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DECISION



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

10,825

FILE: B-193623

Request for

DATE: July 23, 1979

MATTER OF: Earl Matchett - Overtime Compensation While in
Travel Status

DIGEST: Customs Inspector stationed at Blaine, Washington claims overtime compensation for travel time from station through Canada to perform temporary duty at Point Roberts, Washington. He is not entitled to overtime compensation. Driving was not performed during regular tour of duty. - *present*
Also, driving on hard-surfaced roads, although through allegedly high crime areas, does not constitute travel under arduous conditions.

AGC00156

This action concerns the appeal of Mr. Earl Matchett, a Customs Inspector stationed at Blaine, Washington, from the disallowance of his claim for overtime compensation for travel during non-duty hours in 1975 from Blaine to a temporary duty assignment at Point Roberts, Washington because his travel time did not meet the criteria for overtime payment set out under 5 U.S.C. § 5542(b)(2). He appeals the disallowance by our Claims Division on the basis that he was entitled to pay from the time he left his permanent duty station until he returned to it because: (1) the overtime was regularly scheduled, officially ordered and approved; and, (2) the travel was performed under arduous conditions. For reasons discussed below, we disallow Mr. Matchett's appeal and sustain our Claims Division's decision.

The travel Mr. Matchett performed was between his permanent duty station and Point Roberts, a Customs installation located 26 miles from Blaine on a peninsula accessible by highway only through Canada. The Point remains open 24 hours a day and requires three shifts of inspectors. Since it has staffing problems, inspectors from Blaine provide relief for its regular inspectors. Each Blaine inspector travels to the Point for temporary duty about 21 times a year.

At the outset, we note that Mr. Matchett believes that his position was improperly classified as exempt from the provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-19 (1976). We shall not, however, consider his claim under the FLSA since he is an exempt employee and protests against such classification can be referred only to the Office of Personnel Management. See B-51325, October 7, 1976.

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Mr. Matchett contends that he is entitled to overtime for the time spent driving from Blaine to Point Roberts and the return trip because he believes he was actually assigned a ten-hour shift. He states that this shift was regularly scheduled, officially ordered and approved, and he was issued a travel authorization number. The administrative report shows, on the contrary, that Customs assigned only regular eight-hour shifts. Moreover, the claimant has submitted no evidence that Customs ordered him to work ten-hour shifts which included driving time. Title 5, § 6101(b)(2) of the United States Code provides:

"To the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee."

This statute, however, permits an agency to exercise discretion as to whether travel may be scheduled within the employee's workweek. When the employee's regularly scheduled duties involve assignments to which he commutes from his headquarters, we do not consider the imposition on his private life significantly different from the travel required to and from his regular duty station. Therefore, we do not find such travel time compensable under 5 U.S.C. § 5542(b)(2). 52 Comp. Gen. 446, 449 (1973).

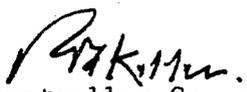
Mr. Matchett further claims that the commuting from Blaine to Point Roberts was under arduous conditions because of inclement weather, and because he often drove alone at night through an area that he claims the Royal Canadian Mounted Police recognized as a "high risk accident area." The question of whether an employee's travel is performed under arduous conditions must be determined from the facts of the individual claim, and arduous conditions must be distinguished from hazardous ones, B-163654, June 22, 1971.

In the present case, the agency reports that the travel was performed over expressways, four-lane highways, and asphalt roads, and that the driver did not encounter unusually severe weather conditions. Mr. Matchett has alleged that the driving was through high-crime areas. However, he has not presented any evidence to show that there was any particular danger to him or any other motorist driving on the hard-surfaced roads involved in this case. Thus, the conditions under which Mr. Matchett drove do not meet the "arduous conditions" test of 5 U.S.C. § 5542 (b)(2)(B)(iii), and no payment may be made under that provision. See 41 Comp. Gen. 82 (1961).

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Finally, Mr. Matchett states that he has not been reimbursed for the cost of insuring the Government vehicle that he drove through Canada. Since this was not part of his original claim or specifically claimed on appeal, we will not consider it here, but refer him to Federal Travel Regulation (Temp. Reg. FPMR A-11, Supp. 4, Attachment A) para. 1-9.1c(3) (1977) and suggest that he claim this amount from his agency.

In view of the above, we sustain the disallowance of Mr. Matchett's claim.


Deputy Comptroller General
of the United States