

120 Howard Street, Room 760
San Francisco, CA 94105



**Fair Labor Standards Act Decision
Under Section 4(f) of the Act as Amended**

Claimant:	[Name of claimant]
Position:	Law Enforcement Ranger GS-1801-11
Organization:	U.S. Department of the Interior Bureau of Land Management
Claim:	Exemption status
Decision:	Nonexempt
OPM Decision No.	F-1801-11-01

Signed by Denis J. Whitebook _____
DENIS J. WHITEBOOK
CLASSIFICATION APPEALS OFFICER

February 20, 1997 _____
DATE

There is no right of further appeal from this decision. The Director of the U.S. Office of Personnel Management may at his discretion reopen and consider the case. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision. However, he may do so only if he does not accept back pay. All back pay recipients must sign a waiver of suit when they receive payment.

The agency is to compute the claimant's overtime pay in accordance with instructions in this decision. The servicing personnel office must submit a compliance report consisting of a corrected position description and Standard Form 50 showing that the claimant's exemption status has been changed to comply with this decision. The corrected position description and SF 50 should be sent to this office for review within 15 workdays of receiving the decision.

The agency is to submit a plan for applying this decision to all identical or similar positions in accordance with instructions in this decision within 30 workdays of receiving the decision.

Decision sent to:

[Name and address of claimant]

Director
National Human Resources Management Center
U.S. Department of the Interior
Denver Federal Center, Building 50
P.O. Box 25047
Denver, CO 80225-0047

Manager, Interagency Human Resources Center
U.S. Department of the Interior
2800 Cottage Way, Room W-1102
Sacramento, CA 95825

Director of Personnel
U.S. Department of the Interior
Washington, D.C. 20240

Introduction

On February 22, 1996, the San Francisco Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [name of claimant]. He believes that his FLSA exemption status should have been nonexempt since May 1995. His position is classified as Law Enforcement Ranger GS-1801-11. The claimant works in [claimant's work location], Bureau of Land Management, Department of the Interior. We have accepted and decided his claim under section 4(f) of the FLSA as amended.

Position information

The claimant is assigned to Position Description (PD) [number] which states:

The primary purpose of this position is to plan, implement, and oversee the District law enforcement program concerning the enforcement of Federal laws and regulations relating to public lands and resources managed by BLM. The incumbent is a uniformed law enforcement officer with full delegated law enforcement authority.

Incumbent is a "stand alone" Law Enforcement Ranger assigned at the Resource Area level. Incumbent serves as a "resident ranger" who is assigned to a duty station far removed from the BLM administrative headquarters (area office). Incumbent's supervisor is not readily available for guidance and assistance. In most cases, incumbents must act alone in implementing and carrying out their duties.

The claimant spends 20 percent of his time on program management duties:

1. Provides direction and leadership to the District law enforcement program. Develops policies and procedures for carrying out law enforcement activities.
2. Plans, implements, and coordinates the law enforcement program which includes identifying apprehension efforts needed to address current and potential law enforcement problems, cooperative investigative and apprehension efforts with other Federal, State, and local law enforcement agencies, crime prevention efforts, public safety, and contingency plans. Coordinates law enforcement program with resource management plans and activities.
3. Analyzes criminal activity, resource vandalism, and violation problems occurring on public lands. Recommends solutions such as planning alternatives, additional regulation through supplementary rules, and law enforcement methods and techniques.
4. Provides technical advice and guidance to management team and resource specialists on law enforcement matters.
5. Provides technical assistance in developing and administering law enforcement agreements that require liaison and coordination on a regional basis. Coordinates law enforcement efforts having District-wide impact with other law enforcement agencies.
6. Develops and maintains liaison with officials of cooperating Federal, State, and local law enforcement agencies. Assists and requests assistance from agencies in law enforcement

activities. Maintains liaison with U.S. Attorney's Office, court clerks, and other organizations.

7. Evaluates requests for Special Agent investigative assistance and coordinates assistance with the Special Agent-in-Charge.

8. Determines cost of activities based on staffing, equipment, supplies, and material requirements. Drafts and submits for approval the annual budget and operating program. Revises program activities to conform to approved and available funds, and implements and oversees annual operating program.

