

PL II

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-192831

DATE: April 17, 1979

[Request for Overtime Compensation for]
MATTER OF: William C. Hughes, Jr. - Preshift and
postshift duties - Overtime

- DIGEST:
1. Civilians employed by the Federal Government as security guards may be entitled to overtime compensation for time spent changing into and out of uniform, if they are required to perform that activity at their place of duty; but if they are permitted to change clothes at home and are not required to do so at the place of work, they are not entitled to additional compensation. Hence, Navy security guard is not entitled to retroactive overtime compensation claimed for time spent at his residence changing into and out of uniform.
 2. Preshift and postshift activities that might be regarded as work, but which do not involve a substantial measure of time and effort, are de minimus, and may not serve as a basis for the payment of overtime compensation; therefore, Navy security guard is not entitled to retroactive overtime compensation claimed for time spent in checking out a weapon and reporting to roll call, where the Department of the Navy reported that such activities required no more than 3 minutes' time.
 3. The General Accounting Office does not hold adversary hearings in order to resolve disputed issues of fact, and where written statements submitted by a Government agency and an individual claimant present an irreconcilable dispute of fact, this Office has no alternative but to accept the agency's statement of the facts; thus, in a matter of overtime claimed by a Navy security guard for checking out a weapon and reporting to roll call, Navy Department's statement that such activities took only 3 minutes is accepted, notwithstanding any contrary assertion.

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B-192831

This action is in response to correspondence received from Mrs. Edith S. Hughes, 7110 Central Avenue, Takoma Park, Maryland 20012, in which she requested reconsideration of Settlement Certificate Z-2621383 dated July 3, 1978, issued by our Claims Division, disallowing the claim of her late husband, Mr. William C. Hughes, Jr., for retroactive overtime compensation for the period January 1970-October 1973, incident to his employment as a civilian security guard with the Department of the Navy.

By letter dated January 28, 1976, Mr. Hughes submitted the following claim to the Claims Division of this Office:

"During the period January 1970 through October 1, 1973, while working as a security guard at the Naval Surface Weapons Center, White Oak Laboratory, Silver Spring, Maryland

"I, William C. Hughes was not allotted 'Official Government Time' to dress up (putting on guard uniform and badge) before my tour of duty nor was I allotted 'Official Government Time' to undress (taking off guard uniform and badge) after my tour of duty.

"Putting on guard uniform and badge and taking off guard uniform and badge was done on my own time and at my place of residence!"

"I, therefore make claim against the Naval Surface Weapon Center, White Oak Laboratory, Silver Spring, Maryland for thirty (30) minutes retroactive overtime compensation based on the 'Eugie L. Baylor, et al. v. The United States' in the United States Court of Claims (Case # 109-67) which was decided May 12, 1972.

"The thirty (30) minutes retroactive overtime compensation being claimed is to cover dress up time and undress time (fifteen (15) minutes time for dress up and fifteen (15) minutes time for undress).

"An additional five (5) minutes retroactive overtime compensation is also being claimed against the Naval

Surface Weapons Center, White Oak Laboratory, Silver Spring, Maryland for not being allotted 'Official Government Time' to draw my weapon and ammunition from the Naval Surface Weapons Center, White Oak Laboratory Guard Office, and then having to walk to the place designated for roll call (muster)."

In April 1976 our Claims Division forwarded Mr. Hughes' claim together with the claims of other similarly situated security guards, to the Department of the Navy for appropriate development and action. Thereafter, the Department of the Navy returned the claims with an administrative report. In the report, the opinion was expressed that the claimants were not entitled to compensation for time spent changing into and out of their uniforms, since they were not required to change clothing at the Naval Surface Weapons Center. In addition, the opinion was expressed that the claimants were not entitled to compensation for their time spent in drawing weapons and ammunition from a control point prior to the beginning of the work shift, since "the total time spent in obtaining a weapon and proceeding to the muster/roll call location cannot reasonably be estimated at more than three minutes." On the basis of this report our Claims Division disallowed Mr. Hughes' claim in its July 3, 1978 settlement.

Mrs. Hughes has questioned the correctness of that settlement. She does not challenge the denial of Mr. Hughes' claim for compensation for time spent at home changing into and out of uniform. However, she has suggested that the Navy report was inaccurate insofar as it stated "the total time spent in obtaining a weapon and proceeding to the muster/roll call location cannot reasonably be estimated at more than three minutes." Mrs. Hughes states that she also worked at the Naval Surface Weapons Center, and it was her personal observation that more than 3 minutes were required for those activities. She has expressed the belief that her husband actually spent more than 30 minutes each workday performing such activities.

It appears that Mr. Hughes' original claim for overtime compensation was based primarily on time spent at home changing into and out of his guard's uniform. It has been held that civilians employed by the Federal Government as security guards may be entitled to overtime compensation for time spent changing in and

B-192831

out of uniform, if they are required to perform that activity at their place of duty; however, if they are permitted to change clothes at home and are not required to do so at the place of work, they are not entitled to any additional compensation. See Baylor v. United States, 198 Ct. Cl. 331, 393 (1972), i.e., Eugie L. Baylor v. United States, Ct. Cl. No. 109-67, May 12, 1972; see also Matter of Elder L. Gurley, B-153307, February 15, 1978. Hence, payment may not properly be made on Mr. Hughes' claim for retroactive overtime compensation based on time spent at home changing into and out of uniform.

Mr. Hughes also claimed, as a secondary matter, overtime compensation for 5 minutes' time spent in checking out a weapon and reporting to the roll call assembly area. Preshift and postshift activities that might be regarded as work, but which do not involve a substantial measure of time and effort, are de minimus, and may not serve as a basis for payment of overtime compensation. Baylor v. United States, supra. This Office has therefore previously expressed the view that overtime compensation may not be paid to a security guard solely on the basis of 3 or 5 minutes' time spent by him in checking out a weapon and reporting to roll call. Matter of Elder Gurley, B-153307, supra. Thus, in the present case, it is our view that under the de minimus rule no payment may issue on Mr. Hughes' secondary claim for up to 5 minutes' overtime compensation for the activities described.

With respect to the statement made by Mrs. Hughes that her husband actually spent more than 30 minutes of uncompensated time each workday in connection with roll calls and the check-out and return of a weapon, we must point out that this statement conflicts with the statements of both Mr. Hughes and Navy authorities indicating that insubstantial amounts of time were required for those activities. This Office does not hold adversary hearings in order to resolve disputed issues of fact, but decides them on the basis of the written record presented. 4 C.F.R. § 31.7. In situations such as this, where the written record before us presents an irreconcilable dispute of fact between a Government agency and individual claimants, we are bound to accept the agency's statement of the facts. Matter of Elder L. Gurley, B-153307, supra; Matter of Joan J. Shapira, B-188023, July 1, 1977. Hence, in the present case we have no

B-192831

alternative but to conclude that "the total time spent in obtaining a weapon and proceeding to the muster/roll call location cannot reasonably be estimated at more than three minutes," since that is the written statement of fact on the matter as presented by the Department of the Navy.

Accordingly, the settlement of our Claims Division is sustained.


Deputy Comptroller General
of the United States