

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

Atlanta Oversight Division
75 Spring Street, SW., Suite 972
Atlanta, GA 30303-3109

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

Claimant: [Claimant]

Agency classification: Business Manager
NF-1101-3

Organization: Golfers' Club
Morale, Welfare, Recreation Fund
U. S. Department of the Army
[Location]

Claim: Nonexempt. Owed payment for overtime.

OPM decision: Exempt. Claim denied.

OPM decision number: F-1101-03-01

/s/

Kathy Day
FLSA Claims Officer

6/1/00

Date

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

Decision sent to:

[Claimant's representative]

[Civilian Personnel Advisory Center]
U. S. Department of the Army

Deputy Assistant Secretary
Civilian Personnel Policy/Civilian
Personnel Director for Army
U.S. Department of the Army
Room 23681, Pentagon
Washington, DC 20310-0300

Director, U.S. Army Civilian
Personnel Evaluation Agency
U.S. Department of the Army
Crystal Mall 4, Suite 918
1941 Jefferson Davis Highway
Arlington, VA 22202-4508

Introduction

On March 28, 2000, the Atlanta Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [claimant]. He believes his position should have been nonexempt under the Act and that he is owed overtime pay from January 1993 to August 1996. During the claim period, he worked in the Golfers' Club, Morale, Welfare, Recreation Fund, U. S. Department of the Army, [location]. His position was classified as Business Manager, NF-1101-3. We have accepted and decided his claim under section 4(f) of the FLSA as amended.

General Issues

The claimant's Notification of Personnel Action, DA Form 3434, reassigning him to the Business Manager, NF-1101-3, position dated (what appears to be) October 10, 1991, shows his FLSA status as nonexempt. However, the claimant's official position description for the claim period, number [#], shows the position as FLSA exempt. The agency discovered the error when the claimant raised the issue of payment for the hours he had worked in excess of 40 hours. The agency corrected the FLSA status on DA Form 3434 to exempt him from FLSA on September 19, 1996. The claimant is no longer assigned to the position in question.

The claimant believes his position should have been nonexempt and requests payment, including interest, for overtime hours worked during the period January 1, 1993, to August 29, 1996. Nonappropriated fund employees are considered employees for purposes of the FLSA but not for purposes of the statute granting interest on back pay. If overtime payment is owed under the FLSA, no interest may be paid on the amount owed. Additionally, the claimant can receive pay for his claim only for two years back from the date the claim was recorded with his agency or with OPM. His claim was recorded with the agency on February 11, 1997. Therefore, if due overtime pay, he can receive pay for the claim only back through February 11, 1995.

The claimant makes various statements relating to his agency and its report on his FLSA case. In adjudicating this claim, our only concern is to make our own independent decision about the claimant's exemption status and how much FLSA overtime pay he is owed, if any. We must make that decision by comparing the facts in the case to appropriate Federal regulations and guidelines. Therefore, we have considered the claimant's statements only insofar as they are relevant to our decision.

In support of his claim, the claimant stated that he performed a number of nonexempt duties in the absence of other employees. However, duties performed in the absence of another employee or temporary, short term and nonrecurring duties are not considered in determining the claimant's FLSA status.

Evaluation

During the claim period, the claimant was assigned to the position of Business Manager, NF-1101-3. According to the position description, the claimant was responsible for developing, recommending, and enforcing operating procedures; representing the activity to the public;

conducting customer surveys; making recommendations concerning services; promoting activities and revenue improvements; developing budgetary data; evaluating financial statements; reviewing costs against revenues; and recommending improvements in merchandise lines, marketing, and other services. He participated in the selection of employees, directed on-the-job training of new employees, and made duty assignments consistent with operational requirements.

Information obtained from the claimant and his supervisor, the agency's findings, and other information in the record indicate that the claimant's primary duty was to serve as the assistant manager of the golf club. He supervised a subordinate staff of 3 part-time cashiers, NF-2091-1; 2 laborers, NA-3502-2; 1 food service leader, NA-7408-5; and 3 food service workers, NA-7408-1. He recommended changes in the hours of operations and staffing levels to meet workload demands, approved leave and timecards, interviewed candidates, recommended selections, counseled employees on work and minor disciplinary matters, and evaluated employee performance. He developed internal controls and standard operating procedures for the staff to follow and placed them in an informational booklet.

The claimant processed receiving reports, bills and other sales documents, ensuring correctness and accuracy. He resolved discrepancies in payment and coordinated the return of damaged goods or merchandise with vendors. He maintained the security of cash and sales receipts, conducted monthly inventory, and maintained financial records and other data. He provided input to the supervisor on capital improvements, renovations, and funding needs for the annual budget request. He determined what merchandise to purchase and whether it was best suited to his customers, and restocked equipment and supplies. He conducted periodic promotional sales to move merchandise, promoted golf tournaments, hung fliers and posters, and ran "specials" in the snack bar to generate revenues. He ensured safety practices were followed and served as the point of contact for health inspections for the food service operations. He socialized with customers, handled customer complaints, and demonstrated the use of equipment.

The work was performed under the general supervision of the general manager. The claimant independently carried out the day-to-day activities and used discretion and judgment to accomplish whatever needed to be done. The supervisor provided additional instructions to complete special assignments or actions that departed from established policy or regulation. Recommendations made by the claimant were subject to the supervisor's review and approval. Overall work was reviewed in terms of meeting established goals and objectives.

