

PH:OD:95-2flb

**OPM decision number:** F-1801-13-02, 1/2/97

PERSONAL

[claimant's name]

National Transportation Safety Board

[address]

Dear [claimant's name]:

This is our decision on the claim that you and your co-workers filed with this office under the Fair Labor Standards Act (FLSA). Your claim indicates that you worked overtime without benefit of proper overtime compensation because your position was categorized incorrectly as exempt from coverage by the FLSA. We initially accepted the claim in a letter to [original claimant's name], who has relocated to another National Transportation Safety Board (NTSB) office. [Another claimant's name, the second complainant, no longer occupies the position at issue in this complaint.

#### Analysis and Decision

Our fact-finding confirmed that the initial claim concerns two distinctly different work functions; i.e., air safety investigation and highway accident investigation. You work in the latter function. As a result, we have severed your claim from the air safety investigation case and will issue a separate decision directly to [another claimant] who, as the third claimant appearing on the initial undated claim letter, will be treated as the current representative of the air safety group in this matter. As a result, this decision covers the work performed by you in your capacity as Highway Accident Investigator.

We have considered carefully the information you submitted, and other information gathered during our investigation of your claim. As a result of our investigation and evaluation, we have determined that your position is categorized properly as exempt from the provisions of the FLSA based on the administrative exemption criteria. Thus, we find you have no entitlement to FLSA overtime pay.

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Your letter of September 6, 1995, to us stated that PD Number 833322, classified as Highway Accident Investigator, GS-1801-13, dated July 24, 1987, submitted by your agency as your position description (PD) of record, had never been seen by you before you filed your claim and was not accurate. Your agency provided a new unnumbered PD as an attachment to a letter to us dated December 18, 1995. The PD was classified on December 14, 1995 as Highway Accident Investigator (Regional), GS-1801-13 and is located in the NTSB, Office of Surface Transportation, Highway Division, [location]. This unnumbered PD was described as the PD "submitted by [claimant's] supervisor, [supervisor's name], as current and accurate. [Claimant] will be officially reassigned to this new PD in the near future." Information provided by your agency indicates that you were officially assigned to this position (PD #642310NP-H1) on December 24, 1995.

The FLSA rationale which you provided in the initial complaint letter is that:

Investigators in other government agencies are currently receiving compensation in the form of either full overtime (1 & 1/2 times their hourly rate), or they receive a 25 percent differential for uncontrollable overtime.

You provided a rationale supporting your claim that your work is not covered by the executive exemption criteria because it "has not been determined to be supervisor or managerial, under the Supervisor Grade Evaluation Guide [which has been superseded by the General Schedule Supervisory Guide]." In addition, you discussed a portion of the since sunsetted Federal Personnel Manual Letter 551-7, dated July 1, 1974, stating that your position:

does not meet the intent of the **administrative** criteria. . . . This element brings into the administrative category a wide variety of specialists, unlike the field investigator, who provides general management, business or other supporting services to line managers. . . . Limited aspects of this criteria can be found in the Field Investigator position. However, these duties are not significant enough or grade controlling in any of the positions, to satisfy the intent of this exemption criteria.

In addition, you stated:

The FLSA exemption provisions recognized as far back as 1975 that there would be groups of employees who would not fit any of the exemption categories. . . . included in this group [are] non-

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supervisory employees at any grade level in occupations requiring highly specialized technical skills and knowledge that can be acquired only through prolonged job training and experience. . . .

Applying this concept to your situation you added:

such as the Field Investigator GS-1801, unless the employee is performing predominantly administrative functions rather than the technical work of the occupation.

In a claim decision, FLSA determinations are based on the actual duties being performed. As part of that process, a connection must be established between the PD of record and the actual duties being performed. The copy of your PD of record provided to this office has been certified by competent management authority as an accurate statement of the major duties and responsibilities assigned to your position. In a letter dated January 17, 1996, you stated that you did not believe your new PD was accurate in that you do not regularly manage a team or group during on-site accident investigations. You provided a list of 1995 investigations and the role you played in them in support of this claim.

In their letter of February 23, 1996, responding to this issue, your agency stated:

As a Highway Accident Investigator, [claimant] manages the accident investigation process even if it only involves calling a local police department to request that they hold a vehicle involved in a highway accident for his inspection at a later date. He also coordinates and directs the activities of other team members involved in the accident investigation process including state and local law enforcement personnel, Federal and State Department of Transportation Officials, motor carrier representatives, etc. He manages each investigation in that he decides what needs to be done and what resources he needs to accomplish the investigation. He may not have all these team

members present with him on-site at the accident scene but he still manages their activities.