9. Provides for formal training to BLM Law Enforcement Rangers in the use of firearms, defensive tactics, trespass procedures, and public contact procedures. Monitors BLM Law Enforcement Rangers' progress with field training standards and individual training plans. Acquires or conducts formal or remedial training, as needed.

10. Arranges for procurement, equipping, and preparation of law enforcement vehicles and related equipment. Manages inventory of law enforcement protective equipment, such as firearms, defensive weapons, and associated gear. Maintains appropriate electronic communication systems.

11. On behalf of the Area Manager, incumbent often represents BLM to the community where assigned. This may include contact with State, regional, county, and city officials. This specifically includes law enforcement and criminal justice officials.

The claimant spends 55 percent of his time investigating, enforcing, and apprehending persons who have committed or are suspected of committing criminal offenses. He enforces criminal law offenses related to resource protection and drug control laws as they relate to public lands. The claimant conducts the full range of criminal, civil, and administrative investigations. He locates, secures, and protects crime scenes, collects or seizes evidence, interviews witnesses or suspects, prepares investigative reports, and testifies at hearing and trials. He is responsible for apprehending persons who have committed or are suspected of committing criminal offenses. He arrests suspects, executes arrest warrants, transports suspects to detention facilities and prepares required documentation, and issues violation notices to violators. He may be delegated as a State Peace Officer under a Memorandum of Understanding with the county sheriff or other State or local official so authorized. Pursuant to such memoranda, is authorized to enforce applicable State laws or county ordinances on Federal public land and private property adjacent to the public land. He may be assigned as the District Tort Claims Officer responsible for coordinating and investigating claims for damage, injury, or death filed against the United States resulting from incidents occurring within the District. He prepares investigative reports and correspondence, presents evidence and provides testimony on trial cases, and serves subpoenas and court orders for witnesses and documents.

He spends 25 percent of his time on special assignments such as: multi-agency task forces to eradicate marijuana plantations, drug investigations, etc.; educating public land users about the Federal laws and regulations pertaining to use of public land and its resources; participating in search and rescue of visitors to public lands; and using automated equipment, data, systems, and applications to accomplish assigned duties.

The claimant and his supervisor have certified the PD as complete and accurate. The PD and other information of record furnish additional details about the duties and responsibilities actually performed by the claimant.

Exemption determination

Three types of employees are exempted from the FLSA's overtime benefits: executive, professional, and administrative. The exemption criteria are found in sections 551.204, 551.205, and 551.206 of Title 5, Code of Federal Regulations (CFR). We have used accepted OPM interpretations of the terms used in the exemption criteria. The claimant does not meet the executive or professional exemption criteria. Neither the agency nor the claimant disagrees.

The agency found that the claimant met the administrative exemption criteria. The claimant disagrees.

Administrative Exemption Criteria

The administrative exemption criteria are found in 5 CFR 551.205:

An administrative employee is an advisor, assistant, or representative of management, or a specialist in a management or general business function or supporting service who meets all of the following criteria:

- (a) The employee's primary duty consists of work that--
 - (1) Significantly affects the formulation or execution of management policies or programs; or
 - (2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or
 - (3) Involves substantial participation in the executive or administrative functions of a management official.

- (b) The employee performs office or other predominantly nonmanual work which is --
 - (1) Intellectual and varied in nature; or
 - (2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.

- (c) The employee must frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

- (d) In addition to the primary duty criterion that applies to all employees, General Schedule employees at GS-5 or GS-6 (or the equivalent in other white collar systems) must spend 80 percent or more of the worktime in a representative

workweek on administrative functions and work that is an essential part of those functions.

The general principles governing exemptions found in 5 CFR 551.202 provide that the exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption, that the burden of proof rests with the agency that asserts the exemption, and that all employees who clearly meet the criteria for exemption must be exempted.

