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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** United States Secret Service Uniformed  
Division - Longevity Pay

**File:** B-251235

**Date:** May 28, 1993

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### DIGEST

Longevity pay authorized for members of the United States Secret Service Uniformed Division under section 4-415 of the District of Columbia Code (D.C. Code), is not a part of a member's rate of basic compensation for the purpose of computing overtime pay (section 4-1104(d) (1) of the D.C. Code); holiday pay (section 4-402 of the D.C. Code); night work (5 U.S.C. § 5545(a)); Sunday work (5 U.S.C. § 5546(a)); or FLSA overtime (5 C.F.R. § 551.512 (1992)).

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### DECISION

This decision is in response to a request for an advisory opinion from the United States Secret Service, Department of the Treasury.<sup>1</sup> The question asked is whether longevity pay authorized to be paid under section 4-415 of the District of Columbia Code (D.C. Code) is to be included as part of basic pay for the purposes of calculating various premium pay entitlements for members of its Uniformed Division. For the following reasons, we conclude that longevity pay is not part of basic pay for any of those purposes.

Although members of the Uniformed Division, United States Secret Service, are federal employees, the basic law authorizing their compensation is found in Chapter 4 of title 4, D.C. Code. However, title 5, United States Code (U.S.C.) controls Sunday pay, night pay, annual comparability increases, and leave.<sup>2</sup> Title 29, U.S.C., controls pay under the Fair Labor Standards Act (FLSA).

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<sup>1</sup>Mr. David C. Lee, Assistant Director, Office of Administration.

<sup>2</sup>See 5 U.S.C. § 5541(2) (iv), as amended by Title V, § 529 [Title IV, § 411(a)] of Pub. L. No. 101-509, Nov. 5, 1990, 104 Stat. 1469, authorizing pay for night work and Sunday work under the provisions of title 5, U.S. Code, effective January 1, 1992.

Section 4-416 of the D.C. Code pertains to basic compensation and provides in part:

"(a) Except as provided in subsections (b) and (c) of this section, the rates of basic compensation of officers and members of the . . . United States Secret Service Uniformed Division shall be the same as the rates of compensation, including longevity increases . . . for officers and members of the Metropolitan Police force in corresponding or similar classes."

Section 4-415 of the D.C. Code provides for compensation to be paid for service longevity. Under section 4-415(a)(1), each officer and member in the active service shall receive per annum, in addition to the rate of basic compensation in the applicable salary schedule, an amount of 5, 10, 15, or 20 percent of the rate of basic compensation prescribed for step 1 of the applicable salary class, based on completion of 15, 20, 25, or 30 years of continuous service. Section 4-415(a)(3) identifies this payment as being "additional compensation" and states that it is to be paid in the same manner as a member's rate of basic compensation is paid, but it is not subject to deduction and withholding for retirement and insurance, nor is it considered salary for the purpose of computing annuities<sup>3</sup> or insurance coverage.<sup>4</sup>

The term "rate of basic compensation" used in the above section is defined in section 4-1104(a)(7) of the D.C. Code to mean the rate of compensation fixed by law for the position held exclusive of any deduction or additional compensation of any kind.

Moreover, longevity pay under section 4-415 of the D.C. Code is not the same as a step increase under the General Schedule or the Salary Schedule under section 4-406 of the D.C. Code. Section 4-406 provides for 11 salary classes and as many as 9 service steps or as few as 2 service steps, depending on the salary class level. In that regard, section 4-412 sets forth the method by which an individual can progress through his classes service steps. The time constraints used parallel those for the General Schedule, i.e., 52, 104, and 156 weeks in step.

In addition to step increases, longevity pay is extra pay which kicks in when the officer has 15 years of active service and is payable based on a percentage (5 percent at 15 years, 10 percent at 20 years, etc.) of the 1st step of

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<sup>3</sup>Chapter 6 of title 4, D.C. Code (1981).

<sup>4</sup>Chapter 87 of title 5, U.S. Code.

that individual's salary class, regardless of the service step the individual happens to occupy. As a result, an individual who is at step 6 of a class and another individual at step 4 of the same class, both of whom have 15 years of service, would receive the same amount of longevity pay.

Compensation for overtime work is described in section 4-1104(d) (1) of the D.C. Code for the several pay classes of officers and members as being either (A) for classes 1 through 4, one and one-half times the basic hourly rate, or (B) for class 5 and above, the basic hourly rate of the officer's or member's basic compensation. Overtime pay in that section is further identified as being premium pay. In that regard, the term "premium pay" is defined in section 4-1104(a) (8) of the D.C. Code as being compensation not considered salary for the purpose of computing deductions for life insurance or for computing annuity payments.

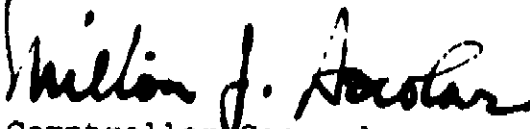
Therefore, even though longevity pay under section 4-415 of the D.C. Code is not specifically identified as premium pay, it parallels the description of premium pay elsewhere in the D.C. Code. That is, longevity pay is described as being additional pay, couched in terms of a percentage of the member's rate of basic compensation based on specifically identified years of service, not subject to withholding for retirement or insurance, and not used to compute a member's basic retirement annuity. Thus, it is our view that it does not become part of a member's "rate of basic compensation" for the purpose of computing overtime pay under D.C. Code section 4-1104.

With regard to pay for working on holidays, section 4-402 of the D.C. Code provides that "in lieu of his regular rate of basic compensation," each officer or member is to receive pay "at the rate of twice such regular rate of basic compensation." Thus, since holiday pay is identified as being based on a multiple (percentage) of the member's "rate of basic compensation," which, as stated previously is a rate of compensation exclusive of any deduction or additional compensation, we conclude that longevity pay is not included as part of a member's basic compensation for the purpose of holiday pay.

The compensation provisions of title 5, U.S. Code, applicable to members of the Uniformed Division are 5 U.S.C. § 5545(a) (night work) and § 5546(a) (Sunday work). The language used in each of those provisions identifies the extra pay entitlement as a premium pay, defined as a percentage increase in the employee's rate of basic pay (10 percent for night work and 25 percent for Sunday work). In this connection, the term "rate of basic pay" is defined in 5 C.F.R. § 550.103(j) (1992) to mean, in part: "the rate

of pay fixed by law or administrative action for the position held . . . before any deductions and exclusive of additional pay of any other kind." Therefore, since additional pay is excluded from the definition of "basic pay" it is our view that longevity pay under section 4-415 of the D.C. Code is also not included in the computation of premium pay under 5 U.S.C. § 5545(a) or 5 U.S.C. § 5546(a).

Finally, as to the possible use of longevity pay for the purpose of computing FLSA overtime under 5 C.F.R. § 551.512, that section provides that an employee's "straight time rate of pay" is equal to the employee's rate of basic pay for his or her position, exclusive of any premiums or differentials. Under that provision, the only other pay which may be included as part of the employee's "straight time rate of pay" is annual premium pay as specifically authorized under 5 C.F.R. § 550.141 (regularly scheduled standby duty hours) or § 550.151 (administratively uncontrollable hours of duty). Since neither of those latter provisions identify longevity pay as being part of "annual premium pay" as that term is used therein, it is our view that longevity pay authorized under section 4-415 of the D.C. Code is not included as part of an employee's "straight time rate of pay" for FLSA purposes.

*for*   
Comptroller General  
of the United States