There are several different types of highway accident investigations represented in [claimant's] list of 1995 investigations. Bolton Landing, NY was a major highway investigation where [employee's name] was the Investigator-in-charge and [claimant] served as Group Chairman. Baltimore, MD was another major highway investigation where [claimant] served as Group Chairman. Lake Wales, FL was a

major railroad investigation where [claimant] served as the highway Group Chairman. Other investigations listed represent [claimant's] involvement with Special Safety Studies where [claimant] was investigating only one or two facets of the highway accident such as seat belts or the braking system on the vehicles involved in the accident.

We conducted on-site fact-finding with you and your supervisor, [supervisor's name], on July 30, 1996, to gain a better understanding of the work functions that you perform in your position of record. This fact-finding supplemented the documentation submitted by your agency at our request, the comments you provided on that information, as well as the information provided by you in further support of your FLSA rationale, causes us to conclude that your PD of record contains the major duties and responsibilities that you perform. For example, Duty B contains eight elements pertaining to highway accident investigation functions. One element indicates that team or group management **may** be performed in the course of investigating a highway accident. It does not indicate, as you claimed in your letter of January 17, 1996, that your PD inaccurately states that you "regularly manage a team during the on-site investigation."

The regulations which are applicable in determining if work is exempt or nonexempt are contained in 5 Code of Federal Regulations (CFR) Part 551 - Pay Administration Under the FLSA, Subpart B - Exemptions. Although sunsetted as official implementing instructions, much of the guidance contained in Federal Personnel Manual Letter (FPM) 551-7 continues to reflect how the Office of Personnel Management (OPM) intends 5 CFR, Part 551 to be interpreted and applied.

Under the administrative exemption criteria, contained in 5 CFR Section 551.205, an administrative employee is one who is "an advisor, assistant, or representative of management, or a specialist in a management or general business function whose work meets the following criteria:

The first criterion is that the primary duty consists of work that:

- (1) Significantly affects the formulation or execution of management policies or programs; or
- (2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or

- (3) Involves substantial participation in the executive or administrative functions of a management official.”

These alternatives apply to the work of your position as follows:

1. Significantly affects the formulation or execution of management policies or programs.

Established OPM guidance concerning work that affects the formulation or execution of management programs and policies recognizes that management policies and programs range from broad national goals that are expressed in statutes or Executive Orders to specific objectives of a small field office. Employees may actually make policy decisions or participate indirectly, through developing proposals that are acted on by others. Employees who significantly affect the execution of management policies or programs typically are those whose work involves obtaining compliance with such policies by individuals or organizations, both within or outside the Federal government, or making significant determinations in furthering the operation of programs and accomplishing program objectives. Administrative employees engaged in such work typically perform one or more phases of program management; i.e., planning, developing, promoting, coordinating, controlling, or evaluating operating programs.

The purpose of the NTSB Office of Surface Transportation is to improve the safety of the public by changing surface transportation policies, practices, and systems in government and industry through independent accident investigations, and through advocacy and oversight. The Office of Surface Transportation Safety manages investigations of major transportation accidents for which multi-disciplinary teams (go-teams) are sent to the accident site. Smaller-scale accidents are usually investigated by one person or a partial team from an NTSB regional office. Your position is located in the NTSB, Office of Surface Transportation, Highway Division, [location] which supports major investigations of highway and motor vehicle accidents and incidents, and investigates accidents meeting regional investigation criteria as defined by the NTSB.

Major investigation teams consist of experts in various technical specialties, including vehicle engineering, structures, human performance and survival factors. Each expert manages other experts from industry and government in the collection of facts, conditions, and circumstances surrounding the accident. After the investigation, which may include holding public hearings or taking depositions, is complete, a narrative report analyzing the record and identifying the probable cause(s) of the accident is prepared. The report generally includes safety recommendations, although they may be issued at any time during the course of

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the investigation. The purpose is to correct deficiencies found and prevent future accidents from similar causes by setting the foundation for (or making Recommendations) for new or revised safety rules and regulations.

Regional investigations are conducted in a manner similar to major investigations, but because the investigation is usually smaller in scope, it is conducted by a single investigator who, working with representatives of the parties, e.g., motor carriers and local police, gathers all of the details pertinent to the accident. During the investigative process, investigators consider ways to prevent similar types of accidents through informal safety suggestions made on-scene or through the NTSB's formal recommendation process. Many accidents are investigated in support of one or more of the NTSB's safety studies.