Based on the *Adam v. United States* (26 Cl.Ct.782), *Roney v. United States* (790 F.Supp. 23), and *Amshey v. United States* (26 Cl.Ct. 582) court rulings, the claimant believes that he should be nonexempt. The *Adam* case covered Border Patrol Agents GS-1896-11, the *Roney* case covered a Deputy U.S. Marshal GS-11, and the *Amshey* case covered sergeants and lieutenants in the Uniformed Division of the U.S. Secret Service. The work discussed in the three court cases is not identical to the claimant's work. It is less clear if the work covered by the court cases is similar enough to the claimant's work that the court decisions would apply to the claimant's work. However, we find that we can make an independent and objective decision on the exemption status of the claimant through application of the appropriate regulations and guidance.

Evaluation

Criterion (a)

To meet criterion (a) the claimants' primary duty must meet one of the three subpoints under (a). Accepted OPM guidance provides the following interpretation of the term *primary duty*.

As a general rule, the primary duty is that which constitutes a major part (over 50 percent) of the employee's work. However, a duty which constitutes less than 50 percent of the work can be credited as the primary duty for exemption purposes provided that duty:

- (1) Represents the most important duty;
- (2) Controls the classification of the position (i.e., if that duty were removed, the position would be classified at a lower grade); 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 PD states that the primary purpose of the claimant's position is to plan, implement, and oversee the District law enforcement program. This program management work occupies 20 percent of the claimant's time. According to established classification principles, work occupying less than 25 percent of the time cannot be grade controlling (*Introduction to the Position Classification Standards*, page 23). In addition, the agency's classification evaluation statement reflects that the grade level is not based solely on the program management duties. For example, the classification evaluation statement reflects that the grade is also based on the requirement for

an extensive knowledge of legal principles and concepts to determine those criminal acts that constitute a crime or violation as defined in Federal and State statutes; and of investigative techniques and available sources of information, methods of obtaining and maintaining a chain of evidence, interviewing and interrogational techniques, and the methods and patterns of criminal operations sufficient to bring suspects and violators to court hearings or trials.

We did not find that all of the program management work is clearly exempt work meeting the criteria in the third subpoint. For instance, one of the eleven program management duties has the claimant developing and maintaining liaison with officials of cooperating law enforcement agencies and assisting or requesting assistance from these agencies. In our judgment, this is not clearly administrative work that significantly affects the formulation or execution of management policies or programs. It does not involve obtaining compliance with policies. It also does not clearly involve one of the phases of program management, i.e., planning, developing, promoting, coordinating, controlling, or evaluating operating programs of the employing organization or of other organizations subject to regulation or other controls. We believe that even less than 20 percent of the time is spent on duties that may meet the administrative exemption criteria. The program management work does not meet OPM's established interpretation of the term *primary duty*.

The claimant spends over 50 percent of his time on enforcement, apprehension, and investigative duties. These are routine law enforcement work: enforcing criminal law offenses related to resource protection and drug control laws as they relate to public lands; arresting suspects and issuing violation notices; conducting the full range of criminal, civil, and administrative investigations; participating in multi-agency task forces to perform special law enforcement activities; participating in search and rescue; etc. We find that the law enforcement work is the primary duty.

(a)(1) The agency finds that the claimant meets criterion (a)(1) where the employee's primary duty consists of work that significantly affects the formulation or execution of management policies or programs. Following is the accepted OPM interpretation of the term *formulation or execution of management policies or programs*:

Management policies and programs range from broad national goals that are expressed in statutes or Executive Orders to specific objectives of a small field office. Employees may actually make policy decisions or participate indirectly, through developing proposals that are acted on by others. Employees who significantly affect the execution of management policies or programs typically are those whose work involves obtaining compliance with such policies by other individuals or organizations, within or outside of the Federal Government, or making significant determinations in furtherance of the operation of programs and accomplishment of program objectives.

Administrative employees engaged in formulation or execution of management policies or programs typically perform one or more phases of program management

(i.e., planning, developing, promoting, coordinating, controlling, or evaluating operating programs of the employing or of other organizations subject to regulation or other controls). Some of these employees are classified in occupations that reflect these functions (e.g., program analyst) but many are classified in subject matter occupations.

BLM believes that the claimant meets this criterion because his program management work significantly affects the formulation or execution of management programs and policies. However, the program management work is not the primary duty for reasons discussed on the previous two pages and cannot be considered further in the exemption determination. The claimant's primary duty is the routine law enforcement work occupying more than 50 percent of his time.

