

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

Office of Merit Systems Oversight and Effectiveness
1900 E Street, NW
Washington, DC 20415-6000

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

Claimant: [claimant]

Agency classification: Quality Assurance Specialist
(Aerospace), GS-1910-11

Organization: [agency]

Claim: Exemption status and compensation for
time traveled in connection with training.

OPM decision: Exempt.
Overtime payment due.

OPM decision number: F-1910-11-01

/s/

Deborah Y. McKissick
FLSA Claims Officer

4/15/02

Date

As provided in section 551.708 of title 5, Code of Federal Regulations (CFR), this is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which 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 (address provided in 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

Decision sent to:

[the claimant]

[agency representatives' names and addresses]

Carlos A. Torrico
FLSA Claims Officer
U.S. Office of Personnel Management
San Francisco Oversight Division
120 Howard Street, Room 760
San Francisco, California 94105

Introduction

On July 20, 2000, the San Francisco Oversight Division of the Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [claimant]. The claimant believes he is owed payment for time traveled in connection with training during the period of April 19, 1997 to September 18, 1999. The claimant works with the [agency] in [agency's location]. The claimant is a Quality Assurance Specialist (Aerospace), GS- 1910-11. Because of program changes in OPM, the San Francisco Oversight Division sent the claim to OPM's claims office in Washington, DC for processing on July 12, 2001. We 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. We also conducted a telephone interview with the claimant and the claimant's supervisor.

General issues

The agency designated the claimant's position, Quality Assurance Specialist (Aerospace), GS-1910-11, as exempt. The claimant believes he should be designated as nonexempt and also be compensated for time spent traveling outside his scheduled work hours during the period of April 19, 1997 to September 18, 1999.

The claimant references the July 14, 1999 settlement agreement between headquarters [two agency components] and certain American Federation of Government Employees (AFGE) locals, regarding the FLSA status of certain bargaining unit positions. He also references the September 9, 1999 settlement agreement between the [agency component] and Bargaining Unit Employees of the National Federation of Federal Employees (NFFE) Local 1614, regarding the FLSA status of certain bargaining unit positions. The claimant notes that there was a dispute regarding the FLSA exemption status for the Quality Assurance Specialist, GS-1910-11 grade level. However, we must make our decision solely by comparing claimants' duties and responsibilities to Federal regulations and other Federal guidelines. Since comparison to Federal guidelines is the exclusive method for making exemption decisions, we cannot compare the claimant's position to others as a basis for deciding his claim.

Background information

The claimant believes that his current FLSA exemption status, exempt, is incorrect. The claimant believes that his FLSA exemption status should be nonexempt, covered by the Fair Labor Standards Act.

The essential facts surrounding this claim are not in dispute.

- The claimant's position was designated by the agency as exempt, not covered by the FLSA.

- The claimant is not a member of a collective bargaining unit or a party of either of the settlement agreements.
- The claimant's unit was not covered by a negotiated agreement.
- The claimant was and is a Quality Assurance Specialist (Aerospace), GS-1910-11, working as a Quality Program Manager at [contractor facility].

Evaluation

FLSA Exemption Designation

The claimant believes that he was covered by the terms of the settlement agreement because the Quality Assurance Specialist, GS-1910-11, position's FLSA designation was in dispute. The claimant's position was not included in the settlement agreement, and neither the agency nor the claimant provided documents that establish a conclusion to the dispute regarding the FLSA designation for Quality Assurance Specialist, GS-1910-11.

The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee (5 CFR 551.202). Sections 551.205, 551.206, and 551.207 of title 5, Code of Federal Regulations (5 CFR) contain criteria governing whether the claimant's position should be exempt from the FLSA.

Executive Exemption Criteria

The executive exemption criteria in 5 CFR 551.205, define an "executive" as 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. Because the claimant does not supervise, his work does not meet the exemption definition of executive criteria as described in 5 CFR 551.205.

Professional Exemption Criteria

The professional exemption criteria in 5 CFR 551.207, define a professional employee as an employee, 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 professional employee may also be an individual that performs 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. Based on the information provided, the claimant's work does not meet the exemption definition of professional criteria as described in 5 CFR 551.207.

