

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

Chicago Oversight Division
230 South Dearborn Street, DPN 30-6
Chicago, Illinois 60604

**Fair Labor Standards Act Decision
Under section 4(f) of title 29, United States Code**

Claimant: [Name]

Agency classification: Biomedical Engineering Technician
GS-0802-11

Organization: [Name] Service
Medical Center
Department of Veterans Affairs
[City, State]

Claim: Exemption status

OPM decision: Nonexempt from coverage of the FLSA

OPM decision number: F-0802-11-03

/s/

Douglas K. Schauer
Classification Appeals Officer

August 6, 2001

Date

As provided in section 551.708 of title 5, Code of Federal Regulations, this is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which Office of Personnel Management administers the Fair Labor Standards Act. The agency should identify all similarly situated current and, to the extent possible, former employees, and ensure that they are treated in a manner consistent with this decision. There is no right of further administrative appeal. This decision is subject to discretionary review only under conditions and time limits specified in section 551.708 of title 5, Code of Federal Regulations (address provided in section 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

The agency is to compute the claimant's overtime pay in accordance with instructions in this decision, then pay the claimant the amount owed him within four pay periods. If the claimant believes that the agency has incorrectly computed the amount owed, he may file a new FLSA claim with this office.

Decision sent to:

Claimant:

[claimant's name and address]

Agency:

[name and address of claimant's servicing
personnel office]

Ms. Ventris C. Gibson
Deputy Assistant Secretary for
Human Resources Management (05)
Department of Veterans Affairs
810 Vermont Avenue, NW Room 206
Washington, DC 20420

Introduction

On April 11, 2001, the Chicago Oversight Division of the Office of Personnel Management (OPM) accepted a claim for overtime under the Fair Labor Standards Act (FLSA) submitted by [Claimant]. [Claimant] is employed by the Department of Veterans Affairs Medical Center in [City, State]. He is a Biomedical Engineering Technician, GS-802-11, and his position is currently classified as exempt from the FLSA. In addition to what [Claimant] provided us, we requested information from the servicing human resources office. We received this additional information on June 1, 2001.

The claimant states that his position is mistakenly classified as exempt from the FLSA. He believes that because of this he has not received all overtime pay or compensatory time off and pay for official travel time to which he was entitled. He says that he has been told that because his position is exempt from the FLSA, he is not entitled to pay for official Government business.

The servicing human resources office provided us with a copy of the claimant's position description (PD). They also provided us with a copy of his performance standards and other pertinent information. We contacted the claimant and reviewed the duties of his position with him on July 17, 2001, to obtain information needed to arrive at a decision.

General Issues

The claimant states that his position does not meet any of the exemption criteria; therefore, he believes that his position should be nonexempt. He says that an official in the servicing human resources office agrees with him, but that no efforts have yet been made to change his exemption status. This decision will determine the proper exemption status of [Claimant's] position, and will set aside any previous agency decisions on this matter.

The claimant mentions that there are other employees in his immediate organization who are in the same situation. These employees have not filed an FLSA exemption status claim with this office, and this decision will affect only the claimant's position. However, the decision rationale is also applicable to other employees in the claimant's organization whose working situations are identical.

As is customary with our analysis of an FLSA claim, we reviewed the position description of record and other information provided by the claimant and the agency. We also interviewed the claimant. Based on our review, it appears that the claimant's position may not be functioning as it is currently classified. In addition to the FLSA, we administer the provisions of title 5, under which the employing agency has primary responsibility for proper classification. Therefore, since the agency is responsible for correctly classifying positions, we recommend that you review the classification of the claimant's position and take whatever actions are necessary to ensure the accuracy of its classification.

Evaluation

The claimant is assigned to PD number [number] which is classified as Biomedical Engineering Technician, GS-802-11. The PD's duties preponderantly concern the maintenance and repair of biomedical equipment. The PD states that the "incumbent performs duties, of broad scope and complexity to install, repair, test, calibrate, adjust, overhaul, and correct system malfunctions with a variety of medical, surgical, radiology, laboratory, ADP, data communications, and other equipment, ranging from simple gas flowmeters to complex medical systems, that have virtually interrelated and sometimes dispersed subsystems." The PD then goes in to substantial detail on the repair, maintenance, and related work performed and the skills and knowledges required to perform this work.

