

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

Claimant: [name]

Agency classification: Budget Analyst
GS-560-11

Organization: Joint Task Force [number]
Office, Chief of Staff
Department of the Army
[location]

Claim: FLSA Overtime Compensation for
Capped Overtime

OPM decision: Granted

OPM decision number: F-0560-11-01

/s/

Kevin E. Mahoney
Acting Deputy Associate Director
Center for Merit System Accountability

7/5/07 _____
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 the U.S. 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. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

Decision sent to:

[name and address]

Department of the Army
Office of the Assistant G-1 for Civilian Personnel
Chief, Policy and Program Development Division
Attn.: DAPE-CP-PPD
2461 Eisenhower Avenue
Alexandria, VA 22332-0320

Department of the Army
Office of the Assistant G-1 for Civilian Personnel
Director, Civilian Personnel Evaluation Agency
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Director, Defense Finance and Accounting Service
DFAS-Headquarters
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Chief, Classification Appeals
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Civilian Personnel Management Service
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Introduction

On September 10, 2001, the Dallas Field Services Group, formerly the Dallas Oversight Division, of the U.S. Office of Personnel Management (OPM), received a Fair Labor Standards Act (FLSA) claim from [name]. The claim was transferred to the Center for Merit System Accountability, formerly the Office of Merit System Oversight and Effectiveness upon receipt. The claimant occupies a Budget Analyst, GS-560-11, position with Joint Task Force [number], Department of the Army, duty stationed in [location]. She believes she is entitled to the difference between the capped overtime wages she was paid under the premium pay provisions of 5 U.S.C. § 5542 and “full overtime wages” under the FLSA for the 58.5 hours of overtime she worked in fiscal year (FY) 1999 and FY2000; i.e., September 11, 1999 through September 11, 2001. We have accepted and decided this claim under section 4(f) of the FLSA as amended.

In reaching our decision, we have carefully reviewed all information furnished by the claimant and her agency.

Background

OPM received documents requested from the servicing West Civilian Personnel Operations Center, Fort Huachuca, Arizona, on January 30, 2003, but the agency did not respond to the claim. On July 3, 2003, we wrote to the Department of the Army Headquarters (Attn.: SAMR-CPP-MP) requesting the agency respond to the claim. Subsequent telephone discussions with claimant indicate the claimant’s servicing payroll office (Defense Finance and Accounting Service (DFAS)) issued a check for the overtime pay in question which the claimant did not receive. The claimant provided e-mails (May 26, 2006, and June 18, 2007) indicating DFAS was supposed to research the situation and “reissue” the check.

General issues

The record shows the claimant’s agency, as a result of an FLSA study, determined her position was nonexempt from the overtime provisions of the FLSA. The employing activity advised the claimant of this change in exemption status on or around August 10, 2001. An August 10, 2001, memorandum from the claimant to the Commander, Joint Task Force [number], Subject: Acknowledgement of the FLSA Consistency Review, states:

...I understand that my status...will be changed from “Exempt” to that of “Non-exempt”

2. Additionally, I have been provided with the procedures for filing a claim under a two year statute of limitations (3 years for willful violation), by accessing the Office of Personnel Management (OPM) Website...should I decide to do so.

The claimant indicated to OPM she was advised of the information discussed in this memorandum by the Joint Task Force [number] internal personnel director, Lt. Col. [name]. In her claim, she stated: “I do not feel there was any willful wrongdoing,” indicating she believes her claim is subject to a two-year rather than three-year statute of limitations. Since OPM

received the claim on September 10, 2001, the appellant has preserved the claim for the entire period of time at issue; i.e., September 11, 1999 through September 11, 2001.

Evaluation

Subpart G of part 551 of title 5, Code of Federal Regulations (CFR), applies to FLSA exemption status determination claims, FLSA claims for minimum wage or overtime pay for work performed under the Act, and complaints arising under the child labor provisions of the Act. The agency is responsible for determining the right of employees to compensation consistent with FLSA regulations and OPM decisions. Contrary to the advice provided by the claimant's employing activity, 5 CFR 551.703(b) provides for filing an administrative claim with **either** OPM or the agency employing the claimant during the claim period.

For employees such as the claimant, the FLSA administrative claims process is intended to resolve disputes regarding a claimant's exemption status, whether the claimant is being paid for all hours of work performed as defined by the Act, and/or is receiving the proper rate of FLSA overtime pay. None of these are at issue in the instant claim. The agency has determined the appellant is nonexempt from the Act and is due FLSA overtime pay. The appellant's supervisor has certified to the number of overtime hours at issue. The agency has not disagreed with these assertions. The only unresolved issue in this case is the apparent failure of the agency's payroll provider to issue a check for the overtime pay which is subject to interest under 5 U.S.C. 5596 and 5 CFR part 550, subpart H. These are matters under the purview and control of the employing agency and its payroll provider and are not subject to OPM's FLSA claim adjudication process.

Decision

The claimant is entitled to overtime compensation under the FLSA as agreed to by her employing agency.