

Date: April 14, 2004
Claimant: [name]
File Number: 03-0017
OPM Contact: Deborah Y. McKissick

The claimant is employed as a [position] with the U.S. Customs and Border Protection, Department of Homeland Security. He filed a claim requesting compensatory time for travel. The Office of Personnel Management (OPM) received the compensation claim on August 7, 2003, and the agency administrative report on October 17, 2003. For the reasons discussed herein, this claim is denied.

The claimant believes he is entitled to seven hours of compensatory time when he traveled to Miami, Florida, on Saturday, September 14, 2002, after participating in the Management Development Program oral interview on Friday, September 13, 2002. The claimant works an Alternative Work Schedule, Monday through Friday, and is off every first Friday of a pay period.

The agency administrative report confirmed that the claimant participated in the interview for the Management Development Program until 4:00 p.m. on Friday, September 13, 2002. The agency stated that as an exempt employee, the provisions governing his time in a travel status are contained in title 5, Code of Federal Regulations (CFR), section 550.112(g). The agency stated that because there was no regularly scheduled overtime approved in advance of the Saturday during which the claimant traveled, 5 CFR 550.112(g)(1) did not apply. Because the claimant did not perform work while traveling, the agency said that 5 CFR 550.112(g)(2) (i) did not apply. Since the claimant traveled under normal circumstances using normal conveyances, the agency stated that 5 CFR 550.112(g)(2)(iii) did not apply. The agency said that because scheduling of the Management Development Program interview was within the administrative of control of legacy Customs, 5 CFR 550.112(g)(2) (iv) did not apply. An agency electronic mail message in the record also stated that because the claimant did not perform work while traveling, 5 CFR 550.112(g)(2)(ii) did not apply.

Section 5543(a) of title 5, United States Code (U.S.C.), provides that agency heads may, at an employee's request, grant the employee compensatory time off from his or her scheduled tour of duty instead of payment for an equal amount of time spent in irregular or occasional overtime work under section 5542. Section 5543(a) also specifies that agency heads may provide that an employee, whose rate of basic compensation exceeds the maximum rate of basic pay for GS-10, shall be granted compensatory time off equal to the amount of time spent in irregular or occasional overtime work. Section 5543(b) provides that, at the request of an employee, the head of an agency may grant the employee compensatory time off instead of overtime pay for an equal amount of time

spent in irregular or occasional overtime work. Subsection (b) further provides that an agency head may not require an employee to be compensated for overtime work with an equivalent amount of compensatory time off from his or her tour of duty. The corresponding OPM regulation, at 5 CFR 550.114, tracks the statutory language.

Congress has authorized overtime pay for travel time only under the specifically limited circumstances set forth in 5 U.S.C. § 5542(b). Section 5542(b)(2) provides that:

- (2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--
 - (A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or
 - (B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, 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 such

The corresponding OPM regulation at 5 CFR 550.112(g) tracks the statutory language.

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the government agency involved in the claim. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. Moreover, the burden of proof is on the claimant to prove the liability of the government and his or her right to payment. 5 CFR 178.105; *Matter of Jones and Short*, B-205282, June 15, 1982. Thus, where the written record presents an irreconcilable dispute of fact between a government agency and an individual claimant, the factual dispute is settled in favor of the agency, absent clear and convincing evidence to the contrary. 5 CFR 178.105; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982. There is no evidence that the claimant's travel on Saturday, September 14, 2002, met any of the circumstances set forth in 5 U.S.C. § 5542(b). The claimant is not entitled to compensatory time off merely on the basis that his travel took place outside his regular workweek. Hence, the claim is denied.

This settlement is final. No further administrative review is available within the Office of Personnel Management. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.