

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



Dallas Oversight Division
1100 Commerce Street, Room 4C22
Dallas, TX 75242

**Fair Labor Standards Act Decision
Under Section 4(f) of the Act as Amended**

Claimant: [claimant's name]

Position: Contract Specialist
GS-1102-9

Organization: [claimant's immediate organization]
Contract Department
Department of the Navy
[city, state]

Claim: Received no overtime pay for travel to attend training

OPM decision: Claim partially granted

OPM decision number: F-1102-09-01

/s/ Bonnie J. Brandon

Bonnie J. Brandon
FLSA Claims Officer

7/21/99

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 OPM administers the Act. The agency should identify all similarly situated current and, to the extent possible, former employees, ensure that they are treated in a manner consistent with this decision, and inform them in writing of their right to file an FLSA claim with the agency or OPM. There is no further right of administrative appeal. This decision is subject to discretionary review only under conditions specified in 5 CFR 551.708 (address provided in 5 CFR 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision. However, she may do so only if she does not accept back pay. All back pay recipients must sign a waiver of suit when they receive payment.

Decision sent to:

[appellant's name and address]

Director, Human Resources Office
 Department of the Navy
 Michael G. Hoff Building
 Box 22, Naval Air Station
 Jacksonville, FL 32212-0022

Director, Human Resources Office
 Department of the Navy
 [address of servicing personnel office]

Program Manager
 Naval Acquisition Intern Program
 Naval Acquisition Career Management Center
 Department of the Navy
 P. O. Box 2033
 Mechanicsburg, PA 17055

Director
 Plans, Programs, and Diversity
 Office of the Deputy Assistant Secretary
 of Navy, Civilian Personnel (CP/EEO)
 Department of the Navy
 800 North Quincy Street
 Arlington, VA 22203-1998

Chief, Classification Branch
 Field Advisory Services Division
 Defense Civilian Personnel Management Service
 1400 Key Boulevard, Suite B-200
 Arlington, VA 22209-5144

Introduction

On August 10, 1998, the Dallas Oversight Division of the U. S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [the claimant]. The claimant is requesting payment for uncompensated overtime for hours traveled in connection with training attendance during the period November 5, 1995, through August 16, 1996. During the claim period, the claimant was in the Naval Acquisition Intern Program, Naval Acquisition Career Management Center (NACMC), Department of the Navy, duty stationed at [name of installation]. Her position was classified at that time as Contract Specialist, GS-1102-9. It was nonexempt from the FLSA. We have accepted and decided her claim under section 4(f) of the FLSA as amended.

General issues

There are several issues bearing on this claim:

- (1) The claimant disagrees with the date used to preserve the statute of limitations.
- (2) The claimant believes there was a willful intent on the agency's part to violate the FLSA by providing erroneous information on overtime payment for travel in the NACMC Administrative Manual for the Contracting Career Intern Program. A finding of willful violation would establish a three-year period for the statute of limitations.
- (3) The claimant believes she is entitled to payment for uncompensated overtime for travel to attend training on both workdays and nonworkdays during the claim period.

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

Evaluation

We will address each of the issues bearing on this claim.

(1) Preserving the Statute of Limitations

FLSA pay claims are subject to a two-year statute of limitations, except in cases of a willful violation where the statute of limitations is three years [section 551.702(b) of title 5, Code of Federal Regulations (CFR)]. In order to preserve the claim period, a claimant must submit a written claim either to the employing agency or to OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay. The claimant is responsible for proving when the claim was received.

The claimant originally submitted her claim to her employing agency on July 3, 1997. The copy of the claim the claimant sent us does not show a date of receipt by the agency, and the claimant did not provide proof of when it was received by her agency. The claim was not processed by the employing agency, and the claimant subsequently submitted her claim to the General Accounting Office (GAO) on June 26, 1998. Because OPM has the responsibility for administering the FLSA, the GAO notified the claimant on July 13, 1998, that the claim had been forwarded to OPM. The claimant believes this date should be used to preserve the statute of limitations as it indicates when the GAO received the claim. OPM received the claim on July 17, 1998. Since this is the only date for which we have official proof that the pay claim was received by the appropriate authority responsible for its adjudication, we find that the date of July 17, 1998, is proper for preserving the statute of limitations. We note that the claimant's request for uncompensated overtime would not be affected even if the July 13, 1998, date is used for this purpose.

(2) Willful Intent to Violate the FLSA

The next issue is whether the claim period should be extended to three years based on the claimant's belief that her employing agency willfully violated the FLSA. Her belief is based on information covering overtime payment for travel in the NACMC Administrative Manual for the Contracting Career Intern Program that states nonexempt employees (interns at the GS-5 and GS-7 levels) who must travel on nonworkdays may be eligible for travel overtime. The claimant did not claim travel overtime since she believed she was not eligible based on her grade of GS-9.

Willful violation, as defined in 5 CFR 551.104, occurs under circumstances where the employing agency knew that its conduct was prohibited by the FLSA or showed reckless disregard for its requirements. Reckless disregard means failure on the part of the employer to make adequate inquiry into whether conduct is in compliance with the FLSA.

