

April 6, 1998 Dallas Oversight Division

1100 Commerce Street, Room 4C22
Dallas, TX 75242-9968

In Reply Refer To: Your Reference:

MSO:FLSA

February 24, 1997

OPM decision number: F-1811-13-01 (rescinded and replaced by F-1811-13-08)
[claimant's name]
[address]
[city, state]

Dear [claimant's name]:

This letter responds to your claim in which you request payment for overtime under the Fair Labor Standards Act (FLSA) for the years 1984 through 1990, during which you were employed as a Criminal Investigator, GS-1811, with the Customs Service. Your claim was referred to us by the General Accounting Office when its authority to settle Federal employee FLSA claims was transferred to the Office of Personnel Management in 1996.

A two-year time limit applies to FLSA claims, unless they involve willful violations, which have a three-year limit. Employee claims filed before June 30, 1994, however, are subject to a six-year limit (an exception granted by Public Law 103-329) unless the employee has received *any* compensation for overtime worked during the claim period under *any* other provision of law (Public Law 104-52). Claims for time spent commuting between home and duty station are also excluded from the six-year exception. In 1978, GAO began using a six-year limitation period for FLSA claims. In 1994, GAO determined that the two-year limit used by the courts in settling FLSA claims should also apply to the administrative settlement of Federal employees' claims. The two-year limit now applied to claims in the Federal sector aligns with the time limits used in the private sector.

Your claim was filed with your agency on June 4, 1990, which would qualify it for the former six-year limit except that your agency indicates that you received premium pay for administratively uncontrollable overtime (AUO) during your claim period. AUO is an annual premium paid under 5 U.S.C. 5545(c) to employees as compensation for substantial amounts of irregular, unscheduled overtime. Consequently, the two-year limit applies to your claim, reducing its beginning period to 1988, at the earliest.

Your agency further indicates that you were promoted to an FLSA exempt Criminal Investigator, GS-1811-13, position on May 25, 1986, and that such positions were

determined properly exempt in a court decision (*Stephen Adams v. The United States, Fed. Cl. No. 90-162C*). Exempt positions have no overtime entitlement under FLSA. Accordingly, we cannot consider your claim.

You may call our office at (214)767-0561 if you have any questions concerning this matter.

Sincerely,

Bonnie J. Brandon
FLSA Claims Officer

cc: Mr. Frederick W. Tingley
Chief, Compensation Policy Staff
Office of Human Resources
U. S. Customs Service
1301 Constitution Ave, NW, Room 6103
Washington, D.C. 20229