Administrative Exemption Criteria

Under the administrative exemption criteria contained in 5 CFR 551.206, an administrative employee is an advisor or assistant to management, a representative of management, or a

specialist in a management or general business function or supporting service who meets all of the four required criteria:

- (a) The employee's primary duty consists of work that - -
 - (1) Significantly affects the formulation or execution of management policies or programs; or
 - (2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or
 - (3) Involves substantial participation in the executive or administrative functions of a management official.
- (b) The employee performs office or other predominantly nonmanual work which is - -
 - (1) Intellectual and varied in nature; or
 - (2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.
- (c) The employee must frequently exercise 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 white collar systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions.

The claimant does meet (a)(1).

OPM defines the formulation or execution of management programs and policies as work that involves management programs and policies, which range from broad national goals expressed in statutes or Executive Orders to specific objectives of a small field office. Employees make policy decisions or participate indirectly through developing proposals that are acted on by others. Employees significantly affect the execution of management policies or programs typically when the work involves obtaining compliance with such policies by individuals or organizations, 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's supervisor stated that the claimant monitors [contractor] to ensure that the company's facilities are in compliance with all federal contract requirements that cover product manufacturing, inspecting, test, and delivery of equipment. He added that the claimant's duties and responsibilities of planning and implementing the quality assurance program affects the creation or execution of the agency's management programs or policies. The claimant's position description states that the claimant is a program manager responsible for planning, developing, implementing, and administering an in-plant quality assurance program as a resident Quality Assurance Specialist in a contractor facility. We find this to be an accurate depiction of the claimant's duties.

The claimant does meet (a)(2).

Work that involves general management, business, or supporting services includes a wide variety of specialists who provide support to line managers by providing expert advice in specialized fields, such as that provided by management consultants or systems analysts; by assuming facets of the overall management function, such as personnel management or financial management; by representing management in business functions, such as negotiating contracts; or by providing support services, such as procurement and distribution of supplies.

According to the information provided, the claimant reviews purchase contracts from vendors and issues delegations of authority to subcontractors in the field. He also provides support to the line managers in production, engineering and quality by assuring that acceptable quality evidence exists for performance of such things as purchased materials and vendor controls, shipment and key processes. The claimant assesses the contractor's purchased material or vendor quality assurance controls and, as required, selectively requests Government quality assurance support at subcontract level to verify adequacy of prime contractor controls. The claimant's assessment serves as advice in the specialized field of quality assurance.

The claimant does not meet (a)(3).

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 the duties of a secretary or administrative assistant, nor is he authorized to act for the supervisor.

The claimant does meet (b)(1).

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.

During fact-finding, it was learned that the claimant exhibits skills in interpreting, explaining, and proofing technical requirements and processes to document process flows, identifies and establishes key process measuring points, and analyzes contractor data and process variations. The claimant also uses defect analysis techniques to identify chronic cause of nonconformance and associated costs, and to analyze contractor and Government data. These evaluative judgments apply analytical reasoning and perspective in the management of the organization's quality assurance program.

The claimant does meet (b)(2).

OPM guidance indicates that work which is of a specialized or technical nature requiring considerable specialized training, experience, and knowledge means specialized knowledge of a complex subject matter and of the principles, techniques, practices, and procedures associated with that subject matter field. That knowledge characteristically is acquired through considerable on-the-job training and experience in the specialized subject matter field. The in-depth practical knowledge required by the claimant to provide technical assistance would typically come from several years of on-the-job training and experience.

The claimant has a comprehensive knowledge of aerospace systems and primary structural components of the systems, including launch vehicles, and spacecraft. The claimant acquired his in-depth knowledge through on-the-job experience and by completing courses in the military. Since leaving the military, the claimant has also completed courses and earned certification in Aircraft, Electronics and Aerospace systems and products. This specialized knowledge enables the claimant to carry out his program management duties.

The claimant does meet (c).