The claimant's primary duty does not involve obtaining compliance with BLM policies, but rather consist of routine law enforcement tasks involved in obtaining compliance with the law and regulations.

The claimant's routine law enforcement work is nearly identical to the law enforcement work performed by Law Enforcement Rangers GS-1801-9 who also filed FLSA exemption claims. In these related claims, BLM indicated that law enforcement work performed by Law Enforcement Rangers GS-1801-9 is a management program and the GS-9's work clearly affected the execution of that program. BLM finds that investigating, apprehending, and enforcing laws significantly affects the execution of the law enforcement program in a given District or Resource Area. In contrast, we find that the claimant *affects* the execution of policy by carrying out the work. However, we do not find that the primary duty (i.e., routine law enforcement work) *significantly affects*, i.e., influences or changes, the execution of policy.

The claimant does not meet criterion (a)(1).

(a)(2) We find that the claimant's primary duty, i.e., routine law enforcement work, does not involve general management or business functions or supporting services of substantial importance to the organization serviced. The claimant's primary duty does not involve providing expert advice in specialized subject matter fields, such as that provided by management consultants or systems analysts; assuming facets of the overall management function, such as safety management, personnel management, or budgeting and financial management; representing management in such business functions as negotiating and administering contracts, determining acceptability of goods or services, or authorizing payments; and providing supporting services, such as automated data processing, communications, or procurement and distribution of supplies. Neither the agency nor the claimant disagrees.

(a)(3) The claimant does not meet (a)(3) either. The claimant does not participate in the functions of a management official. This subpoint covers employees (variously identified as secretaries, administrative or executive assistants, aids, etc.) who participate in portions of the managerial or administrative functions of the supervisor whose scope of responsibility precludes personally

attending to all aspects of the work. Such employees perform varied duties such as personally attending to or redirecting calls and visitors; scheduling or rejecting invitations and requests for appointments; representing or arranging for another staff member to represent the supervisor in conferences or meetings; and similar actions which significantly affect the supervisor's effectiveness. Neither the agency nor the claimants disagree.

The claimant does not meet criterion (a).

Criterion (b)

BLM did not address the nonmanual work issue; however, to evaluate criterion (b), we must first determine if the claimant performs office or other predominantly nonmanual work.

OPM has not provided an interpretation of the term *nonmanual work*. However, OPM is to interpret the FLSA consistent with the U.S. Department of Labor's (DOL) regulations. DOL administers the FLSA for State and local governments, the U.S. Post Office, and the private sector. DOL explains the term *nonmanual work* in 29 CFR 541.203:

(a) The requirement that the work performed by an exempt administrative employee must be office work or nonmanual work restricts the exemption to *white-collar* employees who meet the tests. If the work is *office* work it is immaterial if it is manual or nonmanual in nature. This is consistent with the intent to include within the term *administrative* only employees who are basically white-collar employees since the accepted usage of the term *white-collar* includes all office workers. Persons employed in the routine operation of office machines are engaged in office work within the meaning of [the administrative exemption criteria] (although they would not qualify as administrative employees since they do not meet the other [administrative exemption criteria]).

(b) [The administrative exemption criteria do] not completely prohibit the performance of manual work by an *administrative* employee. The performance by an otherwise exempt administrative employee of some manual work which is directly and closely related to the work requiring the exercise of discretion and independent judgment is not inconsistent with the principle that the exemption is limited to *white-collar* employees. However, if the employee performs so much manual work (other than office work) that he cannot be said to be basically a *white-collar* employee he does not qualify for exemption as a bona fide administrative employee, even if the manual work he performs is directly and closely related to the work requiring the exercise of discretion and independent judgment. Thus, it is obvious that employees who spend most of their time in using tools, instruments, machinery, or other equipment, or in performing repetitive operations with their hands, no matter how much skill is required, would not be bona fide administrative employees within the meaning of [the administrative exemption criteria]. An office employee, on the other hand, is a *white-collar* worker, and would not lose the

exemption on the grounds that he is not primarily engaged in *nonmanual* work, although he would lose the exemption if he failed to meet any of the other requirements.

Webster's Ninth New Collegiate Dictionary (1986) defines *manual* as "requiring or using physical skill or energy." We conclude, therefore, nonmanual work would not call for significant use of physical skill or energy.

The claimant's PD and the classification evaluation statement reflect that his law enforcement work requires considerable physical exertion, e.g., long periods of standing, crawling, walking and running over rough, uneven, rocky surfaces and through wooded or brush areas, performing these activities day or night, when the claimant may be required to respond immediately from a sedentary activity to an extremely arduous activity. The work is performed both in a typical office setting and outside with exposure to hazardous and environmentally adverse conditions. Field work is normally performed alone in isolated areas and for extended periods of time. Many investigations occur in isolated areas of the public lands. The remote areas are in high mountains as well as desert areas, canyons, and other types of rough terrain. This type of work involves potentially high risks with personal exposure to dangerous situations, including possible physical attack or other uncontrollable conditions. He travels on foot, horseback, or in vehicles such as four-wheel drives, motorcycles, and all-terrain vehicles.

Given that the field work is performed on a regular and recurring basis and the level of effort required in the environment described, the claimant's work cannot be considered *office or other predominantly nonmanual work*. The claimant's work does require the use of physical skill and energy. The work involves considerable strenuous physical exertion, e.g., long periods of standing, crawling, walking, and running over rough, uneven, rocky surfaces and through wooded or brush areas. He performs the work in isolated areas such as in mountain and desert areas, canyons, and other types of rough terrain. The work involves potentially high risks with personal exposure to dangerous situations including possible physical attack. We must conclude that the claimant's work is manual work.

Since we find that the claimant does not perform office or other predominantly nonmanual work, it is not necessary to determine if the claimant meets either of the two subpoints under criterion (b).

The claimant does not meet criterion (b).

Summary

To meet the administrative exemption criteria found in 5 CFR 551.205, the employee must meet *all* of the criteria. Since the claimant does not meet two of the criteria, there is no requirement that the remaining criteria be evaluated. The claimant does not meet the administrative exemption criteria. The claimant is nonexempt from the FLSA, i.e., covered by the provisions of the FLSA.

Decision

The claimant's Law Enforcement Ranger GS-1801-11 position (PD number) is nonexempt from the FLSA. This decision covers the entire complaint period, including the present. During the complaint period, the claimant is generally due FLSA overtime pay for those hours in a tour of duty which exceed the overtime standard for a work period specified in section 7(k) of the Act or are in excess of 40 hours in a workweek if the claimant does not receive compensation for those hours under 5 U.S. Code 5545(c)(1) or (c)(2).

Compliance instructions

Claimant

The servicing personnel office must submit a compliance report containing the corrected position description and Standard Form 50's showing that the claimant's exemption status has been changed to comply with this decision. The corrected position description and SF 50's should be sent to this office within 15 workdays of receiving the decision.

FPM Letter 551-5 or 551-24 will contain the appropriate guidance for computing pay when FLSA overtime is due. Although the FPM was abolished, the guidance in these FPM Letters is still applicable as is other FPM guidance cited in this decision. As indicated earlier, the claimant's overtime pay must be calculated on a work period or workweek basis. Therefore, for each work period or workweek in the claim period, the agency is to compute the claimant's pay entitlement using the guidance in the appropriate FPM letter. The claimant is due this amount, minus whatever he has already been paid for the work period or workweek.

Five CFR 550.806 and the attached FPM Letter 550-78 show that the claimant is also owed interest on the back pay discussed above. Therefore, the agency is instructed to compute that interest as described in the regulation and the FPM letter. To help with this, we have enclosed a floppy disk containing an OPM program for computing such interest and instructions on using the program.

If a claimant and the agency cannot agree on the amount due, the claimant can submit a claim to this office.

Identical and similar positions

This decision applies to all identical and similar positions. The agency must submit a plan with timeframes for reviewing the FLSA status of identical and similar positions and for making corrections and payments including interest to all affected employees, if necessary. The plan should be sent to us within 30 workdays from receiving this decision.

If agency personnel have any questions, they may call our desk officer at (415) 281-7050.

Attachments