

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

Office of Merit Systems Oversight and Effectiveness  
1900 E Street, NW  
Washington, DC 20415-6000

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

**Claimant:** [claimant]

**Agency classification:** Electronics Engineer  
GS-0855-12

**Organization:** [agency]

**Claim:** Compensation for time traveled in  
connection with training.

**OPM decision:** Exempt.  
Overtime payment due.

**OPM decision number:** F-0855-12-03

/s/

\_\_\_\_\_  
Deborah Y. McKissick  
FLSA Claims Officer

4/15/02

\_\_\_\_\_  
Date

As provided in section 551.708 of title 5, Code of Federal Regulations (CFR), this is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which 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 (address provided in 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

**Decision sent to:**

[claimant]

[agency representatives' names and addresses]

Carlos A. Torrico  
FLSA Claims Officer  
U.S. Office of Personnel Management  
San Francisco Oversight Division  
120 Howard Street, Room 760  
San Francisco, California 94105

## **Introduction**

On August 31, 2000, the San Francisco Oversight Division of the Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [claimant]. The claimant believes he is owed payment for time traveled in connection with training during the period of January 26, 1997 to April 23, 1999. The claimant works with the [agency]. The claimant is an Electronics Engineer, GS-0855-12. Because of program changes in OPM, the San Francisco Oversight Division sent the claim to OPM's claims office in Washington, DC for processing on July 12, 2001. We accepted and decided his 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. We also conducted a telephone interview with the claimant and the claimant's supervisor.

## **General issues**

The agency has designated the claimant's position, Electronics Engineer, GS-0855-12, as exempt. The claimant believes he should be compensated for time spent traveling outside his scheduled work hours in connection with training attendance for the period of January 26, 1997 to April 23, 1999.

The claimant references the July 14, 1999 settlement agreement between headquarters [two agency components] and certain American Federation of Government Employees (AFGE) locals, regarding the FLSA status of certain bargaining unit positions. He also references the September 9, 1999 settlement agreement between the [agency component] and Bargaining Unit Employees of the National Federation of Federal Employees (NFFE) Local 1614, regarding the FLSA status of certain bargaining unit positions. The claimant notes that there was a dispute regarding the FLSA exemption status for the Quality Assurance Specialist, GS-1910-11 grade level. However, we must make our decision solely by comparing claimants' duties and responsibilities to Federal regulations and other Federal guidelines. Since comparison to Federal guidelines is the exclusive method for making exemption decisions, we cannot compare the claimant's position to others as a basis for deciding his claim.

## **Background information**

The essential facts surrounding this claim are not in dispute.

- The claimant's position was designated by the agency as exempt, not covered by the FLSA.
- The claimant is not a member of a collective bargaining unit or a party of either of the settlement agreements.
- The claimant and his supervisor concur that the claimant's position description is accurate.

## Evaluation

### *Time Spent Traveling*

The claimant believes that he is entitled to overtime pay for time spent traveling outside of his established work hours and outside of his duty-station in connection with the [system] mission during the period of January 26, 1997 to April 23, 1999. The claimant notes that Electronics Engineers in exempt positions in union bargaining agencies have been authorized compensation for time spent traveling in connection with training.

5 CFR 550.112(g) is used to determine hours of work for travel for FLSA exempt who are covered by the overtime pay provisions of title 5, United States Code (5 U.S.C.), section 5542. 5 CFR § 550.112(g) defines the situations that designate time in travel as overtime and it reads,

Time in travel status. Time in travel status away from the official duty-station of an employee is deemed employment only when:

- (1) It is within his regularly scheduled administrative workweek, including regular overtime work; or
- (2) The travel -
  - (i) Involves the performance of actual work while traveling;
  - (ii) Is incident to travel that involves the performance of work while traveling;
  - (iii) Is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
  - (iv) Results from an event, which could not be scheduled or controlled administratively, including, travel by an employee to such an event and the return of the employee to his or her official-duty station.

5 CFR 550.112(g)(2)(iv) applies to the claimant's situation. The Federal agency did not administratively control the scheduling of traveling time for trips in question to Farmingdale, New York; Hamamatsu, Japan; Iruma Air Base, Japan; Hauppauge, New York; Huntington, New York; and Inglewood, Colorado during the claim period. The work was ordered and approved by the supervisor. Therefore, the times spent traveling to the aforementioned areas are compensable at the overtime rates prescribed in 5 U.S.C. § 5542(b)(2)(B).

Compensation for overtime should be authorized because the travel results from an event that could not be scheduled or administratively controlled, and there is an immediate official necessity concerning the event that requires travel outside the employee's regular duty hours. *Barth v. U.S.*, 568 F.2d 1329, 1332 (Ct. Cl. 1978); *Jordan*, 72 Comp. Gen. 286, 287

(1993); *Department of Housing and Urban Development*, 70 Comp. Gen. 77 (1990); *William A. Lewis, et. al.*, 69 Comp. Gen. 545, 547 (1990).

## **Decision**

Requests for overtime under title 5 for time spent traveling to attend overseas meeting dates may be denied because the agency administratively controls the scheduling of the event. However, the claimant's agency did not administratively control the scheduling of the overseas meeting dates which required the claimant to travel outside the employee's duty station and outside the employee's regularly scheduled workweek. The start and end time of the events were scheduled not by the claimant's agency, but by someone or some organization outside the Executive branch of government – [contractor] and its customers. *William A. Lewis, et al.*, 69 Comp. Gen. 545 (1990).

Based on the above analysis, the claimant is owed compensation for the following time spent traveling outside his scheduled work hours:

1. TDY to Farmingdale, New York, Travel Order [#], Thursday, 4/22/99 and Friday, 4/23/99.
2. TDY to Iruma Air Base, Japan, Travel Order [#], Saturday, 6/20/98;
3. TDY to Hamamatsu, Japan, Travel Order [#], Saturday, 3/21/98;
4. TDY to Hauppauge, New York, Travel Order [#], Saturday, 11/15/97;
5. TDY to Inglewood, Colorado, Travel Order [#], Sunday, 5/4/97; and
6. TDY to Huntington, New York, Travel Order [#], Sunday, 1/26/97.

## **Compliance instructions**

There is a six-year statute of limitation for employees covered by title 5 (exempt from FLSA). The claimant can receive back pay for six years from the date his claim was received by OPM, which was July 20, 2000. Therefore, he can receive compensation for the requested claim period of January 26, 1997 to April 23, 1999.

The agency should pay the claimant the total owed him. If the claimant believes that the agency has computed the amount incorrectly, he may file a new FLSA claim with OPM.