

**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]

Position: Supervisory Correctional Officer
GS-007-11

Organization: [Installation]
U. S. Department of Justice

Claim: Nonexempt. Owed payment for overtime.

OPM decision: Exempt. No payment due.

OPM decision number: F-0007-11-01

/s/

Kathy W. Day
FLSA Claims Officer

7/31/00

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]

[Servicing human resources office]

Human Resources Management Division
Pay and Position Management
Federal Bureau of Prisons
320 First Street, NW.
Washington, DC 23405

Director of Personnel
U.S. Department of Justice
JMD Personnel Staff
1331 Pennsylvania Avenue, NW.
Suite 1110
Washington, DC 20530

Introduction

On June 9, 2000, the Atlanta Oversight Division of the U.S. Office of Personnel Management received a Fair Labor Standards Act (FLSA) claim from [claimant]. He believes his FLSA status should be nonexempt under the Act and that he is owed overtime pay from pay period 10 of 1998 to pay period 5 of 2000. During the claim period, he was officially assigned to the position of Supervisory Correctional Officer (Lieutenant), GS-007-11. We have accepted and decided his claim under section 4(f) of the FLSA as amended.

General Issues

The claimant is requesting that his FLSA status be changed to nonexempt. He believes he should be compensated for 202.25 hours of overtime under FLSA. He further states that he spends less than 25 percent of his time in a supervisory capacity, does not meet any of the FLSA exemption criteria, and that the overtime hours he worked involved the same duties performed by Senior Officer Specialists, GS-007-8, who received FLSA overtime. In support of his claim, the claimant states that he performs a number of nonexempt duties in the absence of other employees. The agency provided copies of the specific Post Orders, which lists all required duties for Supervisory Correctional Officers (Lieutenant). The Post Orders state that the claimant may occasionally be required to assist the day watch operations Lieutenants or even assume their posts. Duties performed in conjunction with his supervisory responsibilities, e.g., filling in for absent employees to ensure all duties are covered, are considered to be part of the supervisory responsibilities, and therefore, exempt work.

The claimant makes various statements concerning 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.

The agency believes that the claimant's position is exempt under section 5542 of title 5, United States Code (USC), and meets the executive exemption criteria in title 5, Code of Federal Regulations (CFR), part 551, Subpart B. The claimant's current position description, dated December 2, 1996, indicates that he was exempt for the claim period. According to the agency, the 202.25 hours the claimant alleges he worked was authorized overtime as a Supervisory Correctional Officer (Lieutenant).

In reaching our decision, we have carefully reviewed all information furnished by the claimant and his agency and conducted telephone interviews with the claimant and his supervisor.

Evaluation

During the claim period, the claimant was assigned to the position of Supervisory Correctional Officer (Lieutenant), GS-007-11. According to the position description, the claimant is responsible for the conduct, morale, and performance of the correctional officers and the custody

and supervision of inmates. His responsibilities include shift operations, administrative operations, training, custodial assignments, industrial operations, bus operations, cellhouse duties, and special investigative duties.

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 is to manage and supervise the correctional staff. The claimant provides technical and administrative supervision to 3 Lieutenants and approximately 128 correctional staff employees rotating quarterly on shift assignments. He performs the full range of administrative duties, i.e., he sets priorities, delegates work, assigns correctional officers to various posts, evaluates performance, makes recommendations for promotions and awards, investigates discipline problems, approves leave, and counsels and gives instructions to correctional officers on all shifts. The claimant plans, directs, and administers inmate programs and activities. He is responsible for observing and correcting inmates' behavior, responding to emergencies, and enforcing criminal statutes including investigations, arrests, and detentions. According to the supervisor, the work assigned to the claimant involves primarily supervisory responsibilities requiring more than 25 percent of his time.

The work is performed under the general supervision of the Chief Correctional Supervisor who assigns and evaluates the work. The supervisor provides additional instructions for unique or unusual situations. The claimant is expected to supervise the routine work operations independently by carrying out the day-to-day activities using discretion and judgment to accomplish the work.

The agency determined that the claimant's position is 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 5 CFR, Part 511, Subpart B.

Executive Exemption Criteria

Under the executive exemption criteria, contained in 5 CFR 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 29 USC, 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 is responsible for supervising the work of a subordinate staff who perform the line work of the organization. He makes recommendations for promotions and awards. Although the claimant does not make selections, according to the supervisor, he can participate in the selection of personnel in his department. He recommends other personnel actions for both staff personnel and inmates. We find that the nature of his work clearly meets the criteria of supervisory subordinate employees.

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 duties regularly require independent judgment and discretion to make recommendations and decisions affecting the security and safety of the institution. He plans work, sets schedules, assigns priorities, gives instructions to employees, trains employees, and evaluates performance. Although he does not exercise final authority for all his decisions, his recommendations and delegated supervisory responsibilities clearly extend beyond procedural details and impact the security and safety concerns of the institution.

The find the claimant's primary duty consists of supervision and essentially related work and meets the FLSA executive exemption criteria in (a).

Criteria in (b) is not applicable

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

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 FLSA status, and FLSA overtime pay is not due.