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 that specifically govern their actions do not meet this element. In addition, deciding whether a situation does or does not conform to clearly applicable criteria is not considered making significant decisions.

Under general supervision, the claimant works in contractor facilities completing projects, such as testing [system name]. The claimant uses discretion and independent judgment in interpreting the guidelines and policies, which apply to interpret the requirements of contracts, and in resolving conflicts with the contractor over technical requirements of contract and specifications.

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

The claimant meets all of the administrative criteria.

Decision

Based on the above analysis, the claimant's position does not meet the executive exemption nor the professional exemption criteria. However, the claimant's position meets the administrative exemption criteria, and is therefore, exempt, i.e., not covered by the provisions of the Fair Labor Standards Act.

Time Spent Traveling

The claimant believes that he is entitled to overtime pay for time spent traveling outside of his established work hours and outside of his duty-station in connection with the [system name] mission ground support during the period of April 19, 1997 to September 18, 1999.

5 CFR 550.112(g) is used to determine hours of work for travel for FLSA exempt who are covered by the overtime pay provisions of title 5, United States Code (5 U.S.C.), section 5542. 5 CFR § 550.112(g) defines the situations that designate time in travel as overtime and it reads,

Time in travel status. Time in travel status away from the official duty-station of an employee is deemed employment only when:

- (1) It is within his regularly scheduled administrative workweek, including regular overtime work; or
- (2) The travel -
 - (i) Involves the performance of actual work while traveling;
 - (ii) Is incident to travel that involves the performance of work while traveling;
 - (iii) Is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
 - (iv) Results from an event, which could not be scheduled or controlled administratively, including, travel by an employee to such an event and the return of the employee to his or her official-duty station.

5 CFR 550.112(g)(2)(iv) applies to the claimant's situation. The Federal agency did not administratively control the scheduling of traveling time for trips in question to Germany, England, and Japan during the claim period. When the claimant was required to travel during the weekend to report to work on Monday morning in Germany, England, and Japan,

the work was ordered and approved by the supervisor. Therefore, the travel was compensable at the overtime rates prescribed in 5 U.S.C. § 5542(b)(2)(B).

Compensation for overtime should be authorized because the travel results from an event that could not be scheduled or administratively controlled, and there is an immediate official necessity concerning the event that requires travel outside the employee's regular duty hours. *Barth v. U.S.*, 568 F.2d 1329, 1332 (Ct. Cl. 1978); *Jordan*, 72 Comp. Gen. 286, 287 (1993); *Department of Housing and Urban Development*, 70 Comp. Gen. 77 (1990); *William A. Lewis, et. al.*, 69 Comp. Gen. 545, 547 (1990).

Decision

Requests for overtime under title 5 for time spent traveling to attend overseas meeting dates may be denied because the agency administratively controls the scheduling of the event. However, the claimant's agency did not administratively control the scheduling of the overseas meeting dates which required the claimant to travel outside the employee's duty station and outside the employee's regularly scheduled workweek. The start and end time of the events were scheduled not by the claimant's agency, but by someone or some organization outside the Executive branch of government – [contractor] and its customers. *William A. Lewis, et al.*, 69 Comp. Gen. 545 (1990).

Based on the above analysis, the claimant is owed compensation for the following time spent traveling outside his scheduled work hours:

1. TDY to Germany, Travel Order [#], Sunday 9/12/99 to 9/18/99;
2. TDY to England, Travel Order [#], Saturday, 2/20/99; and
3. TDY to Japan, Travel Order [#], Saturday, 2/6/99.
4. TDY to Japan, Travel Order [#], Sunday, 4/19/98; and
5. TDY to Japan, Travel Order [#], Saturday, 4/19/97.

Compliance instructions

There is a six-year statute of limitation for employees covered by title 5 (exempt from FLSA). The claimant can receive back pay for six years from the date his claim was received by OPM, which was July 20, 2000. Therefore, he can receive compensation for the requested claim period of April 19, 1997 to September 18, 1999.

The agency should pay the claimant the total owed him. If the claimant believes that the agency has computed the amount incorrectly, he may file a new compensation claim with OPM.