

U.S. Office of Personnel Management
Division for Human Capital Leadership and Merit System Accountability

Fair Labor Standards Act Program
Center for Merit System Compliance
1900 E Street, NW.
Washington, DC 20415-6000

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

Appellant: [name]

Agency classification: Credit Union Examiner
CU-0580-11

Organization: SE Group A
Region [location]
National Credit Union Administration
[location]

Claim: Exemption status and compensation for
time traveled.

OPM decision: Exempt. No entitlement to backpay
under the provisions of the
FLSA

OPM decision number: F-0580-11-01 (originally issued as
F-0580-11)

//signed//

Deborah Y. McKissick
FLSA Claims Officer

April 26, 2004

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 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 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]

[name]
Trial Attorney
National Credit Union Administration
Office of the General Counsel
[location]

Introduction

On March 26, 2003, the San Francisco Oversight Division, now the San Francisco Field Services Group, of the Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [name]. Because of program changes within OPM, the claim was sent to OPM's claims office in Washington, DC, for processing. We have accepted and decided this claim under section 4(f) of title 29 (FLSA), United States Code.

In reaching our FLSA decision, we have carefully reviewed all information furnished by the claimant and his agency.

General Issues

The claimant occupies a Credit Union Examiner, CU-0580-11, position with the National Credit Union Administration (NCUA). The agency designated the claimant's position as FLSA exempt. The claimant believes he should be designated as nonexempt and also compensated in accordance with FLSA provisions for all time spent traveling. He does not provide a rationale as to why the work that he performs is nonexempt from the provisions of the FLSA.

Evaluation

FLSA Exemption Designation

The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee (5 CFR 551.202). Sections 551.205, 551.206, and 551.207 of title 5, Code of Federal Regulations (5 CFR) contain criteria governing whether the claimant's position should be exempt from the FLSA.

The claimant did not disagree with the description of his work in his position description (PD) of record (PD #9772 or the contents of the agency claim administrative report that we received on June 18, 2003).

Professional Exemption Criteria

The professional exemption criteria in 5 CFR 551.207, define a professional employee as an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

- (a) *Primary duty test.* OPM guidance indicates that the primary duty test is met if the employee's work consists of –
 - (1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing

work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

- (2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee; or
- (3) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering or other similar work in the computer software field. The work must consist of one or more of items in (3)(i) to (3)(iv).

The claimant's position meets (a)(1) of the primary duty test. The agency administrative report states that the claimant "must have knowledge of accounting, auditing, business theory, and finance equivalent to that attained by completing a bachelor's degree in accounting, finance, or business economics. This knowledge is required so that Examiners can independently conduct and complete examinations of federal credit unions" As discussed in the PD of record, the claimant's examination work requires knowledge of the theory, concepts, and practices of accounting and auditing to analyze credit union financial statements and to apply Generally Accepted Accounting Principles, knowledge of business theory to understand credit unions and how they function, and knowledge of finance to understand credit union financial operations.

During the claim period, from January 2001 to April 2003, the claimant managed an assigned district of federally insured and chartered credit unions. His responsibilities included planning and performing supervision and examination activities, with frequent adjustments to comply with changing regulatory or economic factors, to fulfill program objectives. The processes required to perform these duties required application of professional accounting and related knowledge described in the PD of record.

- (b) *Intellectual and varied work test.* OPM guidance indicates that the employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought processes for satisfactory performance.

The claimant's position meets the intellectual and varied work test. The record shows that the claimant reviews financial statements, computes ratios and analysis of financial trends, management policies and procedures, major asset, liability and capital accounts, and internal controls to determine the financial soundness of a credit union. The claimant also identifies financial weaknesses, inefficiencies and violations of law and regulation to assure compliance with applicable laws and regulations. His written report on examination findings includes a thorough analysis of the credit union's financial condition and management, and identification of significant problems and the agreements reached for corrective action. This work

requires analytical reasoning and substantial judgment in considering, selecting, adapting, and applying accounting and related financial principles and practices to the variables encountered in credit union examining,

- (c) *Discretion and independent judgment test.* Established OPM guidance indicates that the employee frequently exercises discretion and independent judgment under only general supervision, in performing the normal day-to-day work.

The claimant's position meets the discretion and independent judgment test. Under general supervision, the claimant independently plans the work, sets up contacts, develops examination findings, interprets regulations, coordinates preliminary findings with credit union officials, develops the final recommendations, and prepares the written examination report. His work requires exercising independent judgment to determine the financial soundness of the institutions examined. During the examination process, the claimant exercises discretion and independent judgment on such matters as determining financial weaknesses and violations of law and regulation, determining their causes, and evaluating their seriousness. In discussing preliminary findings and negotiating a plan of action to eliminate the identified problems and prevent recurrence, the claimant must compare and evaluate possible courses of action, interpret results or implications, and make decisions after considering the various possibilities. These decisions have a significant impact on the operations of the examined institutions.

- (d) *80-percent test.* In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS-5 or GS-6 (or the equivalent level in other comparable white-collar pay systems), must spend 80 percent or more of the worktime in a representative workweek on professional functions and work that is an essential part of those functions to meet the 80-percent test.

Criterion (d) is not applicable to the claimant's position.

Based on the information provided, the claimant's work meets all of the professional criteria as described in 5 CFR 551.207.

Decision

The claimant's position meets the professional exemption criteria, and is therefore, exempt, i.e., not covered by the provisions of the Fair Labor Standards Act.

As an exempt employee, any claim for backpay must be adjudicated as a compensation claim under OPM regulations at Part 178 – Procedures for Settling Claims, in Title 5 of the Code of Federal Regulations (CFR). Because the record does not show that the claimant has filed a title 5 claim with his former employing agency and received a denial of the claim, we may not accept and process a compensation claim on his behalf at this time.