Fair Labor Standards Act Decision
Under section 204(f) of title 29, United States Code

Claimant: [name]

Agency Classification: Prisoner

Organization: Federal Prison Industries, Inc.
Federal Correctional Institution (FCI)-
[name]
Bureau of Prisons
U.S. Department of Justice
[location]

Claim: West Virginia/Federal rate of pay
for work while incarcerated

OPM decision: Denied; Lack of standing and
lack of jurisdiction

OPM file number: F-5823-00-01

/s/

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Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

5/5/09

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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 U.S. Office of Personnel Management (OPM) administers the Fair Labor Standards Act (FLSA). 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 location]

Director, Human Resources
U.S. Department of Justice
JMD Personnel Staff, Room 1110, NPB
1331 Pennsylvania Avenue, NW
Washington, DC 20530

District Director
U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
320 West Pike Street, Room 140
Clarksburg, WV 26301

Administrator
U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
200 Constitution Avenue, NW
Washington, DC 20210

Introduction

In his March 11, 2009, FLSA claim, hand delivered to OPM, the claimant seeks the "WV rate/Fed rate of pay continuously" for work performed from October 18, 2006, through September 11, 2008, as a "QA + Truck Mechanic." The claimant states he was paid "Super-Sub-Wages of $0.23 to $0.69 an hour" during the period of the claim when he worked for Federal Prison Industries, Inc., also know as FPI or UNICOR. The claimant filed this claim with OPM after being advised by the U.S. Department of Labor (DoL) in a January 27, 2009, letter that "[s]ince FPI is part of the federal government, [his claim] would fall under the jurisdiction of "OPM" for any FLSA issues."

In the December 17, 2008, FLSA claim sent to the DoL, claimant states he should have been paid "$6.55/Federal Minimum Wage pursuant [sic] the Walsh-Healy Act of 1934….[a]nd the Fair Labor Standard [sic] Act of 1938 (FLSA) and USCA 8 "cruel and unusual punishment" inflictions prevention; USCA 8 due process clause."' The record shows claimant sought various sums at different times during his various attempts to file an FLSA claim. In his March 11, 2009, request to OPM, claimant sought "12K or more with interest." During the period of the claim, the claimant was incarcerated at FCI-[name], Bureau of Prisons, U.S. Department of Justice, in [location]. For the reasons discussed herein, we find the claimant lacks standing to bring the claim and we deny it for lack of jurisdiction.

OPM's Center for Merit System Accountability received the claim on March 19, 2009. In reaching our decision in this matter, we have carefully reviewed all information furnished by the claimant.

Analysis

Jurisdiction (Walsh-Healy Act, Whistle Blower Protection Act of 1989 and 2002, and "USCA 8")

In his March 11, 2009, claim request, claimant requests the aforementioned monies for "work done inside UNICOR Industr [sic] (FPI) which was inside FCI-[name]" based on the "72 pages or more" of information provided with his request. This documentation includes the claim previously sent to DoL asserting, *inter alia*, UNICOR's violation of the Walsh-Healy Act by entering into contracts of more than $10,000 using convict labor and his status as a "third part beneficiary to those contracts," seeking "the full protection for the Whistle Blower protection [sic] Act of 1989 and 2002 to prevent retaliation by UNICOR for this complaint." Claimant also appears to assert a constitutional claim by citing "USCA 8 "cruel and unusual punishment" infliction's prevention; USCA 8 "due process clause."'

OPM's authority in section 204(f) of title 29, United States Code (U.S.C.) is narrow and limited to administration of the FLSA for most Executive branch Federal employees. Section 204(f) does not include any authority to adjudicate alleged violations of the Walsh-Healy Act or constitutional matters such as alleged violations of Amendment 8 of the U.S. Constitution, or act on requests for Whistleblower protection. Therefore, OPM lacks jurisdiction to act on the claimant's requests regarding these matters.

Jurisdiction and authority to settle the claim

The FLSA claims process in 5 CFR Part 551 pertains to the adjudication of claims for minimum wage and FLSA overtime pay. Under 5 CFR 551.705, a claimant may "file an FLSA claim with either the agency *employing* (emphasis added) the claimant during the claim period or with OPM…" Therefore, the first step in the FLSA claims adjudication process is to determine whether the claimant was employed as an employee under 29 U.S.C. 204(f).

