohibit overtime pay for work performed in excess of 8 hours in a day or 40 hours in a week. See 41 Comp. Gen. 477 (1962)." He cites 5 U.S.C. § 5542 as providing for payment, as overtime work, for hours of work in excess of eight hours in a day, and 5 U.S.C. § 5543 as providing for an equal amount of compensatory time in lieu of overtime for time spent performing irregular or occasional overtime in support of his claim.

The claimant appears to posit an alternative rationale when he cites 5 CFR 410.402(b)(2) as providing for premium pay for "training at night because situations that he or she must learn to handle only occur at night..." Claimant appears to assert that, even if 5 U.S.C. § 4109 as cited by the agency as precluding the claimant's receipt of overtime pay or compensatory time for the hours in training at issue in this claim applies, the claimant should receive the compensatory time he seeks because the "night training" he participated in was an approved exception to 5 U.S.C. § 4109. Responding to the Command's identification of his work being exempt under the Fair Labor Standards Act (FLSA), he states: "Had this been mentioned, I would have forwarded this as an EEOC case."

The AAR states that during the period of the claim, the claimant's duties included researching and developing personnel policies for 5,000 excepted service, civil service mariners as well as administering the labor relations program for those employees. The agency states the claimant was sent to the course because labor relations was part of the claimant's job and the course was for those "who will be named chief negotiators or bargaining team members." The AAR confirms the claimant requested to be excused from training, but his request was denied by his supervisor because "labor relations duties were contained in his position description." The claimant's request for compensatory time for time spent in training in excess of eight hours in a day was rejected based on advice of the Command's Office of Counsel because the claimant, as an FLSA exempt employee, is prohibited by statute and regulation from earning overtime or compensatory time while in a training status...."

It appears the claimant misconstrues the impact of FLSA exemption status with regard to his potential entitlement to premium pay. The claimant does not contest and, based on our review of the record, we have no reason to question that the claimant's work was properly exempt from the overtime pay and minimum wage provisions of the FLSA during the period of the claim. Thus, the sections of 5 CFR part 551 cited by the claimant apply exclusively to FLSA nonexempt employees, do not apply to the claimant, and will not be addressed further in this decision.

It is well established that laws *in pari materia*, or upon the same subject matter, must be construed with reference to each other and should be interpreted harmoniously. *Sullivan v. Finkelstein*, 496 U.S. 617, 632 (1990). This assumes that, when Congress passes a new statute, it is aware of all previous statutes on the same subject. *Erlenbaugh v. United States*, 409 U.S. 239, 243-244 (1972). Thus, 5 U.S.C. § 4109, read in conjunction with 5 U.S.C. §§ 5542-5543, must be read as prohibiting compensation for hours spent in training in excess of eight hours in a day other than for exceptions made by OPM under the authority of 5 U.S.C. § 4102(b)(1) and 5 U.S.C. § 4118. Contrary to the claimant's assertion, OPM file number S001036, dated June 7, 1999, is directly applicable to the claimant's situation, and bars the payment of overtime premium pay or compensatory time in lieu of overtime premium pay other than for the exceptions provided for in 5 CFR 410.402(b). As an OPM settlement decision, OPM file number S001036 is binding on Executive branch agencies and adopts long-established interpretation on this prohibition (See, e.g., B-249835, January 29, 1993; and B-189006, July 11, 1977).

The claimant's reliance on 41 Comp. Gen. 477 (1962) is misplaced in that the overtime premium pay found permissible in this case pertained to hours of work that were not hours of training. The claimant's alternative rationale, which relies on 5 CFR 410.402(b)(2), fails since labor negotiation training is not a situation which an employee can only learn to handle at night. Thus, the claim is denied.

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