During the on-site fact-finding, you confirmed that you function as a typical regional investigator. For example, on major accidents you typically serve as head of the Motor Carrier Group. You stressed the limited nature of the field investigations that you conduct in comparison with the major investigation go-team which operates out of NTSB headquarters. You described the limited resources you control as a regional investigator, and the fact that you frequently perform your investigations alone. While you work with people at the accident scene, e.g., police and State highway department personnel, you said that you do not "manage" people. You highlighted the fact that NTSB management policies and programs are controlled at a higher level in your agency, and that you are "a technical person." When you work on safety recommendations, you stressed they are subject to multiple levels of review, i.e., "four or five levels downtown."

As indicated previously, the location of your position in a field office does not change your primary and paramount function as an NTSB representative executing the management policies of the NTSB in your role as accident and incident investigator in a field setting. The basic purpose of your agency, and your function within the agency, is to **administer** the laws, rules, and regulations pertaining transportation safety. Your PD states:

Support and implement, the objectives, goals and mission of the Highway Division. . . . As called upon, investigates highway accidents as Group Chairman, IIC [Investigator-in-Charge], or investigator and is responsible for. . . . Establishing and maintaining liaison and communication with Federal, State, and local authorities and the private sector highway safety community. . . . Manages a team or group during on-site investigations. . . . Identifies, interprets, and applies investigative skills, techniques and laws of physics and mathematics as needed. . . . Preparing comprehensive and accurate

factual and analytical reports. . . . Proposing probable cause and preparation of written documentation to support it. . . . Proposing safety recommendations for remedial actions. . . . Promoting safety improvements and documenting safety accomplishments. . . .

Conducts comprehensive investigations, including the determination of proposed probable cause(s) of Board approved investigations either of national or regional significance or of others selected in support of safety issues in safety studies or special investigations. . . . Establish[s] and maintain[s] an effective liaison/notification network within the regional area of responsibility. . . . Provide[s] expertise, support and cooperation . . . to safety studies and special studies and special investigation, including program, forms procedures and goal development. Prepares briefs on cases for which probable cause is to be determined. . . . Analyze[s], for the purpose of identifying major problem areas and hazards, highway safety studies and special investigation, safety programs and research reports prepared by other government agencies and organizations in the highway community; through technical expertise, applies such knowledge to the solution of highway safety problems. . . . Provides technical expertise . . . in the areas of accident investigation, review of draft reports, development of safety studies and analysis of safety issues. . . . Participates in technical conferences, seminars, workshops, technical panels, makes public appearances and speeches with Board approval and maintains acceptable public news media relation matters pertaining to highway safety. . . . Maintains technical liaison with federal agencies and such national organizations with responsibility for highway safety. . . . seeks out available industry and law enforcement expertise to assists in completion of assignments. . . .

Technical and administrative policy guidance provided by the chief, Highway Division. Receives direct supervision and support on all administrative and operational matters from the Regional Director. Relies on his/her own resources and seeks out available industry and law enforcement expertise to assist in the completion of assignments. Completed work will be reviewed and quality controlled by the Regional Director. . . .

The highest degree of technical accuracy is required in accident investigations and special studies since the findings affect Board

policy and large segments of the private sector that are involved in the overall highway system.

These functions are evident in your performance elements; i.e., performing the full range of highway accident and incident investigation and program support functions. The fact that your recommendations are subject to review and change does not change the fundamental purpose of your position as the NTSB representative on assigned highway safety matters. This work entails executing major components of the NTSB highway safety management program. You also perform program planning and development functions when you propose safety recommendations, notwithstanding the subsequent review and control process. You perform these functions within the overall policies, objectives, and requirements prescribed by NTSB regulations, guidelines, and procedures. As discussed during our on-site review, and confirmed by our independent review of selected publications in the regional conference room, NTSB accident investigation guidelines are very general in nature. This is particularly true for highway safety studies and investigations. In addition to capturing technical data on issues of program interest to NTSB policy developers, you identify other areas of potential safety interest that may become the subject of these special investigations and studies. You formulate and develop plans, procedures, and timetables to accomplish the desired work outcomes; e.g., a technically accurate, complete and thorough investigation, recommending a probable cause. You complete the necessary coordination and integration with other organizations in accomplishing the NTSB highway safety program execution functions of your position. Accordingly, we find that your position meets this criterion.

