

OPM Decision No. F-0856-11-04, dated 10/05/01

This decision reopened, reconsidered, and sustained OPM decision number F-0856-11-02, dated November 9, 2000.

Ms. Rose Mondello, Director
Human Resources Office
Navy Region Southwest
Coronado Complex
Box 357041
San Diego, CA 92135-7041

Dear Ms. Mondello:

This is in response to your May 21, 2001, letter requesting that the Office of Personnel Management (OPM) reconsider the Fair Labor Standards Act (FLSA) claim decision issued for [claimant], on November 9, 2000. [The claimant] occupies a [position], in the [agency], [city, state]. The OPM claim decision number F-0856-11-02 changed the FLSA designation of [the claimant's] position from exempt to nonexempt. OPM reconsidered the decision in accordance with section 551.708 of title 5 of the Code of Federal Regulations (CFR). After our review of the original decision and the additional documents received from the agency, we affirm the original decision.

[The claimant] provides technical advice, assistance, and instructions to an assigned squadron on the maintenance and repair of electronic warfare/communication equipment on the F-14 aircraft. His primary duty is to provide troubleshooting and technical assistance on the operation, maintenance and/or installation of radar and radio technical support and training to the military members onboard ship, including 10 percent classroom training. He refers to technical publications and planning documents when training and providing onsite assistance. He is not authorized to deviate from the established guidance, and his work is reviewed for adequacy of results. The assigned supervisor or Officer-in-Charge has final authorization of [the claimant's] work. Based on our review, we find [the claimants] position to be nonexempt.

We are enclosing an analysis of our reconsideration of [the claimant's] FLSA claim. Based on our findings, the original decision, F-0856-11-02, is affirmed. You should follow the implementing instructions as described on page *ii* of the original decision. The agency should identify all similarly situated current and, to the extent possible, former employees, to ensure that they are treated in a manner consistent with this decision. The agency is to compute [the claimant's] overtime pay in accordance with instructions in the original decision, then pay [the claimant] the amount owed him. The agency must also submit a Standard Form (SF) 50 showing that [the claimant's] exemption status has been changed to comply with this decision.

If you have any further questions, please call me on (202) 606-2530.

Sincerely,

Melissa A. Drummond
Program Manager

Enclosure

**OFFICE OF MERIT SYSTEMS OVERSIGHT AND EFFECTIVENESS
OFFICE OF PERSONNEL MANAGEMENT**

**RECONSIDERATION ANALYSIS
OF OPM CLAIM DECISION NUMBER F-0856-11-02**

FAIR LABOR STANDARDS ACT CLAIM

On February 7, 2000, the Atlanta Oversight Division of the OPM received [the claimant's] FLSA claim. On March 31, 2000, the claim was suspended because [the claimant] was on a temporary overseas duty assignment and could not be contacted. On August 9, 2000, the administrative report was received and the claim was reactivated. On November 9, 2000, OPM issued a decision changing [the claimant's] position FLSA designation from exempt to nonexempt. On May 21, 2001, the agency requested reconsideration of the OPM decision because the agency believed that the decision was based on material errors of fact. On June 26, 2001, our office provided [the claimant], for his comment, a copy of the agency's documentation that supported their position regarding OPM's FLSA claim decision. On July 3, 2001, our office received [the claimant's] response, dated June 29, 2001. [The claimant] agreed with the agency's description of his responsibilities and duties of his position.

In reaching our decision, we have carefully reviewed all written information furnished by [the claimant] and the agency, and conducted a telephone interview with [the claimant's] first-line supervisor. In the agency's request for reconsideration of the decision, the agency did not provide comments on the Introduction and General Issues paragraphs. However, the agency provided comments on the Job information section of the decision.

The agency determined that [the claimant's] duties do not meet the executive or administrative exemption criteria, but meets the professional exemption criteria. The agency submitted documentation to support the agency's belief. We agree with the agency's assessment that [the claimant's] duties do not meet the executive or administrative exemption criteria.

However, we disagree with the agency's assessment that [the claimant's] duties meet the professional exemption criteria. According to subpart 551.207 of title 5 Code of Federal Regulations (CFR), four tests must be met – the primary duty, intellectual and varied work, discretion and independent judgment, and 80-percent tests – to meet the professional exemption criteria. The FLSA exemption status is based on the duties the employee actually performs rather than what is described in the position description. *See 5 CFR § 551.202(i).*

The statements that the agency provided in its May 21, 2001, letter are in standard print and our responses are in italic print.

- On occasion he has modified the software in the computer to complete the diagnostic process.

