

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



San Francisco Oversight Division  
120 Howard Street, Room 760  
San Francisco, CA 94105

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

**Claimants:** [claimants' names]

**Positions:** Police Officer GS-083-6 and 7

**Organization:** [large subordinate organization]  
Bureau of Indian Affairs  
Department of the Interior  
[location]

**Claim:** Were not fully paid for all hours of standby worked.

**OPM decision:** Claim denied

**OPM decision number:** F-0083-06-01

Signed by Denis J. Whitebook \_\_\_\_\_  
Denis J. Whitebook  
FLSA Claims Officer

December 11, 1997 \_\_\_\_\_  
Date

There is no right of further appeal from this decision. The Director of the U.S. Office of Personnel Management may at her discretion reopen and consider the case. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

**Decision sent to:**

[claimants' names]

[name and address of claimants'  
representative]

Area Personnel Officer  
[large subordinate organization]  
Bureau of Indian Affairs  
Department of the Interior  
[location]

Director of Personnel  
Department of the Interior  
Washington, DC 20240

## **Introduction**

On August 15, 1997, the San Francisco Oversight Division of the Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [the claimants] who are represented by [their representative]. The claimants believe that when they were employed as Police Officers GS-083-6 and/or -7 they were performing standby duty and were not fully paid for all hours worked. The claim covers the period from 1992 to August 1997. The claimants worked at various locations within the [large subordinate organization], Bureau of Indian Affairs, Department of the Interior, [location]. Their claim is accepted and decided under the provisions of section 4(f) of the FLSA, as amended.

## **General issues**

The claimants indicate that they have not been paid for all hours spent on standby since 1992. However, they can receive pay for their claim only for two years back from the date it was recorded with their agency or with OPM's Office of Merit Systems Oversight. Their claim was recorded with the OPM office on August 15, 1997. Therefore, they can receive pay for the claim only back through August 15, 1995. We will not try to determine whether they worked FLSA overtime before that date.

## **Background**

The claimants were to respond to emergency calls 24 hours a day, 7 days a week. Therefore, the agency placed the claimants in an on-call status after their regular duty hours in order to respond to emergency calls. The claimants were compensated when they responded to an emergency call. The claimants believe that they were in a standby status rather than an on-call status and they should have been compensated for all of their off duty hours under the FLSA. The information of record furnished by the claimants, their representative, and their agency provides additional details about the claim.

## **Evaluation**

Under the FLSA, time spent on standby duty is hours of work; however, time spent on-call is not hours of work. The applicable criteria are found in section 551.431 of title 5, Code of Federal Regulations (5 CFR 551.431):

- (a) An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:
  - (1) The employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or
  - (2) The employee, although not restricted to the agency's premises:
    - (I) Is restricted to his or her living quarters or designated post of duty;
    - (ii) Has his or her activities substantially limited; and
    - (iii) Is required to remain in a state of readiness to perform work.

(b) An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:

- (1) The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or
- (2) The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

The claimants' claim reflects that in addition to their regularly scheduled duty hours, they were to be available for emergency calls during their off-duty hours. They were to be available 24 hours a day, seven days a week. Their home telephone numbers were given to various police organizations and individuals in their community. In addition, individuals who did not have access to telephones would go directly to the claimants' homes for assistance. They state that they had to remain home in order to be available for the telephone calls and visits. During this time, the claimants indicate that they were unable to carry out personal business or participate in family activities away from home.

Their claim also reflects that the claimants were allowed to give the dispatch officers and the Indian communities alternate telephone numbers where they could be reached if they left their homes. They indicate that this requirement was burdensome because they did not know the telephone numbers of all the places they wanted to visit and it was a formidable task to notify all the contacts of the alternative numbers and to notify them again when the claimants returned home. They also wanted to visit a number of places that they could not visit because they could not readily respond to an emergency call in a reasonable amount of time. They believed that the duty to remain at home to respond to emergency calls was onerous and deprived them of any reasonable opportunity to pursue nonwork related activities.

The agency indicates that it required its police officers to telephone the police dispatcher to leave alternate telephone numbers where the officers could be reached. If the officers were to be out of town, they were to notify their supervisor so he could make alternate arrangements. The officers have had pagers for the past two years to aid in communication. It was standard practice for the dispatcher to contact the supervisor or his designee if the dispatchers could not contact the police officer. The supervisor then contacted other officers or responded himself.

*Were the claimants on standby duty status?*

The claimants were not restricted to the agency's premises as required by 5 CFR 551.431(a)(1). They were not restricted to their living quarters or a designated post of duty as required by 5 CFR 551.431(a)(2)(I). The claimants could leave their area of responsibility if they provided an alternative telephone number to the dispatcher and/or carried their pager with them. They were told to notify their supervisor if they were going out of town or they were ill so that the supervisor could make alternate arrangements. If the dispatcher could not contact a claimant, the dispatcher contacted the supervisor or his designee so that the supervisor could contact other officers or respond to the emergency call himself. Even though the claimants have made a general assertion that notifying the

dispatcher and other individuals of an alternate number was onerous, there was no requirement restricting the claimants to their living quarters or designated post of duty.

The claimants indicate that their activities were substantially limited. However, as discussed above, the claimants could carry out any activity provided they notified the dispatcher of an alternative number or notified their supervisor that they were not available because they were ill or they were going out of town. The agency indicates that management did not impose any restriction on activities. The claimants have indicated that they could not visit a number of places because they could not readily respond to an emergency call in a reasonable amount of time. However, a reasonable call-back time does not indicate that the claimants were restricted to their living quarters. Under 5 CFR 551.431(b)(1), an employee is considered off duty and in an on-call status if the employee is allowed to leave a telephone number or to carry an electronic device, even though the employee is required to remain within a reasonable call-back radius. The information of record indicates that the claimants' activities were not substantially limited as required by 5 CFR 551.431(a)(2)(ii).

The agency indicates that the claimants were required to remain in a state of readiness to perform work as required in 5 CFR 551.431(a)(2)(iii).

For time spent waiting to be considered standby duty, items (i) through (iii) in 5 CFR 551.431(a)(2) must be met. Based on the information of record, the claimants did not meet the first two items; therefore, the claimants were not in a standby duty status.

*Were the claimants in an on-call status?*

The claimants were allowed to leave a telephone number with the dispatcher where they could be contacted and they carried an electronic paging device to aid in communication. Furthermore, the claimants notified their supervisor when they were going to be out of town or ill so that the supervisor could make alternate arrangements. The claimants indicated that they were required to respond to emergency calls within a reasonable amount of time. This situation clearly meets the on-call criteria found in 5 CFR 551.431(b)(1) where the employee is considered on-call if he or she is allowed to leave a telephone number or carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius.

The information provided by the claimants, their representative, and the agency indicates that the claimants were in an on-call status rather than a standby status.

## **Decision**

The claimants were in an on-call status and time spent in an on-call status is not considered hours of work under the FLSA.