



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Michael J. Farruggia

File: B-257147

Date: June 29, 1995

DIGEST

1. A nurse employed by the Department of Veterans Affairs returned to travel status at 4 p.m. on December 23, 1993, and remained in that status until 8:10 p.m. on that same day. His return travel was incident to travel which involved the performance of work (attending to medical needs of a patient) while traveling. In accordance with 38 U.S.C. § 7453(e)(1) and (e)(5)(B)(ii) (Supp. IV 1992) and 50 Comp. Gen. 519 (1971), he is entitled to 3 hours of overtime pay (4 hours minus 1 hour for a meal) for the period of 4 p.m. to 8 p.m.

2. Although employee's return travel waiting time and flight time on a holiday lasted 7 hours because of poor weather conditions, the employee had used up the maximum allowance of 3 hours for "usual waiting time" permitted by 50 Comp. Gen. 519, 523-524 (1971), on the previous day. Thus, he is only entitled to be compensated for the actual flight time. Under 38 U.S.C. § 7453(d) (1988), he is entitled to 2 hours of holiday pay.

DECISION

The Department of Veterans Affairs (VA) requests a decision as to the proper calculation of overtime pay and holiday pay when a nurse was required to escort a patient by airplane from the VA Medical Center in Boise, Idaho, to Portland, Oregon, for specialized cardiac care.¹ For the following reasons, we find that he is entitled to 3 hours of overtime pay for December 23, 1993, and 2 hours of holiday pay for December 24, 1993.

BACKGROUND

After a patient had been admitted to the VA Medical Center in Boise, Idaho, the attending physician determined that patient required more specialized cardiac care

¹This request was submitted to our Office by Mr. Ronald K. Blanton, Chief, Fiscal Service, Department of Veterans Affairs, Medical Center, Boise, Idaho.

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than could be rendered there and ordered a transfer of the patient to the VA Medical Center in Portland, Oregon, to be accompanied by a nurse. The travel clerk at the VA Medical Center in Boise, Idaho, booked airline tickets for the patient and the VA nurse, Mr. Michael J. Farruggia, R.N., on a flight to Portland, Oregon, on December 23, 1993. Due to holiday traffic, no reservations could be obtained for Mr. Farruggia's return flight until 7:30 a.m. on December 24, 1993.

After escorting the patient to the VA Medical Center in Portland, Mr. Farruggia, as instructed by the travel clerk, returned to the Portland Airport before his tour of duty ended at 4 p.m. on December 23, 1993, attempted without success to secure a seat on a return flight, and remained in a standby status until 8:10 p.m. when the last plane departed. Since he was unable to return, he then checked into a motel in Portland at 9 p.m. He departed from his motel at 6 a.m. on December 24, 1993, went to the Portland Airport, and obtained his previously booked seat on the flight scheduled for 7:30 a.m., PST. However, poor weather conditions delayed the flight. It finally departed Portland at 2 p.m. PST, and arrived in Boise at 3:30 p.m., MST. We note that Mr. Farruggia's usual tour of duty is from 7:30 a.m. to 4 p.m. but he was not scheduled for duty on Friday, December 24, 1993, which was a legal holiday for federal government employees.

Mr. Farruggia's entitlement to pay and "additional pay" (which includes holiday pay and overtime pay) is governed by title 38 of the United States Code.² In regard to holiday pay, 38 U.S.C. § 7453(d) (Supp. IV 1992) provides that a nurse performing "service" on a holiday shall receive for each hour of such service both basic pay and additional pay at a rate equal to the hourly rate of basic pay, for that holiday service, including overtime service. Any service required to be performed by a nurse on a holiday shall be deemed to be a minimum of 2 hours in duration. Title 38 U.S.C. § 7453(e)(1) (Supp. IV 1992) provides that a nurse performing "service" in excess of 40 hours in an administrative workweek, or in excess of 8 hours in a day, shall receive overtime pay at the rate of one and one-half times his or her hourly rate of basic pay. In regard to what constitutes "service," 38 U.S.C. § 7453(e)(5) (Supp. IV 1992), in relevant part, provides that:

"(5) For the purposes of this subsection, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless--

"(A) such travel occurs during such nurse's tour of duty; or

"(B) such travel--

²Mr. Farruggia's position is not covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (1988).

