

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

**Claimant:** [name]

**Agency classification:** Supervisory Detention Enforcement  
Officer  
GS-1802-9

**Organization:** [name] District Office  
New England Field Office  
U.S. Immigration and Customs  
Enforcement  
Department of Homeland Security  
[location]

**Claim:** Nonexempt - Received No Overtime Pay  
During Claim Period.

**OPM decision:** Claim is Time Barred

**OPM decision number:** F-1802-9-01

/s/

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

10/13/06

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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 further right of administrative appeal. This decision is subject to discretionary review only under conditions specified in 5 CFR 551.709. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

**Decision sent to:**

[name and address]

Office of Human Resources Management  
U.S. Customs and Border Protection  
Department of Homeland Security  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

Mr. Robert Hosenfeld  
Assistant Commissioner  
1400 L Street, -9<sup>th</sup> Floor  
Washington, DC 20005

## **Introduction**

On June 16, 2005, the Center for Merit System Accountability of the OPM received an FLSA claim from [name] for "...FLSA pay I did not receive while working as a Supervisory Detention Enforcement Officer (*SDEO, GS-1802-09*) in the Boston, MA Office." The claimant cites an FLSA lawsuit filed by a group of other SDEOs, i.e., *Aaron Angelo Jr., et al v. the United States*, 57 Fed. Cl. 100 (June 27, 2003), and the resulting settlement agreement. While he was not a plaintiff in the case, he believes he is equally entitled to compensation. We received the agency administrative report (AAR) on February 22, 2006. For the reasons discussed herein, the claim is time barred.

## **Background**

In order to properly adjudicate the claim, we requested additional information from the claimant and agency. The claimant responded by memorandum dated October 31, 2005, stating his initial claim was filed with OPM in June 2005, and the period of time covered by his claim was from January 1999 to February 2002. There is no evidence in the record of the claimant filing an earlier claim.

The record contains the judge's opinion and settlement agreement for the cited case. As a result of the case, the agency conceded the plaintiff's positions should have been FLSA nonexempt, and the parties agreed on terms for settlement of the dispute. The court found the agency's actions were not willful, and, therefore, a two year statute of limitations was applied to all plaintiffs. The claimant held a comparable SDEO position during the period of the claim, and believes the agency should be required to treat all the SDEOs in the same manner, regardless of whether they were parties to the litigation or not. The record shows the settlement agreement is solely intended to resolve the matters at issue between the parties involved in the case, and directly applies only to them.

The AAR cover letter, dated February 10, 2006, states the agency changed the claimant's position description of record, #E0A3QT, and all other SDEO, GS-1802-9 positions from FLSA exempt to nonexempt on August 11, 2002, because of decisions made regarding the cited case. It also states the claimant was not a member of a bargaining unit, nor was he covered by a collective bargaining agreement during any portion of the claim period.

## **Statute of Limitations**

The FLSA claims process in subpart G of part 551 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for unpaid overtime or violations of child labor law. Any FLSA claim filed by a Federal employee, not otherwise covered by a negotiated grievance procedure which includes FLSA matters, on or after June 30, 1994, is subject to a two-year statute of limitations (three years for willful violations) contained in the Portal-to-Portal Act of 1947, as amended (section 255a of title 29, United States Code). In order to preserve the claim period, a claimant or a claimant's designated representative must submit a written claim either to the agency employing the claimant during the claim period or to OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay. The claimant is responsible for proving when the claim was received by the agency or OPM (5 CFR 551.702(c)).

**Evaluation**

We did not receive the claim until June 16, 2005, and the record does not show the claimant filed a claim at an earlier date with the agency. The claimant does not allege the agency's actions were willful, and we defer to the court's findings on similarly situated SDEOs on this matter. In accordance with the statute of limitations for FLSA claims, any entitlement to FLSA overtime pay based on the claim period ending February 2002 (i.e., the period of time during which the basis of the claim occurred), expired in February 2004 based on application of the two year statute of limitations. Further, the claimant did not file and preserve his claim with OPM until June 16, 2005. Therefore, any entitlement to FLSA overtime based on this claim expired on June 16, 2003, due to the running of the two-year statute of limitations period. The claim is barred from our consideration and may not be allowed. The Portal-to-Portal Act does not merely establish administrative guidelines; it specifically prescribes the time within which a claim must be received in order to be considered on its merits. OPM does not have any authority to disregard the provisions of the Act, make exceptions to its provisions, or waive the limitations it imposes.

**Decision**

The claim is denied since it is time barred.