We obtained information from two former intern program managers concerning the guidance in the manual covering travel on nonworkdays. Both of the managers substantiate that at the time the manual was written, GS-9 interns were considered exempt from the provisions of the FLSA and not eligible for overtime compensation. One of the program managers remembers this information was based on advice provided by agency human resource officials at the time the manual was published. The two former intern program managers recall that GS-9 interns were later changed to a nonexempt status after the manual was issued. Although our factfinding found no documentation as to why or when this change in exemption status occurred, both program managers attest to this change and that the manual, to the best of their knowledge, was correct at time of publication. They also recall that when the claimant later raised the issue of uncompensated overtime, she was advised to submit the proper documentation to her agency to claim payment since her GS-9 position was determined to be nonexempt for that time. According to the NACMC payroll technician, the claimant never submitted the requested documentation.

These circumstances do not indicate the employing agency knowingly or with reckless disregard violated the requirements of the FLSA. The NACMC manual guidance provided to interns was correct at the time it was written and was based on authoritative advice given at the time the

manual was issued. The claimant was given the opportunity to provide proper documentation to claim overtime for travel, but she never provided the documentation to her agency as requested. We, therefore, deny the claimant's assertion of willful violation and uphold the two-year period for preserving the statute of limitations. This claim, therefore, covers the two-year period from July 18, 1996, through July 17, 1998.

The claimant is concerned that the manual guidance is misleading to interns who are new to government service and unfamiliar with travel and overtime regulations. We have learned that the NACMC Administrative Manual is no longer used. Instead, interns are now provided a letter upon entering the program that states in general terms that they may be entitled to overtime for travel on nonworkdays.

(3) Uncompensated Overtime for Travel

Time spent in a travel status is considered compensable hours of work as described in both 5 CFR 551.422(a) and 5 CFR 550.112(g). Section 551.422(a) states that time spent traveling is considered hours of work if an employee is required to (1) travel during regular working hours; (2) drive a vehicle or perform other work while traveling; (3) travel as a passenger on a one-day assignment away from the official duty station; or (4) travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours. Section 550.112(g) provides that time in a travel status away from the official duty station is hours of work if the travel (1) is within an employee's regularly scheduled administrative workweek; (2) involves the performance of work while traveling; (3) is incident to travel that involves the performance of work while traveling; (4) is carried out under arduous and unusual conditions; or (5) results from an event that could not be scheduled or controlled administratively.

As an intern, the claimant was required to attend Defense Acquisition University training courses during her internship. The courses varied in duration and location. The claimant's regularly-scheduled administrative workweek was Monday through Friday. The claimant would often travel on Sundays, nonworkdays, since the courses began on Monday mornings. The claimant's return trips home following course completion often extended beyond working hours on normal workdays, typically on Fridays. The claimant's overtime pay claim covers the hours she traveled on Sundays and past working hours on normal workdays for six separate trips she took during the claim period. Because of the two-year statute of limitations as previously discussed, this claim covers the travel that occurred on Sunday, August 4, 1996, and Friday, August 16, 1996.

Using the criteria in sections 551.422(a) and 550.112(g), we conclude that the hours the claimant traveled on Sunday, August 4, 1996, that correspond to her regular working hours are considered hours of work under the FLSA. The hours claimed on the return trip home on Friday, August 16, 1996, that extend past the claimant's normal working hours are not considered hours of work based on the above criteria. Travel time outside of normal duty hours, either on a workday or nonworkday, is not counted as hours of work when the employee is on an overnight trip unless the employee performs work while traveling, travels under arduous conditions, or travels as the result of an uncontrollable event.

The claimant's normal work hours were 8:00 a.m. to 4:30 p.m. Copies of time sheets provided by the employing agency for the period in question confirm this. The time sheet for the pay period ending August 17, 1996, however, reflects the hours of work as 7:30 a.m. to 4:00 p.m. This work schedule is consistent with instructions in the NACMC Administrative Manual that established those hours as "default" duty hours during periods of travel. Since this was the agency policy at the time, and this policy was known in advance of the actual travel, the default hours are used to determine the claimant's corresponding hours of work on Sunday, August 4, 1996.

According to a travel voucher summary provided by the agency, the claimant left her residence at 8:30 a.m. (central time zone) on August 4, 1996, in order to catch a flight scheduled to depart at 10:40 a.m. The claimant's departure time from her residence appears reasonable considering the 18 miles the claimant had to drive to the airport and the normal waiting time at the airport before flight departure. The claimant was scheduled to arrive in Columbus, Ohio, at 3:15 p.m. (eastern time zone). Accepted OPM guidance states that when travel involves more than one time zone, the time zone from the first point of departure is used to determine hours of work. The claimant's scheduled arrival time in Columbus is thus converted to 2:15 p.m. The travel information provided by the agency does not indicate what time the claimant arrived at her temporary lodgings in Columbus. The agency, therefore, will need to obtain this information directly from the claimant or, if no records exist to verify her arrival time, determine an arrival time that is mutually agreeable to all parties concerned. Any time after 4:00 p.m. (central time zone) will not be considered hours of work.

Decision

The claimant is entitled to FLSA overtime pay for the hours she traveled on Sunday, August 4, 1996, that correspond to her normal working hours. The time commences at the time of the claimant's departure from her residence (8:30 a.m.) until the time of her arrival at temporary lodgings in Columbus, Ohio (all hours based on central time).

Compliance instructions

Once an arrival time at temporary lodgings in Columbus, Ohio, is determined, the agency is to compute the claimant's pay entitlement in accordance with subpart E of 5 CFR 551. The claimant is also owed interest on the back pay as specified in 5 CFR 550.806. Interest payments on the overtime back pay can be calculated using the procedures described in the regulation. If the claimant believes that the agency has computed the amount incorrectly, she may file a new FLSA claim with this office.

If agency personnel have any questions, they may call our office at (214) 767-0561.