The agency determined that the claimant's position was exempt from coverage under FLSA. To be exempt from FLSA coverage, the position in question must meet one or more of the statutory exemptions, i.e., executive, administrative, or professional, found in title 5, Code of Federal Regulations (CFR), Part 511, Subpart B.

Executive Exemption Criteria

Under the executive exemption criteria, contained in 5 CFR, section 551.204, an "executive" is a supervisor, foreman, or management official who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and

regularly and customarily directs the work of at least three subordinate employees (excluding support employees) and meets all the following:

- (a) The employee's primary duty consists of management or supervision. The primary duty requirement is met if the employee-
 - (1) Has authority to select or remove, and advance in pay and promotion, or make any other status changes of subordinate employees, or has authority to suggest and recommend such actions with particular consideration given to these suggestions; and
 - (2) Customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of management of subordinates, including personnel administration.
- (b) In addition to the primary duty criterion that applies to all employees, foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems), employees at the GS-7 through GS-9 level subject to section 207(k) of title 29, United States Code, and employees classified at the GS-5 or GS-6 level (or equivalent in other white collar pay systems) must spend 80 percent or more of the work time in a representative work week on supervisory and closely related work.

Primary duty

All exemption determinations are based on the employee's primary duty. As a general rule, the primary duty is that which constitutes the major part (over 50 percent) of the employee's work. However, a duty which constitutes less than 50 percent of the employee's work can be credited as the primary duty for exemption purposes provided that duty: (1) constitutes a substantial, regular part of a position, and (2) governs the classification and qualification requirements of the position, and (3) is clearly exempt work in terms of the basic nature of the work, the frequency with which the employee must exercise discretion and independent judgment, and the significance of the decisions made.

The claimant's position meets (a)(1)

The claimant's primary duty was to manage the golf club and supervise the work of a subordinate staff who performed the line work of the organization. Although little if any hiring was occurring during the claim period, the claimant's position description gave him responsibility for interviewing applicants and recommending selections. In addition, he was responsible for recommending other personnel actions.

The claimant's position meets (a)(2)

The exercise of discretion and independent judgment involves: (1) comparing and evaluating possible courses of conduct; and (2) interpreting results or implications, and independently

taking action or making a decision after considering the various possibilities. Firm commitments of final decisions are not necessary to support exemption. The “decisions” made as a result of the exercise of independent judgment may consist of recommendations for action rather than the actual taking of action. There are three elements involved in the evaluation of this factor:

- (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. Employees whose work primarily requires skill and the application of standardized techniques, precedents, or other guidelines are excluded.
- (2) The employee must have authority to make such determinations during the course of assignment.
- (3) The decisions made independently must be significant. Although 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, it 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.

The claimant’s supervisory and managerial duties regularly required independent judgment and discretion to make recommendations and decisions affecting the business and financial operations of the golf club. He planned work, set schedules, assigned priorities, gave instruction to employees, trained employees, and found ways to improve production or increase quality. Although he did not exercise final authority for all his decisions, his recommendations, e.g. whether to purchase, promote, market or sell merchandise, served as a basis for final decisions. His delegated managerial responsibilities clearly extended beyond procedural details and impacted the efficiency of services and revenues of the golf club.

The claimant furnished a list of 26 support duties that he claims are nonexempt, e.g., “ordered various golf merchandise for stock of the pro shop, processed purchase requests and monthly blanket purchase agreements, maintained petty cash fund for small purchases, opened and closed the golf course, maintained various files, records, and other data, returned damaged merchandise to vendors, ...” These duties related to the claimant’s management work. In evaluating management work, related support work which is an essential part of the management functions is included in the exempt work. Examining the processes involved in performing the exempt function typically identifies such work. For example, in a retail business, the processes involved in the analysis and evaluation of revenues, financial and budget data, and marketing strategies often require collecting information by conducting inventories, ordering merchandise, and preparing reports or other records. If divorced from the management function, such duties are nonexempt. However, when the employee who performs the management functions also performs some or all of these related steps, all such work is included in the employee’s exempt duties. Therefore, the claimant’s support duties are considered a part of his management functions.

The claimant's primary duty consisted of management and supervision.

Criteria in (b) is not applicable

The claimant's position was not in the Federal Wage System or an equivalent system and his position was not subject to section 207(k) of title 29.

The agency furnished a copy of the guide for the Payband Classification and Pay System for White Collar Nonappropriated Fund (NAF) employees. The guide contains a table that compares the descriptions of work levels and pay categories, as well as the basic work characteristics for each level, to the General Schedule (GS) grade level equivalent.

The claimant's position was classified at the NF-3 work level/pay category described as an entry-level management job, full-performance administrative or technical job, and an assistant specialist. The agency compared the payband to the GS grade level equivalent of grades 5 through 8. In the GS, positions classified at grade 5 are characterized as entry level. Grade 7 is characterized as a developmental position or an administrative support position with full responsibility for a program area, and grade 9 is characterized as the first full-performance level for a specialist position.

The actual work performed by the claimant was not an entry level management position. It was comparable to grade 7 level work.

Section (b) of the executive exemption criteria is not applicable.

Since the claimant's position meets the executive exemption criteria, no further evaluation against other exemption criteria is needed.

Decision

The claimant's position is properly exempt from the FLSA from February 11, 1995, to February 11, 1997, and FLSA overtime pay is not due.