

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

Claimant: [name]

Organization: Office of Field Operations
Office of Information Technology
Wilkes-Barre VA Medical Center
Department of Veterans Affairs
[location]

Claim: Change exemption status to nonexempt
and remuneration for unpaid overtime at
the rate of time-and-a-half

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM decision number: F-2210-12-01

/s/

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

6/11/2010

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). 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 section 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

Decision sent to:

[name and address]
PO Box 7625
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Chief, Human Resources
[name] VA Medical Center
Department of Veterans Affairs
[location]

Director
Compensation and Classification Service (055)
Office of Human Resources Management
Department of Veterans Affairs
810 Vermont Avenue, NW, Room 240
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Deputy Assistant Secretary for
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Introduction

On April 7, 2010, the U.S. Office of Personnel Management's (OPM) Merit System Audit and Compliance received a Fair Labor Standards Act (FLSA) claim from [name] concerning his employment in an Information Technology (IT) Specialist (Network Services), GS-2210-12, position in the Office of Field Operations, Office of Information Technology, [name] VA Medical Center, Department of Veterans Affairs (VA), in [location]. The claimant seeks to reverse his agency's May 8, 2008, change in his FLSA exemption status from nonexempt to exempt and "remuneration for unpaid overtime at the time-and-one-half rate."

In reaching our FLSA decision, we have carefully considered all information furnished by the claimant and his agency which we received on May 17, 2010.

Jurisdiction

Although OPM has the authority to adjudicate FLSA claims for many Federal employees, OPM cannot take jurisdiction over FLSA claims of Federal employees that are or were subject to a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA) between the employee's agency and labor organization for any time during the claim period, unless that matter is or was specifically excluded from the agreement's NGP. The Federal courts have found Congress intended such a grievance procedure to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990) (en banc), *cert. denied*, *Carter v. Goldberg*, 498 U.S. 811 (1990); *Mudge v. United States*, 308 F.3d 1220 (Fed. Cir. 2002). Section 7121(a)(1) of 5 U.S.C. mandates the grievance procedures in negotiated CBAs be the exclusive administrative procedures for resolving matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

The CBA between VA and the American Federation of Government Employees (AFGE) National Veterans Affairs Council of Locals in effect during the period of the claim does not specifically exclude FLSA overtime pay issues from the NGP (Article 42) covering the claimant. Therefore, the claimant's FLSA claim must be construed as covered by the NGP the claimant was subject to during the claim period and OPM has no jurisdiction to adjudicate this claim.¹

Decision

The claim is denied based on lack of jurisdiction.

¹ We note that in his April 2, 2010, letter the claimant states he sought assistance from a local AFGE union representative and the "General Counsel for AFGE."