

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:** Electronics Engineer  
GS-855-12

**Organization:** [claimant's division]  
[organization]  
Combat Systems Support Group  
U.S. Department of the Navy  
[city, state]

**Claim:** Exemption status

**OPM decision:** Exempt

**OPM decision number:** F-0855-12-02

/s/

\_\_\_\_\_  
Bonnie J. Brandon  
FLSA Claims Officer

9/2/99

\_\_\_\_\_  
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:**

[claimant's name and address]

[address of servicing personnel office]

Director for Classification, Staffing, and  
Compensation (OCPM Code C20)  
Office of Civilian Personnel Management  
Department of the Navy  
800 North Quincy Street  
Arlington, VA 22203-1998

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

## **Introduction**

On February 18, 1999, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [the claimant]. His claim had originally been filed with the San Francisco Oversight Division. He believes that his position should have been determined as non-exempt from the Fair Labor Standards Act from July 7, 1995 to the present. During the claim period he worked as an Electronics Engineer, GS-855, at the GS-11 and GS-12 grade levels. Currently, his position is at the GS-12 level and assigned to the Department of the Navy's [activity], [division], in [city, state]. His temporary duty assignment is the Naval Sea Systems Command, [organization], in [city, state]. The agency has determined his position is exempt from the FLSA under the professional exemption criteria. We have accepted and decided his claim under section 4(f) of the FLSA as amended.

## **General issues**

The claimant makes many statements relating to his agency and its response to his FLSA case. In adjudicating this claim, our primary concern is to make an independent decision about the exemption status and, if the position is non-exempt (i.e., covered by the provisions of the FLSA), whether the violation was willful and how much FLSA overtime pay he is owed, if any. We must make that decision by comparing the facts in the case to criteria and guidance in Federal regulations, laws, and guidelines concerning the FLSA. Therefore, we have considered the claimant's statements as they are relevant to making that comparison.

## **Evaluation**

The claimant believes that his position should be non-exempt under the FLSA. While he is classified as a professional engineer, he states that he has been used as a technician on a routine and repeated basis. While he agrees with the accuracy of his position description, he claims to perform work under "other duties as assigned" that is outside of his professional engineering duties. He believes this justifies his position being classified as non-exempt under the FLSA.

The claimant provided a list of functions that he has performed in his career, starting with his initial employment in 1991 in [city, state]. While employed as an engineer during this time, he claims that his duties included many technician duties that were performed side-by-side with technicians and engineers. These included testing, troubleshooting, repairing, and maintaining electronic equipment and test equipment. Throughout his assignments in his work, the claimant states that he has performed technician duties outside of the scope of a professional engineer, often reaching 50 percent of his time.

The claimant disagrees with the agency's exemption determination made under the professional exemption criteria. In our decision, we compare his position with these criteria to determine the FLSA exemption status of the position.

The regulations applicable in determining if work is exempt or non-exempt are contained in title 5, Code of Federal Regulations (CFR), part 551, Pay Administration Under the FLSA, Subpart B, Exemptions and Exclusions. Section 551.207 of the CFR contains the criteria governing

whether the claimant's position should be exempt from the FLSA under the professional exemption criteria. The position is exempt if it meets professional exemption criteria (a)(1), (2), or (3), known as the primary duty test, and (b) through (d), in section 551.207.

The claimant's position meets the primary duty test.

Criterion (a)(1) deals with work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or work comparable to that performed by professional employees that is performed on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field.

The claimant's position description (PD) and other information provided by his agency indicate that the claimant's primary duty consists of work that requires substantial knowledge in the engineering field, as acquired through a bachelor's degree. We find that the claimant's bachelor's degree, which is in engineering, is in a field that is pertinent to his identifying system problems and developing solutions for the assigned systems. The agency has provided information on the expectations and requirements of the position, as annotated in the PD, indicating the education is required to perform the work. We find that the primary duty test is met, in that at least one of the criteria is met (i.e., criterion (a)(1)).

The claimant's position meets criterion (b).

Criterion (b) focuses on work of an intellectual nature, which 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 that require substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. An employee involved in work of an intellectual nature does not 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 a broad range of possible actions.

Although not addressed in detail in the PD of record, we find that on-site in-service engineering work requires intellectual capability, including perceptiveness, analytical reasoning, perspective, and judgment to conceptualize the likely paths of fact-finding necessary to plan and carry out sonar troubleshooting, repair, and maintenance of the sonar systems responsibilities. These functions entail applying knowledge of a variety of subject matter fields covered by on-site engineering principles application management. The 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 with each electronic system to establish appropriate procedures to support and maintain their daily operation.

The intellectual demands of the work are reflected in the responsibility to organize and plan the required procedures, to decide the most appropriate means of completing assigned position functions, and to apply the breadth and depth of program and technical knowledge in the most effective way to accomplish the engineering duties effectively and efficiently.

The claimant stressed the physical hands-on demands of the work, e.g., soldering, preparation of adaptor cables, manual adjustments, etc., as justification for being non-exempt. Many inherently exempt positions entail substantial physical demands and manual skills. These physical effort requirements, however, are ancillary to and do not change the intellectual and/or creative nature of the work at the heart of such occupations. Maintenance and repair of electronic sonar systems requires hands on involvement of all personnel associated with these responsibilities. However, this requirement is ancillary to and does not change the intellectual and/or creative nature of the work. Thus, the totality of the functions of this position reflect the scope of work and application of intellectual acumen that satisfy this criterion.

The claimant's position meets criterion (c).

This criterion covers the use of discretion and independent judgment. Established OPM guidance explains 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. The work must involve sufficient variables as to regularly take action and the decisions must be significant. 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. In addition, deciding whether a situation does or does not conform to clearly applicable criteria would not be considered making significant decisions.

The claimant's position is vested with substantial independence of action since it operates independently in a field work situation. The position is delegated the authority to effect necessary coordination and integration to accomplish its work. Discretion and judgment are reflected in such duties as coordinating projects, being the in-house project expert on a specific sonar system, and making significant modification to electronic systems. Although budget considerations from higher levels in the organization may restrict the claimant from working on certain projects, this is not a relevant issue when assessing the discretion and judgment used by the claimant in performing his work. The day-to-day freedom of action with which the 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.

Criterion (d) is not applicable.

In addition to the primary duty criterion, General Schedule employees in positions classified at the GS-5 or GS-6 grade level must spend 80% or more of the work time in a representative work week on professional functions and work that is an essential part of those functions. Because the

claimant's position is classified above these grade levels, this criterion does not apply to the position.

### Summary

Based on the preceding analysis, we find the claimant's position and his functions as an on-site in-service engineering technical expert are exempt from the FLSA under the professional exemption category.

### **Decision**

The claimant's position meets the criteria for exemption and is, therefore, not covered by the overtime provisions of the FLSA.