The PD also states that the incumbent assists in designing new and modifying existing systems to meet special clinical needs. It states that the incumbent "...performs the developing work by employing new and conventional components and circuits and by exercising originality in adapting medical equipment to perform new and different functions..." However, it identifies no specific systems or equipment on which this type of work is performed. We did not find that this work is being performed.

The claimant's performance standards are overwhelmingly concerned with biomedical systems and equipment maintenance and repair, similar to that shown in the PD. There is no mention of performing engineering technician work developing new biomedical equipment or adapting equipment to meet new and different functions.

Our interview with the claimant revealed that he maintains and repairs a large scope and volume of biomedical systems and equipment at the medical center. Most of the systems and equipment are digital (approximately 99 percent, by his estimate). Often, individual equipment items are interconnected to make a complete, interoperable, and complex system. Systems and equipment are scheduled for regular periodic preventive maintenance by the claimant and the other employees in his shop.

During the interview, the claimant said that he spends approximately 50 percent of his time in repair, 40 percent on average in preventive maintenance, 5 percent in administrative work associated with shop operations, and 5 percent in technical problem solving and writing technical papers. According to the claimant, the work requires significant knowledge of digital electronics in order to troubleshoot and repair the systems and equipment.

The claimant said that his input on new equipment purchase is minimal. He is asked by the Veterans Integrated Service Network (VISN) equipment committee for his opinion of a new system or piece of equipment being considered for purchase, and he is consulted near the end of the process as to whether the item(s) selected can be supported with space and utilities. He does not perform biomedical systems and equipment design indicated in the PD. The only modification of systems performed by the claimant is that directed by the manufacturer, e.g., systems upgrades, and they are accompanied by manufacturer's instructions.

The record shows that virtually all of the claimant's duties are systems and equipment maintenance and repair work covered by the Federal Wage System (FWS). The General Schedule work (biomedical engineering technician work) is not substantiated by the evidence.

Part 551 of the Code of Federal Regulations (CFR) covers pay administration under the FLSA for Federal employees such as the claimant. Subpart 551.202(i) states that "the designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee." Therefore, the exemption status of the work actually performed by the employee controls the FLSA determination.

Subpart 551.203(b) states that an employee classified in a position graded GS-5 and above is exempt only if the employee meets the executive, administrative or professional criteria as defined in the subpart. Virtually none of the work performed by the claimant meets the definition of executive, administrative, or professional employee.

CFR subpart 551.204(a) states that "a nonsupervisory employee in the Federal Wage System or in other comparable wage systems is nonexempt..." Although the claimant's position is not classified in the FWS, he is performing predominantly nonexempt trades work. In addition, the claimant does not meet any of the exemption criteria in CFR Part 551. For example, his work does not meet the nonmanual work test criteria as required by 551.206, Administrative Exemption Criteria.

Decision

[Claimant's] work is judged to be properly nonexempt from coverage of the FLSA. That is, he is entitled to the pay and overtime provisions of the Act.

The claimant is entitled to compensation for FLSA covered hours of work performed for up to two years from the time he filed an FLSA claim with the agency or OPM. He first sent his FLSA claim request to this office on September 29, 2000, and there is no record that he filed a claim with his agency. Therefore, the time period will be from September 29, 1998, through the date this decision is received by the servicing human resources office.

This decision is returned to the agency for them to determine the amount of overtime pay due the claimant under the provisions of the FLSA, if any. CFR subpart 551.422 defines when time spent travelling is hours of work under the FLSA. The claimant is due compensation for the difference between the overtime payment he received or would have received under title 5, United States Code, and the overtime payment due under the FLSA. He is also entitled to interest on his back pay under 5 USC 5596 and subpart H, section 550 of the CFR.