2. Involves general management or business functions or supporting services of substantial importance to the organization serviced.

Established OPM guidance is that in addition to the difficult and complex analytical functions involved in general management, e.g., budgeting or financial management, work which meets this criterion includes support services ranging from automated data processing to the procurement and distribution of supplies. Support may also entail providing expert advice in a specialized subject matter field; assuming facets of the overall management function; or, representing management in business functions such as determining the acceptability of goods or services, or authorizing payments. The guidance states that the organizational location does not change service functions into production functions. In order to warrant exemption from the FLSA, such work must involve substantial discretion on matters of enough importance that the employee's actions and decisions have a noticeable impact on the effectiveness of the organization advised, represented, or serviced.



Your position is vested with authority to take control of accident/incident sites independently as well as plan and accomplish the investigation necessary to propose the findings eventually issued by NTSB. For almost all the investigations you conduct, you are the sole NTSB representative. You may be assisted by State and local government and/or motor carrier representatives. Frequently, the sites you visit are distant from your office location. Although you maintain telephone contact with your supervisor, you are responsible independently for almost all investigation decisions. For example, you determine what witnesses and/or other factual information must be developed in order to formulate technical positions on the incident/accident. Your performance standards indicate that you are delegated substantial discretion in site management, e.g., determining resource needs and selecting parties to investigation in accordance with NTSB regulations and policy, maintaining control and making effective use of available resources to ensure an independent investigation, determining the scope/safety issues of the investigation, and demonstrating fiscal responsibility in the conduct of the investigation. As the on-site NTSB representative, you also are responsible for providing factual information to the media.

Your co-claimants, who provided the bulk of the FLSA rationale for the claim in which you initially were a member, stressed the “production” nature of your work in that you perform NTSB line program work; you do not function in a staff support capacity. The term “production” work does not appear in 5 CFR, Part 551. That term within the meaning of the FLSA is discussed in Department of Labor FLSA regulations (29 CFR, Part 541). It is not defined by whether the work is line or staff. For example, representation work directly related to management policies or general business operations frequently is an integral part of line employee work. Although Federal employees are not covered directly by Department of Labor FLSA regulations (29 CFR, Part 541), these regulations contain useful illustrations of fundamental FLSA concepts. As discussed in 29 CFR 541.205(c)(5), the criterion “directly related to management policies or general business operations”:

is also met by many persons employed as . . . claims agents and adjusters . . . account executives of advertising agencies, customers’ brokers in stock exchange firms, promotion men, and many others.

As discussed in 29 CFR 541.205(c)(6):

It should be noted in this connection that an employer’s volume of activities may make it necessary to employ a number of employees in some of these categories. The fact that there are a number of employees of the same employer carrying out assignments of the same relative importance or performing identical work does not affect

the determination of whether they meet this test so long as the work of each such employee is of substantial importance to the management or operation of the business.

Your position, and the work you perform, are central to the purpose and reason for the existence of the NTSB; i.e., determining the probable cause(s) of transportation accidents/incidents and promoting transportation safety. The investigations you conduct are the mission core of the NTSB and, thus, the decisions and recommendations that you make are of fundamental importance to the “business” of the NTSB.

These functions are performed within the overall policies, objectives, and requirements prescribed by NTSB regulations, guidelines, and procedures. As discussed during our on-site review, and our independent review confirmed, NTSB accident investigation manuals are very general in nature. The NTSB relies upon you to independently formulate and develop plans, procedures, and timetables to accomplish the desired outcomes and to affect necessary coordination and integration with other organizations in accomplishing the NTSB highway safety program execution functions of your position. The very nature and purpose of your position are to represent the NTSB as management’s on-site agent and voice.

You work within “technical and administrative policy guidance.” Your work is “quality controlled by the Regional Director.” The very nature of your independent field work vests you with significant representational authority and responsibility. This includes meeting and dealing with the public effectively under difficult circumstances, and representing the NTSB with on-site media personnel. The performance of work of a predominately technical nature, i.e., accident/incident investigation and analysis and design, does not preclude the crediting of this criterion. Business and support services cover a variety of technical and more complex analytical functions as described above.

The investigation, analysis and related functions of your position reflect support services of substantial importance to the organization in which you work in that they affect the ability of the NTSB to accomplish its mandated program mission for highway safety matters. This work entails executing major components of the NTSB highway safety management program. You also perform program planning and development functions when you propose safety recommendations, notwithstanding the subsequent review and control process. You also perform program planning and development functions when you identifying potential special investigation and safety topics. Accordingly, we find that your position meets this criterion.

