

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



Philadelphia Oversight Division
600 Arch Street, Room 3400
Philadelphia, PA 19106-1596

**Fair Labor Standards Act Decision
Under Section 4(f) of the Act as Amended**

Claimant: [claimant's name]

Position: Supervisory Criminal Investigator,
GS-1811-14

Organization: Bureau of Alcohol, Tobacco
and Firearms
U.S. Department of the Treasury
[name] Field Division
[location]

Claim: Received incorrect overtime

OPM decision: No overtime pay is due

OPM decision number: F-1811-14-01

Robert D. Hendler
FLSA Claims Officer

/s/ 4/10/98

Date

There is no right of further appeal from this decision. The Director of the U.S. Office of Personnel Management may at her discretion reopen and consider the case. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

Decision sent to:

[claimant's name]
U.S. Department of Treasury
Bureau of Alcohol, Tobacco,
and Firearms
[address],

Office of Chief Counsel
Associate Chief Counsel (Administration)
U.S. Department of Treasury
650 Massachusetts Avenue, NW
Washington, DC 20226

Mr. Robert Breivis
Director of Personnel Policy
U.S. Department of Treasury
Room 4164-ANX
Washington, DC 20220

Introduction

The Philadelphia Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [claimant's name] as the result of a transfer of claims functions from the General Accounting Office (GAO) under Public Law 104-53. [claimant's name] believes that from August 28, 1988 through September 23, 1990, he worked overtime for which he should have been paid under the Act. During the claim period, he worked as a Criminal Investigator, GS-1811-9 (July 31, 1988 through September 10, 1989) and a Criminal Investigator, GS-1811-11 (September 10, 1989 through September 23, 1990) with the Bureau of Alcohol, Tobacco, and Firearms (BATF). We have accepted and decided his claim under section 4(f) of the FLSA as amended.

To help decide the claim, we requested clarifying information from the agency and the claimant. In reaching our FLSA decision, we have reviewed all material of record furnished by the claimant and his agency.

General issues

The claim is based on “Stephen Adams, et al. v. United States” that found, in part, certain current or former employees of the United States, including BATF, as criminal investigators or in some other law enforcement capacity, were covered by the overtime provisions of the FLSA. Although not a party to the suit, he believes the substance of the decision should apply to his position. He believes that he has filed his claim timely, and is covered by a 6-year statute of limitations for FLSA claims filed before June 30, 1994.

Evaluation

In a March 24, 1995, memorandum, [name], the Deputy Assistant Director (Management), BATF, responding to a December 15, 1994, memorandum from the claimant, denied his claim for \$27,560.00 because:

Section 640 of the Treasury Appropriations Act, Pub L. No. 103-329, 109 Stat. 2432 (September 30, 1994), provides only that the Comptroller General shall apply a 6-year statute of limitations to claims filed before June 30, 1994. As there is not statutory authority for ATF to make backpayments for FLSA over-time beyond the 2/3-year limitation provides in the FLSA, your claim must be denied.

In an undated memorandum, [claimant's name] filed a claim on the same matter with the Office of Chief Counsel, BATF, stating he had “tolled the running of the statute” through GAO on May 27, 1994. He stated that because he had filed with GAO:

as required by law before the June 30, 1994, cutoff date, I am appealing your decision to deny my claim. . . .If you will not accept this, please prepare a detailed report stating your reason for denying my claim and forward it to GAO for their review.

The record shows that the claimant filed his initial claim with GAO, received and date stamped May 31, 1994. In a letter dated July 17, 1995, [name], Financial Manager/CFO, BATF forwarded the appeal to GAO without further comment.

In determining whether the claimant is owed overtime under the Act, the normal process is to first determine whether the work performed is exempt or nonexempt from the overtime provisions of the FLSA. We will not do so in this case. In response to our request for clarifying information, the agency has certified that the claimant received administratively uncontrollable overtime (AUO) pay for the claim period. The claimant corroborates that he received AUO for the period of his claim.

Section 640 of the Treasury Appropriations Act of 1994, amended in 1995, states, in part:

the Comptroller General of the United States shall apply a 6-year statute of limitations to any claim of a Federal employee under the Fair Labor Standards Act of 1938 for claims filed before June 30, 1994. This section shall not apply to any claim where the employee has received compensation for overtime hours worked during the period covered by the claim under any provision of law, including, but not limited to 5 USC 5545(c), or to any claim for compensation for time spent commuting between the employee's residence and duty station.

Although the claim was filed before June 30, 1994, the claimant received AUO for overtime worked during the period covered by the claim. As defined in title 5, Code of Federal Regulations, part 550, AUO is form of overtime compensation for positions in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work. Therefore, we find the claimant received overtime compensation, under another provision of law, as stipulated in section 640, as amended.

Decision

No FLSA overtime is owed.