



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



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PKM-1

OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO: B-90867 (LLW)

DEC 19 1978

[Applicability of Pay Limitation To Experts and Consultants]

The Honorable Eleanor Holmes Norton
Chair, Equal Employment Opportunity Commission

Dear Ms. Norton:

This is in response to your letter of May 15, 1978, concerning applicability of the pay limitation imposed by 5 U.S.C. § 5547 to experts and consultants appointed under 5 U.S.C. § 3109. The purpose of your letter was to advise this Office of the situation of a consultant hired by the Equal Employment Opportunity Commission who, in addition to working 40 hours during the regular workweek, worked on several Saturdays and Sundays. For each day that he worked, the consultant was paid at the daily equivalent of the top step of grade GS-15. By reason of his having worked more than 10 days per pay period, the consultant received payments which, on a pay-period basis, exceeded the aggregate rate of pay for the maximum rate of grade GS-15.

The pay limitation imposed by 5 U.S.C. § 5547, applicable to receipts of premium pay, is as follows:

"An employee may be paid premium pay under sections 5542, 5545(a)—(c), and 5546(a), (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15."

As noted in your letter, consultants appointed under the authority of 5 U.S.C. § 3109 are not entitled to premium compensation under 5 U.S.C. §§ 5542, 5545, or 5546, but are entitled to the per diem rates prescribed for their employment regardless of the total number of hours worked. See 28 Comp. Gen. 328, 330 (1948), and 46 *id.* 667, 669 (1967). For this reason, we concur with your determination that a consultant's pay is not limited by 5 U.S.C. § 5547.

However, consultants are subject to the following compensation limitation imposed by 5 U.S.C. § 5308:

"Pay may not be paid, by reason of any provision of this subchapter, at a rate in excess of the rate of basic pay for level V of the Executive Schedule."

Letter

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We are enclosing a copy of our recent decision in the Matter of Jerome E. Hass, B-90867, November 21, 1978, holding that the ceiling imposed by 5 U.S.C. § 5308 is intended to be applied on a biweekly pay period basis to experts and consultants. You will note that that decision waives payments made to an expert or consultant prior to November 21, 1978, in excess of the biweekly amount payable for level V of the Executive Schedule.

Sincerely yours,

Robert L. Higgins

Robert L. Higgins
Assistant General Counsel

Enclosure