The second portion of the primary duty criterion is that the employee performs office or other predominantly nonmanual work which is:

1. Intellectual and varied in nature; or
2. Of a specialized or technical nature that requires considerable specialized training, experience, and knowledge.

These criteria apply to your position as follows:

1. Intellectual and varied in nature.

Established OPM guidance is that work of an intellectual nature is work involving general intellectual capability, such as perceptiveness, analytical reasoning, perspective and judgment applied to a variety of subject matter fields, or work involving mental processes which require substantial judgment based on considering, selecting, adapting and applying principles to numerous variables. The employee cannot rely on standardized application of established procedures or precedents, but must recognize and evaluate the effect of a continual variety of conditions or requirements in selecting, adapting, or innovating techniques and procedures, interpreting findings, and selecting and recommending the "best" alternative from among a broad range of possible actions.

Although not addressed in detail in your PD, we find that your investigative work requires intellectual capability, including perceptiveness, analytical reasoning, perspective and judgment to conceptualize the likely path(s) of productive fact-finding necessary to reconstruct probable accident/incident dynamics and sequence of events. You apply knowledge of a variety of subject matter fields, including the physical dynamics of motor vehicle operating functions and processes of motor vehicle systems, the biological impact of vehicle operation on human physiological and psychological behavior, and the impact of weather and other external conditions on the operating interrelationships of human beings and machines in identifying and analyzing accident/incident data. Your work involves substantial judgment based on considering, selecting, adapting and applying this wide variety of subject matter principles and concepts to the numerous variables present in each accident/incident in order to establish an objectively supportable theory of accident/incident dynamics and the sequence of events. You apply equivalent intellectual acumen in preparing safety recommendations and proposals based on an intensive analysis of similarly complex data.

The intellectual demands of your position are reflected in the responsibility to organize and plan your work; to determine the most appropriate means of

completing your assigned position functions; and, to apply the breadth and depth of program and technical knowledges discussed above in the most effective way so as to accomplish your program functions effectively and efficiently.

Your co-claimants, who provided the bulk of the FLSA rationale for the claim in which you were a member initially, stressed the physical demands of your field work as being FLSA non-exempt manual work. The rationale regarding the physical demands of your work; i.e., your on-site work entails exacting manual labor, and you are required to meet physical fitness requirements, does not address this FLSA criterion in context. Many inherently exempt positions entail substantial physical demands and manual skills, e.g., wildlife biologist, foresters, musicians, artists and physicians. These physical effort requirements, however, are ancillary to and do not change the fundamentally intellectual and/or creative nature of the work at the heart of those occupations. Thus, based on the above analysis, these functions reflect the scope of work and application of intellectual acumen which satisfy this criterion.

2. Of a specialized or technical nature that requires considerable specialized training, experience and knowledge.

Established OPM guidance is that work which meets this criterion requires specialized knowledge of a complex subject matter and of the principles, techniques, practices and procedures associated with that subject matter field. These knowledges characteristically are acquired through considerable on-the-job training and experience in the specialized subject matter field, as distinguished from professional knowledges characteristically acquired through specialized academic training.

The duties described previously in this decision require substantial intellectual effort in order to analyze and apply subject matter of considerable difficulty entailed in the technical program work assigned to your position. These duties reflect work requiring substantial knowledge of complex subject matter which form the basis for classifying the position to the GS-13 grade level as stated in the Section 5104, Chapter 51, title 5, U.S. Code definition of GS-13 grade level work, i.e., "to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility along special technical, supervisory, or administrative lines requiring extended specialized, supervisory, or administrative training and experience." Accordingly, we find your position meets this criterion.

The third portion of the primary duty criterion is that the employee frequently must exercise discretion and independent judgment, under only general supervision, in

performing the normal day-to-day work. Established OPM guidance is that the exercise of discretion and independent judgment involves interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. Decisions made as the result of independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decisions are subject to review, and may be revised or reversed, does not mean an employee is not exercising discretion and independent judgment of the level required for exemption. There are three elements involved in the evaluation of this criterion:

1. The work must involve sufficient variables as to regularly require discretion and judgment in determining the approaches and techniques to be used, and in evaluating results.

Established OPM guidance is that employees who perform work requiring primarily skill in applying standardized techniques or knowledge of established procedures, precedents, or other guidelines which specifically govern their actions would not meet this element.

