

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

Chicago Oversight Division  
230 South Dearborn Street, DPN 30-6  
Chicago, Illinois 60604

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

**Claimant:** [Name]

**Agency classification:** Industrial Hygiene Technician  
GS-640-09

**Organization:** Department of the Navy  
[Installation]  
[Name] Center  
[City, State]

**Claim:** Owed payment for travel time

**OPM decision:** Payment due

**OPM decision number:** F-0640-09-01

/s/

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Douglas K. Schauer  
FLSA Claims Officer

July 3, 2001

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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 section 551.708 of title 5, Code of Federal Regulations (address provided in section 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

The agency is to compute the claimant's overtime pay in accordance with instructions in this decision, then pay the claimant the amount owed him within four pay periods. If the claimant believes that the agency has incorrectly computed the amount owed, he may file a new FLSA claim with this office.

### **Decision sent to:**

#### **Claimant:**

[Claimant's name and address]

#### **Agency:**

[Claimant's Commanding Officer's name and address]

Ms. Betty S. Welch  
Deputy Assistant Secretary of the Navy  
Civilian Personnel and Equal Employment Opportunity  
Nebraska Avenue, Complex  
321 Somer Court, NW., Suite 40101  
Washington, DC 20393-5451

Mr. Albert Cohen  
Office of the Deputy Assistant Secretary of the Navy  
Civilian Personnel and Equal Employment Opportunity  
Nebraska Avenue, Complex  
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[Claimant's Site Manager's name and address]

## **Introduction**

On August 14, 2000, the Chicago Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [Claimant]. On January 31, 2001, our office received the administrative report. The claimant believes that he is due payment for time spent in travel. He works in the [Installation] [Name] Center, [Name] Center [City, State]. We have accepted and decided his claim under section 4(f) of the FLSA as amended.

## **General Issues**

The claimant occupies an Industrial Hygiene Technician, GS-640-9 position. Documents provided by the agency show that this position is nonexempt from the overtime provisions of the FLSA. An exempt status means the minimum wage and overtime provisions of the Fair Labor Standards Act of 1938 do not cover the position and therefore employees in the position. Non-exempt status means the minimum wage and overtime provisions of the Fair Labor Standards Act of 1938 cover the position. The claimant thinks that he is entitled to compensation for travel hours to attend training authorized by his agency. He believes he is entitled to payment for uncompensated overtime travel past normal duty hours and on nonwork days between August 1999 and July 2000. By law, the claim is retroactive for two years from the date the agency or OPM received the initial claim (or three years for willful violation). There is no evidence in this case of willful violation on the part of the agency so the claim is retroactive for two years from August 14, 2000.

In reaching our decision, we have carefully reviewed all written information furnished by the claimant and his agency and conducted telephone interviews with the claimant and his supervisor.

## **Evaluation**

The claimant believes he is entitled to 29 hours of uncompensated overtime for travel past normal duty hours and on nonwork days incurred during travel to and from three separate agency authorized training events. He requests the following additional compensation for time spent in travel beyond his normal eight-hour workday:

- Four additional hours for travel on Monday, August 16, 1999 from 10:00 AM Central Standard Time (CST) to 11:09 PM Eastern Standard Time (EST).
- Five additional hours for travel on Friday, August 27, 1999 from 7:30 AM EST to 8:30 PM CST.
- Nine and one half additional hours for travel on Sunday, June 11, 2000 from 2:20 PM CST to 11:50 PM EST.
- Eight and one half additional hours for travel on Friday, June 16, 2000 from 8:13 AM EST to 1:00 AM CST Saturday, June 17, 2000.

- Two additional hours for travel on Sunday, July 9, 2000 from 5:00 PM CST to 7:00 PM CST.

Depending on the FLSA exemption status of an employee's position, time spent traveling is considered compensable hours of work as described in both 5 CFR 551.422(a) and 5 CFR 550.112(g). Federal employees in FLSA non-exempt positions fall under the provisions of Section 551.422(a), which 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
- (4) travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours

Both FLSA non-exempt and exempt employees covered by Title V of the United States Code fall under the provisions of Section 550.112(g). This section 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
- (5) results from an event that could not be scheduled or controlled administratively

The phrase "could not be scheduled or controlled administratively" refers to the ability of an executive agency as defined in 5 U.S.C. § 105, to control the event that necessitates an employee's travel. The control is assumed to be the agency's whether the agency has sole control or the control is achieved through a group of agencies acting in concert, such as a training program or conference sponsored by a group of agencies, or sponsored by one in the interest of all, or through several agencies participating in an activity of mutual concern. When an institution outside the government conducts a training course, unless it is for the sole benefit of the government, it is an event that cannot be scheduled or controlled administratively. See Comptroller General Decision, B-193127, May 31, 1979; Perry L. Golden and Wayne Woods, 66 Comp. Gen. 620 (1987); Morris Norris, 69 Comp. Gen. 17 (1989).

Based on information from the claimant and his supervisor, the claimant's normal tour of duty during these training events was 7:30 AM to 4:00 PM. Consequently, under 5 CFR 551.422(a), travel time as hours of work must correspond with these hours on nonwork days. Time spent traveling that occurs outside regular working hours and outside corresponding hours on nonwork days is not considered hours of work if the travel keeps the employee away from the official duty station overnight and the employee performs no work while traveling. Therefore, the agency has no obligation to compensate the claimant for the travel time incurred on Monday, August 16, 1999, Friday, August 27, 1999, Sunday, June 11, 2000, Friday,

June 16, 2000, Saturday, June 17, 2000, and Sunday, July 9, 2000, beyond that which corresponds to his regular work hours which were 7:30 AM to 4:00 PM. However, the agency is obligated to compensate the claimant for travel on Sunday, June 11, 2000, from 2:20 PM CST to 4:00 PM CST.

Under 5 CFR 550.112(g) part (1) is not applicable as the claimant requests payment only for hours beyond those of his regular work week. Parts (2), (3), and (4) are not applicable based on statements made by the claimant and his supervisor that work was not performed during these periods of travel and that the travel was not carried out under arduous or unusual conditions. However, while Part (5) is not applicable with respect to the first two training events, it is applicable to the third. The claimant's supervisor verified that the Department's Navy Environmental Health Center, Norfolk, VA sponsored the first two training events corresponding to the August 1999 and June 2000 dates. Consequently, these training events fell within the administrative control of the agency and travel time beyond the claimant's regular workday is not credited as hours of work. However, Indiana University's Environmental Management Institute, a nonprofit corporation, sponsored the third training event corresponding to the July 2000 date. The Institute provides training, information, and compliance assistance to Federal, state, local, and private institutions, as well as the public. The Institute was not providing training solely for the government's benefit, as enrollment was open to state, local, and private sector people. Therefore, this training was not under the administrative control of the agency and travel time beyond the claimant's regular workday is credited as hours of work. The agency is obligated to compensate the claimant for two hours of travel on Sunday, July 9, 2000 from 5:00 PM CST to 7:00 PM CST.

### **Decision**

Most of the claimant's time spent traveling does not meet the applicable FLSA provisions as compensable hours of work. However, the claimant is entitled to compensation for one hour forty minutes of overtime incurred on Sunday, June 11, 2000 and two hours of overtime incurred on Sunday, July 9, 2000 from 5:00 PM CST to 7:00 PM CST. He is also entitled to interest on this back pay under title 5, United States Code, and 5 CFR 550, subpart H.

### **Compliance instructions**

The agency should pay the claimant the total amount owed, plus interest. If the claimant believes that the agency has computed the amount incorrectly, he may file a new FLSA claim with this office.