"(i) involves the performance of services while traveling,

"(ii) is incident to travel that involves the performance of services while traveling . . ."

The VA agrees that Mr. Farruggia's outgoing travel involved the performance of services (attending to the patient's medical needs) while traveling, under 38 U.S.C. § 7453(e)(5)(B)(i) (Supp. IV 1992), and that his return travel was thus incident to travel that involved the performance of services while traveling under 38 U.S.C. § 7453(e)(5)(B)(ii) (Supp. IV 1992).³ The issue here is the calculation of Mr. Farruggia's entitlement to overtime pay after 4 p.m. on December 23, 1993, and holiday pay for December 24, 1993, under the statutes referenced above.

OPINION

In 50 Comp. Gen. 519, 523-24 (1971) we addressed the issue of compensable traveltime. We cited Federal Personnel Manual Supplement 990-2, Book 550, Subchapter S1-3, page 550-8.01, which provided that an employee is in compensable travel status only for hours of actual travel and for "usual waiting time" which interrupts travel. Based on this guidance, we held that the term "usual waiting time" refers to the time necessary to make connections in the ordinary travel situation. However, since the employee involved was delayed by heavy holiday travel and inclement weather for 9 hours, we concluded that, while the full amount of the waiting time may not be regarded as "usual", it would not be unreasonable to allow up to 3 hours of waiting time to be reimbursed at overtime rates under 5 U.S.C. § 5542.

In this case, Mr. Farruggia's return travel from the VA Medical Center in Portland back to his official duty station began before he completed his usual tour of duty at 4 p.m. on December 23, 1993. Mr. Farruggia traveled to the Portland airport, arrived there at 4 p.m., attempted to obtain a seat on the next flight to Boise, and remained in a travel status until 8:10 p.m. when that flight departed. Subtracting 1 hour from the 4-hour period of 4 p.m. to 8 p.m. on December 23, 1993, for a meal, we find that Mr. Farruggia is entitled to 3 hours of overtime pay for December 23, 1993.⁴

³For the generally parallel statutes in title 5, see 5 U.S.C. §§ 5542 and 5546 (Supp. IV 1992). As to regulations, the Department of Veterans Affairs' report informs us that VA Manual MP-6, Part V, Supp. No. 2.2, Chap. 1, pp. 105.05(c) states that "[Title 38 Nurses] are entitled to overtime compensation while in a travel status on the same basis as Title 5 employees." The parallel regulations are found in 5 C.F.R. § 550.112, espec. § 550.112(f) and (g) (1994).

⁴See 38 U.S.C. § 7453(a), (e)(1), and (e)(5)(B)(ii) (Supp. IV 1992).

Mr. Farruggia returned again to travel status at 7:30 a.m., PST, his scheduled departure time, on December 24, 1993, a federal holiday. However, his flight was delayed by weather conditions and did not depart until 2 p.m., PST. It landed in Boise, Idaho, at 3:30 p.m., MST (2:30 p.m. PST). The total time of return travel was thus 7 hours (6½ hours waiting time and a half hour flight time). Although that return travel on December 24, 1993, was incident to the travel of December 23, 1993, which involved the performance of service while traveling, Mr. Farruggia had used up the maximum allowance of 3 hours for "usual waiting time," as allowed in 50 Comp. Gen. 519, 523-524 (1971), on the previous day. Thus, Mr. Farruggia is only entitled to be compensated for the actual flight time of 30 minutes on December 24, 1993. However, under 38 U.S.C. § 7453(d) (1988), supra, Mr. Farruggia is entitled to be compensated with 2 hours of holiday pay for his service on December 24, 1993.

Accordingly, we find that Mr. Farruggia is entitled to 3 hours of overtime pay for December 23, 1993, and 2 hours of holiday pay for December 24, 1993.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel