

U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeal and FLSA Programs

San Francisco Oversight Division
120 Howard Street, Room 760
San Francisco, CA 94105-0001

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

Claimant: [The claimant]

Agency classification: Electronics Mechanic Leader
WL-2604-11

Organization: [The claimant's organization]
Bureau of Land Management
Department of the Interior

Claim: Not paid for overtime worked

OPM decision: Payment due

OPM decision number: F-2604-11-04

Carlos A. Torrico
FLSA Claims Officer

August 21, 2000
Date

As provided in section 551.708 of title 5, Code of Federal Regulations, this decision is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which the Office of Personnel Management administers the 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 further right of administrative appeal. This decision is subject to discretionary review only under conditions specified in section 551.708 of title 5, Code of Federal Regulations (address provided in section 551.710). 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, which is enclosed with this decision.

The agency is to compute the claimant=s overtime pay in accordance with instructions in this decision, then pay the claimant the amount owed him. If the claimant believes that the agency has computed the amount incorrectly, he may file a new FLSA claim with this office.

Decision sent to:

Claimant:

[The claimant's address]

Agency:

[The claimant's servicing personnel office]
Bureau of Land Management
Department of the Interior

Ms. Carolyn Cohen
Director of Personnel
U.S. Department of Interior
Mail Stop 5221
1849 C Street, NW.
Washington, DC 20240

Introduction

On March 17, 2000, the San Francisco Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [the claimant]. The claimant does not believe that he was paid for overtime worked. The claimant is employed as an Electronics Mechanic Leader, WL-2604-11, and his agency has determined that his job is nonexempt (i.e., covered) by the overtime provisions of the FLSA. He works in the [the claimant's organization and installation] Bureau of Land Management, Department of the Interior. We have accepted and decided his claim under section 4(f) of the FLSA as amended.

Background information and evaluation

The claimant's regular working hours are 7:30 am to 4:30 pm, Monday through Friday. The claimant believes that he is entitled to overtime pay for time spent traveling outside of his regular working hours. The applicable FLSA regulations can be found in Section 551.422 of title 5, Code of Federal Regulations (5 CFR 551.422). Paragraph (a) of this regulation states:

- (a) Time spent traveling shall be considered hours of work if:
 - (1) An employee is required to travel during regular working hours;
 - (2) An employee is required to drive a vehicle or perform other work while traveling;
 - (3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or
 - (4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours.

1. The claimant left his residence in [name of city], on, Monday, November 1, 1999, at 5:30 am to catch a 6:15 am flight to [name of destination]. He attended a five-day, eight-hours per day, supervisory training session. On Friday, November 5, 1999, his flight departed from the [city] International Airport at 9:30 pm and arrived at the [city] airport at 10:30 pm. He claims 2.5 hours of travel time on November 1 and 6.5 hours on November 5.

The time spent traveling can be considered hours of work under the FLSA only if the travel time meets the provisions of 5 CFR 551.422(a). The claimant's travel time does not meet any of the conditions under 5 CFR 551.422(a):

- Any travel he performed during regular working hours has been paid.
- He was not required to drive or perform other work while traveling.
- He was not on a one-day assignment.
- The travel did not occur on a nonworkday, Saturday or Sunday, during hours that correspond to his regular working hours, 7:30 am to 4:30 pm.

The time spent traveling is not considered hours of work under the FLSA and no overtime pay is due for the time spent traveling.

2. The claimant left his residence in [name of city] on, Tuesday, November 15, 1999, at 5:15 am to catch a 6:15 am flight to [city]. He attended a full day of training. On Wednesday, November 16, his flight departed from [city] International Airport at 4:53 pm and arrived at the [city] airport at 5:40 pm. He claims 3.5 hours of overtime.

The claim is denied for the same reasons given in #1 above.

3. The claimant left his [name of city] residence on Sunday, December 5, 1999, at 7:00 am to catch an 8:36 am flight to [city/state], via [city] and [city] airports. He arrived in [city] at 7:30 pm. He left [city] on Friday, December 10 at 1:55 pm and arrived at the [city] airport at about 5:00 pm (missed connecting flight due to airline technical problems). He departed [city] airport at 8:00 pm and arrived in [city] at 10:30 pm. The airline paid for lodging for the night. He departed [city] airport on Saturday, December 11, at 6:45 am and arrived at [city] airport at 7:30 am and at his residence at 9:00 am.

Sunday, December 5

The agency found that the claimant was entitled to overtime pay for time spent traveling on Sunday, December 5, under 5 CFR 551.422(a)(4) and paid him. There is no further entitlement due the claimant for travel on December 5.

Friday, December 10

The claimant was paid for an 8-hour day on Friday, December 10, which included time spent traveling during his regular working hours.

The time spent traveling after his regular working hours on Friday, December 10, does not meet the criteria under 5 CFR 551.422(a). The travel did not occur during regular working hours, the claimant was not required to drive or perform other work while traveling, he was not on a one-day assignment, and he was not traveling during corresponding hours on a nonworkday.

Saturday, December 11

The time spent traveling on Saturday, December 11, during hours on a nonworkday that correspond to the claimant's regular working hours is compensable under 5 CFR 551.422(a)(4). All time spent traveling on a nonworkday during the corresponding hours must be compensated.

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The claimant is entitled to compensation under the FLSA for time spent traveling on Saturday, December 11, from 7:30 am to 9:00 am.

4. The claimant left his residence on Monday, January 24, 2000, at 5:15 am to catch a 6:30 am flight to [city/state]. He arrived in [city] at 6:10 pm. He left [city] at 7:00 pm, driving a

rental car to [name of installation], arriving at 8:00 pm. He left [installation] on Friday, January 28, 2000, at 5:30 am, driving the rental car, to [city] where he arrived at 6:45 am. He caught an 8:35 am flight from [city] to [city] via [city] airport, where he arrived at 4:44 pm.

The time spent traveling by the claimant is not compensable under the FLSA as it does not meet the criteria under 5 CFR 551.422(a).

- Any travel he performed during regular working hours has been paid.
- He was not required to drive or perform other work while traveling. Driving a rental vehicle to a hotel does not constitute being required to drive since no work was performed. The term *required to drive* covers situations such as an employee required to drive a vehicle to transport employees to a job site.
- He was not on a one-day assignment.
- The travel did not occur on a nonworkday, Saturday or Sunday, during hours that correspond to his regular working hours, 7:30 am to 4:30 pm.

Decision

The claimant is entitled to compensation under the FLSA for time spent traveling during hours on a nonworkday that correspond to his regular working hours on Saturday, December 11, 1999. Other periods of travel claimed are not hours of work under the FLSA and are not compensable.

Compliance Instructions

The agency is directed to compute the FLSA overtime pay due the claimant for all time spent traveling on Saturday, December 11, 1999, during hours that correspond to his regular working hours. If he chooses to accept back pay, the claimant must sign a waiver of suit when he receives payment. A receipt for that purpose is enclosed with this decision. It should be completed by the agency and the claimant, and a copy returned to OPM's San Francisco Oversight Division.