

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

Claimant: [name]

Agency classification: Equal Employment
Opportunity Specialist
GS-260-9

Organization: Equal Employment Opportunity Office
[name] District Office
Corps of Engineers
Department of the Army
[location]

Claim : Compensation for FLSA Overtime
for Time Spent Traveling

OPM decision: Overtime is due

OPM decision number: F-0260-09-01

/s/

Kevin E. Mahoney
Deputy Associate Director
Center for Merit System Accountability

11/7/06

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

Decision sent to:

[name and address]

[name]
Human Resources Officer
Civilian Personnel Advisory Center
[name] District
U.S. Army Corps of Engineers
[address]

Director of Human Resources
U.S. Army Corps of Engineers
Attn: CEHR-E
441 G Street, NW
Washington, DC 20314-1000

Department of the Army
Office of the Assistant Secretary (Manpower and
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Deputy Assistant Secretary of the Army (Human Resources)
Attn.: SAMR-HR
The Pentagon, Room 2E468
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Department of the Army
Office of the Deputy Chief of Staff, G-1
Assistant G-1 for Civilian Personnel
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Department of the Army
Office of the Assistant G-1 for Civilian Personnel
Chief, Policy and Program Development Division
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Introduction

On April 24, 2003, the Center for Merit System Accountability, Office of Personnel Management (OPM), received a Fair Labor Standards Act (FLSA) claim from [name]. During the claim period, she occupied an Equal Employment Opportunity Specialist, GS-260-9, position with the Equal Employment Opportunity (EEO) Office, [name] District Office, Corps of Engineers, Department of the Army, [location]. She believes that she was entitled to compensation for time spent in travel status. We have accepted and decided her claim under section 4(f) of the FLSA as amended.

General Issues

The claimant's agency determined that her position is nonexempt from the overtime pay provisions of the FLSA, and we concur. She believes that she is entitled to compensation for travel hours to attend authorized training outside the limits of her duty station and requiring overnight travel on workdays outside regular duty hours, and on nonworkdays during hours that correspond to her regular working hours, between March 2003 and May 2003.

In reaching our decision, we have carefully reviewed all information furnished by the claimant and her agency. We received the agency administrative report on January 20, 2004. We obtained additional information from the agency and the claimant via electronic mail and telephone.

Evaluation

The claimant believes that she is entitled to 68 hours and 20 minutes of overtime pay for time spent traveling on workdays outside her regular working hours, and on nonworkdays during hours corresponding to her regular working hours, to and from six separate agency-authorized training events in 2003. Her regular working hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. She requests the following additional compensation for time spent traveling:

- Twelve hours and 50 minutes on Saturday, March 1, 2003, from 10:00 a.m. to 10:50 p.m. CST
- Eleven hours on Sunday, March 9, 2003, from 6:30 a.m. to 3:30 p.m. CST
- Six hours on Thursday, March 13, 2003, from 4:00 p.m. to 10:00 p.m. CST
- Fourteen hours on Sunday, March 16, 2003, from 7:00 a.m. to 7:00 p.m. CST
- Nine hours and 30 minutes on Saturday, March 29, 2003, from 7:00 a.m. to 4:30 p.m. CST
- Nine hours on Sunday, April 27, 2003, from 7:00 a.m. to 4:00 p.m. CST
- Six hours on Saturday, May 10, 2003, from 7:00 a.m. to 1:00 p.m. CST

Depending on the FLSA exemption status of an employee, time spent traveling may be considered compensable hours of work as described in title 5, Code of Federal Regulations (CFR), sections 550.112(g) and/or 551.422(a). Federal employees under OPM's FLSA jurisdiction in FLSA nonexempt positions fall under the provisions of 5 CFR 551.422(a), which states time spent traveling shall be considered hours of work if an employee is required to:

- (1) travel during regular working hours;
- (2) drive a vehicle or perform other work while traveling;
- (3) travel as a passenger on a one-day assignment away from the official duty station; or
- (4) 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.

Both FLSA nonexempt and exempt employees covered by subchapter V of chapter 55, title 5, United States Code, fall under the provisions of 5 CFR 550.112(g). This section provides that time in a travel status away from the official duty station is hours of work if the travel:

- (1) is within an employee's regularly scheduled administrative workweek;
- (2) involves the performance of work while traveling;
- (3) is incident to travel that involves the performance of work while traveling;
- (4) is carried out under arduous and unusual conditions; or
- (5) results from an event that could not be scheduled or controlled administratively.

The phrase "could not be scheduled or controlled administratively" refers to the ability of an Executive agency as defined in 5 U.S.C. § 105, to control the event that necessitates an employee's travel. The control is assumed to be the agency's whether the agency has sole control or the control is achieved through a group of agencies acting in concert, such as a training program or conference sponsored by a group of agencies, or sponsored by one in the interest of all, or through several agencies participating in an activity of mutual concern. When an institution outside the Government conducts a training event, unless it is for the sole benefit of the Government, it is an event that cannot be scheduled or controlled administratively. See Comptroller General Decision, B-193127, May 31, 1979; *Perry L. Golden and Wayne Woods*, 66 Comp. Gen. 620 (1987); *Morris Norris*, 69 Comp. Gen. 17 (1989).

Under 5 CFR 551.411(c), bona fide meal periods are not considered hours of work, except for on-duty meal periods for employees engaged in fire protection or law enforcement activities who receive compensation for overtime hours of work under 5 U.S.C. 5545(c)(1), (2), or 5545(b).

As part of her Department of the Army intern training plan in EEO, the claimant was directed to attend a series of one-week, two-week, and partial-week formal training sessions for EEO specialists. These were held by her employing agency at various locations throughout the United States. For all departing trips, she was directed to drive her privately owned automobile from her home to the Corps office in New Orleans, and then take a taxi to the New Orleans airport. The agency submitted as part of the case file a copy of the claimant's Individual Development Plan (IDP) showing her prescribed dates of training during the claim period, and copies of travel authorizations (DD Form 1610) covering some of the travel periods to attend the training. The claim file also contains copies of requests/authorizations for overtime (DA Form 5172-R) prepared by the claimant listing the travel dates and times where overtime was requested. The agency does not dispute the fact that the claimant attended the training specified in her IDP during the claim period, and that the specified dates of travel to attend and return from the training were authorized. In those cases where training courses lasting one or

two weeks began on a Monday and ended on a Friday, the agency authorized travel on a Sunday to attend the course beginning on the following Monday, and authorized the claimant to return to her duty station (New Orleans) on a Saturday when a course ended on the preceding Friday. In those situations where a course taking up part of a week began on a Monday, the claimant was authorized to travel on the preceding Sunday, and return to New Orleans on the day of the week following the day the course ended, if necessary. Courses were scheduled from 8:00 a.m. to 4:30 p.m.

The provision in 5 CFR 550.112(g)(1) is not applicable as the claimant requests payment only for hours outside her regularly scheduled administrative workweek. Sections 550.112(g)(2), (i), (ii), and (iii) are not applicable based on statements made by the claimant that work was not performed during these periods of travel, the travel was not incident to travel that involved the performance of work while traveling, and that the travel was not carried out under arduous or unusual conditions. Section 550.112(g)(iv) is not applicable with respect to the training events, because the agency sponsored them and the events fell within the administrative control of the agency.

The provision in 5 CFR 551.422(a)(1) is not applicable as the claimant requests payment only for hours outside her regular workweek. Section 551.422(a)(2) is not applicable because the claimant was not authorized by her agency to drive her privately owned vehicle to and from the training sites, or perform other work while traveling. Section 551.422(a)(3) is not applicable because the travel performed did not occur on one-day assignments away from her official duty station. Section 551.422(a)(4) is applicable because based on the claimant's statements and some of the official documents in the record (i.e., DA Form 5172-R and DD 1610), we can reasonably infer (with the exception of Thursday, March 13, 2003) that the claimant traveled 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.

Although it appears that the claimant meets section 551.422 (a)(4), the record lacks definitive documentation such as copies of airline itineraries or the claimant's travel vouchers, to specifically establish the exact times of travel on the authorized travel days. Although that information is lacking to complete the record, based on our fact-finding we have addressed the dates of travel below and the potential hours constituting hours of work for which compensation is due. In those situations where the claimant's travel involved two or more time zones, the time zone from the point of first departure for the workday (or during corresponding hours on nonworkdays) was used to calculate the number of hours worked.