In his December 7, 2008, letter to DoL, the claimant asserts "[p]risoners are not listed as exempt" from the minimum wage provisions of the FLSA. The claimant states he was "employed" as a Quality Assurance Inspector from October 18, 2006, through February 28, 2007, and was "rehired" from the "Unicor's priority-List [sic]" from August 20, 2007, through September 11, 2008, "after [he] was released (to a USPC (Parole-Cusody [sic]) Warrant/Detainer) into (into the hole) the (SHU) Special Housing Unit"[sic] from March 2, 2007, "through April 10, 2007 and to 04/11/2007."" He provides information on the hours he worked for FPI, which changed during the periods of time he attended vocational training to become an electrician.

It is well settled that Federal inmates working for UNICOR (Federal Prison Industries, Inc or FPI) are not covered by the FLSA. As discussed in *Nicastro v. Reno*, 84 F.3d, 1446, 1447 (D.C. Cir. 1996), citing *Henthorn v. Department of Navy*, 29 F.3d 682 (D.C. Cir. 1994), to qualify as employees under the FLSA, a prisoner must have "freely contracted with a non-prison employer to sell his labor." The Court found labor performed for FPI is not voluntary, stating:

> The mandatory work requirement applies to all federal prisoners who are physically and mentally able to participate. Pub. L. No. 101-647, 104 Stat. 4914 (1990), cited at 18 U.S.C. § 4121 note (1994) (Mandatory Work Requirement for All Prisoners). While inmates can request an industrial work assignment with FPI instead of an institutional job, they have not freely contracted to sell their labor. Choosing where to work is not the same as choosing whether to work. At one task or another, the prisoner "is legally compelled to part with his labor as part of a penological work assignment," and, therefore, the complainant fails to state a claim under the FLSA. *See Henthorn*, 29 F.3d at 686.
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> The complaint fails under the second part of the *Henthorn* test as well, *see id.* at 686-87: Federal Prison Industries, Inc. is not a "non-federal employer." *Accord Sprouse v. Federal Prison Industries, Inc.*, 480 F.2d 1 (5th Cir.), cert. denied, 414 U.S. 1095, 94 S.CT. 728, 38 L.Ed.2d 553 (1973). FPI is a government corporation designed to enhance the opportunity of federal inmates to learn trade and industrial skills. 18 U.S.C. § 4123 (1994). Its funds come from the United States Treasury and its profits return there. 18 U.S.C..§ 4126(a). Rules and regulations promulgated by the Attorney General govern FPI's payment of compensation to inmates. 18 U.S.C. § 4126(c)(4).

As discussed in *Sprouse*: "We are of the view that whatever right plaintiffs have to compensation is solely by congressional grace and governed by the rules and regulations promulgated by the Attorney General. Cf. Sigler v. Lowrie, 8 Cir. 1968, 404 F.2d 659."

The Court stated that in an analogous situation, the Supreme Court held that federal prisoners:

> do not have the right of action under the Federal Tort Claims Act because injury compensation is provided them under [18 U.S.C.] section 4126. "[W]here there is a compensation statute that reasonably and fairly covers a particular group of workers, it presumably is the exclusive remedy to protect that group." United States v. Demko, 1966, 385 U.S. 149, 152, 87 S. Ct. 382, 384, 17 L.Ed.2d 258.

As discussed more recently in *Bennett v. Frank*, 395 F.3d 409 (7th Cir. 2005): "The Fair Labor Standards Act is intended for the protection of employees, and prisoners are not employees of their prison." The Court noted inmates are not imprisoned for the purpose of enabling them to earn a living. The prison pays for their keep and, if its puts them to work, it is to offset some of the cost of keeping them, to keep them out of mischief, to ease their transition to the world outside, or to equip them with skills and habits which would make them less likely to return to crime outside. The Court also stated:

> None of these goals is compatible with federal regulation of their wages and hours. The reason the FLSA contains no express exception for prisoners is probably that the idea was too outlandish to occur to anyone when the legislation was under consideration by Congress.

Decision

The claimant was not an employee for purposes of the FLSA during the period of the claim. Therefore, claimant lacks standing to bring the claim and we deny it for lack of jurisdiction.