[The claimant's] supervisor, stated that [the claimant] did not modify the software in the computer to complete the diagnostic process. [The claimant's supervisor] explained that his unit is not authorized to modify computer software, but must contact the computer unit with any problems or suggestions.

- Additionally, even though repair manuals delineating the proper repair procedures exist, does not necessarily make the work any less complex. Fault diagnostics of the most difficult problems on the mission essential systems requires application of a broad range of electronic principles as well as mechanics and hydraulics to correct malfunctions.

In providing technical assistance, [the claimant] assists the military members in diagnosing and isolating malfunctions by applying standardized procedures and guidelines. To advise and provide on-the-job training, [the claimant] reads and understands technical manuals, manufacturers' specifications, blueprints, etc., and knows accepted repair and maintenance procedures to determine if systems and equipment are functioning as required. He does not create innovative techniques and procedures. While he may occasionally suggest minor adjustments in procedures, such changes are made only within established and acceptable guidelines. [The claimant's] knowledge and job responsibilities are those of a highly skilled and experienced technician.

[The claimant] uses and teaches approved maintenance and operating 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 procedure.

- The number of variable interacting to affect the acceptable level of equipment operation is vast. [The claimant] cannot rely on published standardized procedures but must be able to recognize and evaluate the effect of a great number of variables, which could be the cause of the problems. There is no repair manual to tell him the answer.

[The claimant's supervisor] stated that the technical manuals that [the claimant] uses have established procedures to assist in eliminating equipment operation problems. [The claimant] depends on his previous experience, formal training attained from C-school, on-the-job training, and brainstorming with other NETS technical specialists, including his supervisor, to determine variables that could be the cause of the problems with the equipment operation.

- The OPM decision fails to properly credit the in-depth theoretical electronics knowledge required to “troubleshoot”, develop repair solutions, and provide

instruction to others on how to understand the problem. Unlike painting, this work cannot be learned by rote and repetition. The work is of an intellectual nature; the nature of the malfunction must be understood based both on knowledge of the specific function of the multiple systems in the ANAWG-9 and the theory of the electronics, which causes those systems to work.

We find no evidence that [the claimant] applies in-depth theoretical knowledge to troubleshoot, develop repair solutions, and provide instructions to others. [The claimant's] supervisor, stated that [the claimant] applies basic principles and an in-depth practical knowledge attained from experience working on the assigned electronic systems, using technical manuals, and attending C-school courses. According to [the claimant's supervisor], neither he nor [the claimant] is required to have the level of analytical and evaluative skills expected of a professional engineer.

- [The claimant's] position does, however, require the exercise of independent judgement in terms of analyzing and interpreting complex situations, considering a variety of possibilities, using the technical information, computer input and procedures available and decide what should be done.

Established OPM guidance is that the exercise of discretion and independent judgment involves interpreting results or implications, and independently taking action or making decisions 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 to take action; and the decisions must be significant.

[The claimant] performs 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.

- In essence they [the claimant's supervisors] have no technical knowledge in electronics. They cannot provide technical supervision, technical assistance or advice. In the case of [the claimant's] position, by coincidence, his current supervisor is qualified on the same equipment platform as [the claimant]; however, it is a different generation of equipment making it nearly impossible for his supervisor to provide technical guidance.

[The claimant's supervisor] stated that he is a NETS Technical Specialist, GS-12 and a civilian federal employee. [The claimant's supervisor] explained that he performs administrative (i.e., time sheets and leave) supervisory functions for 25% of his work time. [The claimant's supervisor] stated that he is also qualified on F14 integrated weapon system. [The claimant's supervisor] further explained that he supervises ten people that have different expertise, but the guidelines do not require him to have the same knowledge of all his subordinates. He offered that he is a retired

military member and attained his skills in the military at C-schools, and on-the-job training. [The claimant's supervisor] explained that [the claimant's] completed work is reviewed for compliance with overall project objectives.

It is important to again note our observation of the classification of [the claimant's] position, originally described in our November 9, 2000 cover letter. Considering the true nature of the position described by [the claimant's supervisor] as troubleshooting, calibrating, etc., it appears that [the claimant's] position may not be functioning as it is currently classified. 5 CFR subpart 551.204(a) states that "a nonsupervisory employee in the Federal Wage System or in other comparable wage systems is nonexempt." Although [the claimant's] position is not classified in the FWS, he appears to be performing predominantly nonexempt trades work. Therefore, based on the duties performed by [the claimant], none of the exemption criteria have been met.

Based on the above analysis, we find that [the claimant's] position does not meet the professional, administrative, or executive exemption criteria. Therefore, the position is nonexempt, i.e., covered by the provisions of the Act.