Your position is vested with substantial independence of action since it operates independently in a field work situation, and is relied upon to independently formulate, develop and implement the specific processes and procedures necessary to accomplish the desired accident/incident investigation or safety proposal outcome. You are delegated the authority to affect necessary coordination and integration with other organizations to accomplish your work. Discretion and judgment are reflected in such duties as planning, developing, coordinating, and controlling the investigative fact-finding and subsequent analytical processes, and applying the complex knowledges and skills required to perform that work. The day-to-day freedom of action with which your position operates in performing the above analytically demanding work, reflects sufficient variables as to regularly require the scope of discretion and judgment warranting the crediting of this element to the position.

2. The employee must have authority to make such determinations during the courses of assignments.

Established OPM guidance is that the intent of this element is to preclude exempting trainees who are in a line of work which requires discretion, but who have not been given authority to decide discretionary matters independently. Your

position is not that of a trainee. The scope of authority which is exercised in accomplishing the work assigned, as discussed above, results in the crediting of this element to the position.

3. The decisions made independently must be significant.

Established OPM guidance is that this term is not so restrictive as to include only the kinds of decisions made by employees who formulate policies or exercise broad commitment authority. However, this term does not extend to the kinds of decisions that affect only the procedural details of the employee's own work, or to such matters as deciding whether a situation does or does not conform to clearly applicable criteria.

As discussed above, the program decisions vested in your position extend beyond the procedural details of the position's work in that they significantly affect the ability of the NTSB to meet its mission responsibilities. The accident/incident investigation decisions you make, and the safety proposals that you formulate, are significant decisions which affect fundamental NTSB mission responsibilities. They reflect the independent decisions of the degree of significance which result in the crediting of this element to your position.

### Summary

Based on the above information and analysis, your position meets the primary duty and associated criteria.

In addition to the primary duty criterion for administrative exemption which applies to all employees, General Schedule employees in positions classified at the GS-5 or GS-6 grade level must spend 80% or more of the worktime in a representative work week on administrative functions and work that is an essential part of those functions. Because your position is classified above these grade levels, this criterion does not apply to your position.

Based on the preceding analysis, we find your position is categorized properly as exempt from the overtime provisions of the FLSA under the administrative exemption category.

You disagreed with your agency's determination that your position also is exempt from the overtime provisions of the FLSA under the professional exemption criteria. In applying the professional exemption criteria contained in 5 CFR 511.206, your agency concluded that:

You are all professional employees. In many cases you have professional degrees or degrees in comparable academic fields and/or significant experience in a particular transportation field. This academic education and training or comparable work experience meets the intent of the professional exemption criteria.

During our on-site fact-finding, you indicated that your work did require knowledge of some areas of applied physics, e.g., Newton's Law of Motion. You stressed that this was part of the inherently technical nature of your work; it was not professional in that there is no degree granting professional program in place at four-year colleges and/universities for accident investigation.

You also stated that your position does not meet the professional exemption criteria because:

It is clear that the grade controlling duties of these positions. . . . [do] not require knowledge in a field of science or learning leading to a bachelor's or higher degree with a major in a specialized field. The education required to successfully perform the duties of Investigator (Field), is gained through extensive training provided by the agency through numerous hours of formal classroom education and extensive number so hours of on the job training and experience.

Established OPM guidance is that nonprofessional employees perform work falling under the professional exempt criteria if they apply, within a narrow field of specialization, both theoretical and practical knowledge of related disciplines and of new developments, in the independent performance of work that is very similar and comparable in level to that performed by professional employees in the field. Typical of such work are high graded engineering and electronics technicians who perform design, test and evaluation or equivalent work in a narrow area of technical specialization. We find that while your position entails applying knowledge of applied physics and related knowledge in order to analyze accidents/incidents, the work performed does not require the intensity of theoretical knowledge or the performing of work comparable to professional engineers or other professional positions to warrant exemption under the professional exemption criteria. This type and level of expertise is resident in the specialty work tasked to NTSB headquarters scientific and specialist staff positions, e.g., Office of Research and Engineering. Therefore, while your position is not categorized properly as exempt from the overtime provisions of the FLSA under the professional exemption category, it is exempt under the administrative exemption category.

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This is the final administrative level to which you have a right of review concerning the application of the FLSA to the position concerning which you filed your claim. If you disagree with this decision, you have the right to bring the matter to the appropriate U.S. Court.

Sincerely,

/s/ 1-2-97

Robert D. Hendler  
Classification Appeals Officer

cc:

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