Saturday, March 1

The claimant returned to New Orleans from Las Vegas, Nevada, where she had attended the Mediating Employee Disputes training course. Her travel time, including a two-hour normal waiting time for her flight at the Las Vegas airport, began at 12:00 noon PST, and she arrived at the New Orleans airport at 9:00 p.m. CST (7:00 p.m. PST) and she arrived home at 10:50 p.m. CST (8:50 p.m. PST). The claimant is potentially entitled to four and one-half hours compensation under the FLSA for time spent traveling on a nonworkday during hours that correspond to her regular working hours. The remaining hours are outside her normal working hours and she did not perform any work during those hours.

Sunday, March 9

The claimant left New Orleans airport on a flight departing at approximately 8:00 a.m. CST to attend the Briefing Techniques training course in San Francisco, California. She arrived at 3:30 p.m. PST (5:30 p.m. CST). The claimant is potentially entitled to eight and one-half hours (excluding any bona fide meal period) compensation under the FLSA for time spent traveling on a nonworkday during hours that correspond to her regular working hours. The remaining hour is outside her normal working hours and she did not perform any work during that hour.

Thursday, March 13

The claimant completed the Briefing Techniques training on Wednesday, March 12, 2003, at 4:30 p.m. PST. She traveled all day on Thursday, March 13, during her normal duty hours on a regular workday for which she has already been compensated, arriving at her home at 11:00 p.m. CST (9:00 p.m. PST). She did not perform any work while traveling during hours outside her regular working hours. No additional compensation is due.

Sunday, March 16

The claimant departed the New Orleans airport on a flight leaving at approximately 8:00 a.m. CST to attend the two-week EEO Specialist training course in Melbourne, Florida. Her flight arrived at 6:00 p.m. EST (5:00 p.m. CST) in Melbourne, which included a temporary stop over to change planes in Atlanta, Georgia. The claimant is potentially entitled to eight and one half hours (excluding any bona fide meal period) compensation under the FLSA for time spent traveling on a nonworkday during hours that correspond to her regular working hours. She did not perform any work while traveling during hours outside her regular working hours.

Saturday, March 29

The claimant left the Melbourne, Florida, airport on a flight leaving at approximately 8:00 a.m. EST. She arrived at the New Orleans airport at approximately 4:30 p.m. CST (5:30 p.m. EST), which includes a temporary stop over in Atlanta, Georgia, to change planes. The claimant is potentially entitled to eight and one-half hours (excluding any bona fide meal period) compensation under the FLSA for time spent traveling on a nonworkday during hours that correspond to her regular working hours. She did not perform any work while traveling during hours outside her regular working hours.

Sunday, April 27

The claimant departed from the New Orleans airport at approximately 8:00 a.m. CST to attend the two-week training course AEP/Complaint Processing in Arlington, Virginia. She arrived at Dulles airport at approximately 2:00 p.m. EST (1:00 p.m. CST), and 4:00 p.m. EST (3:00 p.m. CST) at Arlington, Virginia, her point of destination. The claimant is potentially entitled to seven hours (excluding any bona fide meal period) compensation under the FLSA for time spent traveling on a nonworkday during hours that correspond to her regular working hours.

Saturday, May 10

After completing the AEP/Complaint Processing training course the preceding Friday, May 9, the claimant departed on a flight from Dulles airport at approximately 8:00 a.m. EST to return to New Orleans. She arrived at the New Orleans airport at 4:00 p.m. CST (5:00 p.m. EST). The claimant is potentially entitled to eight and one half hours compensation (excluding any bona fide meal time) under the FLSA for time spent traveling on a nonwork day during hours corresponding to her regular working hours. She did not perform any work while traveling during hours outside her regular working hours.

Decision

The claimant is entitled to compensation under the FLSA for time spent traveling on nonworkdays during hours corresponding to her regular working hours as discussed previously in this decision.

Compliance Instructions

The agency is directed to fully reconstruct the record to include a review of the claimant's travel vouchers and agency travel authorizations for the periods noted above, and compute the FLSA overtime pay due the claimant for all time spent traveling on nonwork days during hours corresponding to her regular working hours as discussed in this decision. If she chooses to accept back pay, the claimant must sign a waiver of suit when she receives payment. It should be completed by the agency and the claimant, and a copy returned to OPM's Center for Merit System Accountability.

The agency should pay the claimant the total amount owed, plus interest. If the claimant believes that the agency has computed the amount incorrectly, she may file a new FLSA claim with this office.