

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



Philadelphia Oversight Division  
600 Arch Street, Room 3400  
Philadelphia, PA 19106-1596

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

**Claimant:** [claimant's name]

**Position:** Criminal Investigator,  
GS-1811-13

**Organization:** Bureau of Alcohol, Tobacco  
And Firearms  
Department of the Treasury  
[name] Field Office  
[location]

**Claim:** Received incorrect overtime

**OPM decision:** No overtime pay is due

**OPM decision number:** F-1811-13-04

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Robert D. Hendler  
FLSA Claims Officer

/s/ 4/10/98

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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]  
U.S. Department of Treasury  
Bureau of Alcohol, Tobacco,  
and Firearms  
[address]

Office of Chief Counsel  
Associate Chief Counsel (Administration)  
U.S. Department of Treasury  
650 Massachusetts Avenue, NW  
Washington, DC 20226

Mr. Robert Breivis  
Director of Personnel Policy  
U.S. Department of Treasury  
Room 4164-ANX  
Washington, DC 20220

## **Introduction**

The Philadelphia Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [claimant's name] as the result of a transfer of claims functions from the General Accounting Office (GAO) under Public Law 104-53. [claimant's name] believes that from June 18, 1989, through June 30, 1991, he worked overtime for which he should have been paid under the Act. During the claim period, he worked as a Criminal Investigator, GS-1811-9 (June 18, 1989 through July 1, 1990) and a Criminal Investigator, GS-1811-11 (July 1, 1990 through June 30, 1991) with the Bureau of Alcohol, Tobacco, and Firearms (BATF). We have accepted and decided his claim under section 4(f) of the FLSA as amended.

To help decide the claim, we requested clarifying information from the agency and the claimant. In reaching our FLSA decision, we have reviewed all material of record furnished by the claimant and his agency.

## **General issues**

The claim is based on “Stephen Adams, et al. v. United States” that found, in part, certain current or former employees of the United States, including BATF, as criminal investigators or in some other law enforcement capacity, were covered by the overtime provisions of the FLSA. Although not a party to the suit, he believes the substance of the decision should apply to his position. He believes that he has filed his claim timely, and is covered by a 6 year statute of limitations for FLSA claims filed before June 30, 1994.

## **Evaluation**

In a March 24, 1995, memorandum, [name], the Deputy Assistant Director (Management), BATF, responding to a December 5, 1994, memorandum from the claimant, denied his claim for \$27,560.00 because:

Section 640 of the Treasury Appropriations Act, Pub L. No. 103-329, 109 Stat. 2432 (September 30, 1994), provides only that the Comptroller General shall apply a 6-years statute of limitations to claims filed before June 30, 1994. As there is not statutory authority for ATF top make backpayments for FLSA overtime beyond the 2/3-year limitation provides in the FLSA, your claim must be denied.

In a memorandum dated April 7, 1995, [claimant's name] Mr. Crist filed a claim on the same matter with the Office of Chief Counsel, BATF, stating he had “tolled the running of the statute” through GAO on May 11, 1994. He stated that because he had filed with GAO:

as required by law before the June 30, 1994 deadline, I am appealing your decision to deny my claim. . . .If you do not except [sic] my claim, please prepare a report setting forth in detail, your reason for denying my claim and forward the same to GAO for their review.

The record shows that the claimant filed his initial claim with GAO, received and date stamped May 11, 1994. In a letter dated July 17, 1995, [name], Financial Manager,/CFO, BATF forwarded the appeal to GAO without further comment.

In determining whether the claimant is owed overtime under the Act, the normal process is to first determine whether the work performed is exempt or nonexempt from the overtime provisions of the FLSA. We will not do so in this case. In response to our request for clarifying information, the agency has certified that the claimant received administratively uncontrollable overtime (AUO) pay for the claim period. The claimant corroborated that he received AUO for the period of his claim.

Section 640 of the Treasury Appropriations Act of 1994, amended in 1995, states, in part:

the Comptroller General of the United States shall apply a 6-year statute of limitations to any claim of a Federal employee under the Fair Labor Standards Act of 1938 for claims filed before June 30, 1994. This section shall not apply to any claim where the employee has received compensation for overtime hours worked during the period covered by the claim under any provision of law, including, but not limited to 5 USC 5545(c), or to any claim for compensation for time spent commuting between the employee's residence and duty station.

Although the claim was filed before June 30, 1994, the claimants received AUO for overtime worked during the period covered by the claim. As defined in title 5, Code of Federal Regulations, part 550, AUO is form of overtime compensation for positions in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work. Therefore, we find the claimant received overtime compensation, under another provision of law, as stipulated in Section 640, as amended.

## **Decision**

No FLSA overtime is owed.