

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

Claimant: [name]

Agency classification: Legal Assistant
GS-986-7

Organization: Hearing Office
Regional Chief Administrative Law
Judge ([location])
Office of Disability Adjudication &
Review
Social Security Administration
[location]

Claim: Back pay for uncompensated overtime
for herself and similarly situated
employees, Whistle Blower Protection,
and punishment of management for
violation of the FLSA

OPM decision: Denied; Lack of jurisdiction

OPM decision number: F-0986-07-01

/s/

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

9/15/08

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 the U.S. Office of Personnel Management (OPM) administers the Fair Labor Standards Act (FLSA). 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 5 CFR 551.708. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

Decision sent to:

[name and address]

Introduction

On August 4, 2008, OPM's Division for Human Capital Leadership and Merit System Accountability, Center for Merit System Accountability, received an FLSA claim from [name]. She currently occupies a Legal Assistant, GS-986-7, position with the organizational title of Senior Case Technician (SCT), in Hearing Office, Regional Chief Administrative Law Judge ([location]), Office of Disability Adjudication & Review, Social Security Administration, in [location]. The claimant seeks to file a "grievance" with OPM regarding overtime she has worked "from around September 26, 2006 until the present." She also requests "Whistle Blower Protection in regards to this grievance" because of her belief management retaliates against employees who file grievances. The claimant asks agency management "be fined or Reprimanded [sic] for non-compliance of the FLSA" and OPM to:

seriously look at our Management [sic] team and weed out those employees who do not wish to comply with the FLSA laws, SSA/ODAR policies, and the AFGE Union Contract so that we might be able to have a non-hostile working environment.

In reaching our FLSA decision, we have carefully reviewed all information furnished by the claimant and her agency which we contacted for the sole purpose of ascertaining the claimant's bargaining unit status.

Jurisdiction

OPM has authority to adjudicate FLSA claims for Federal employees under the provisions of section 204(f) of title 29, United States Code (U.S.C.). However, OPM cannot take jurisdiction over the FLSA claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA) between the employee's agency and labor union for any time during the claim period, unless that matter is or was specifically excluded from the agreement's NGP. The Federal courts have found Congress intended such a grievance procedure to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452, 1454-55 (Fed. Cir. 1990) (en banc), cert. denied, *Carter v. Goldberg*, 498 U.S. 811 (1990); *Mudge v. United States*, 308 F.3d 1220 (Fed. Cir. 2002). Section 7121(a)(1) of title 5, U.S.C., mandates that the grievance procedures in negotiated CBAs be the exclusive administrative procedures for resolving matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

Information provided by the claimant's servicing HR office at our request shows the claimant was in a bargaining unit position during the period of her claim. The CBA between the Social Security Administration and the American Federation of Government Employees in effect during the period of the claim does not specifically exclude FLSA issues from the NGP (Article 24) covering the claimant. Accordingly, OPM has no jurisdiction to adjudicate the claimant's FLSA claim.

Although we may not render a decision on this claim, we note the claimant's request for OPM action on behalf of other employees is misplaced. OPM's FLSA claims regulations in subpart G of part 551 of title 5, Code of Federal Regulations (CFR) provide for the filing of individual claims (5 CFR 551.702(a)), and not group claims as the claimant appears to seek. While a claimant may designate a representative to assist in the presentation of a claim, a claimant's

representative must be designated in writing (5 CFR 551.704). Since the claimant has not provided such a written designation, she has no standing to represent any other employee who might be covered under OPM's FLSA claims settlement jurisdiction, e.g., a co-worker occupying a non-bargaining unit position.

The claimant's request for OPM to afford her "Whistle Blower Protection" is similarly misplaced. Whistleblower disclosures under 5 U.S.C. § 1213 fall under the jurisdiction of the Office of Special Counsel (OSC) (see <http://www.osc.gov/wbdisc.htm#jurisdiction>). OPM has no authority to take disciplinary action against SSA managers as the claimant requests. Disciplinary authority is vested in management officials of each agency, such as SSA (5 U.S.C. § 7106(a)(2)(a)). However, OSC may also seek disciplinary action against any employee for having committed a prohibited personnel practice or for other actions enumerated in 5 U.S.C. § 1215.

Decision

The claim is denied due to lack of jurisdiction.