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PLM-2
AGHARIAN

DECISION



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

FILE: B-205118

DATE: March 8, 1982

MATTER OF: Charles F. Callis and others

- DIGEST:**
- 1: Claimants who were employed as Supervisory Customs Inspectors were required to respond to electronic beeper or to telephone calls in order to attend to official matters, such as arranging inspections by customs inspectors, which arose after regular duty hours. They are not entitled to premium pay under 5 U.S.C. § 5545(c)(1) since their residences had not been designated as their duty station and since their activities were not substantially restricted. Employees' on call status would not be considered hours of work for payment of overtime under 5 U.S.C. § 5542.

 - 2: Supervisory Customs Inspectors who served as Duty Supervisors after regular duty hours and were required to receive and make telephone calls from home or elsewhere to carry out official business may not be paid overtime under 5 U.S.C. § 5542 where each call was limited to one minute in duration. Overtime pay may be allowed only if it is shown that employees worked a continuous period equal to the Agency's minimum period for computing overtime on one or a series of telephone calls.

This matter concerns the appeal by Messrs. Charles F. Callis, Roy B. Carawan and Ralph J. Cates of the action of our Claims Group which, by Certificates of Settlement dated August 20, 1981, disallowed their claims for overtime and annual premium pay for standby duty at home and for overtime compensation for time spent at home conducting official business over the telephone. For the reasons set forth below, the disallowance by the Claims Group is sustained.

Messrs. Callis, Carawan and Cates (claimants) are Supervisory Customs Inspectors with the Customs Service, Norfolk District, Norfolk, Virginia. On a rotating basis they were

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designated to serve as Duty Supervisors outside their regular duty hours. The Duty Supervisor was required to respond to telephone calls pertaining to Customs Service inspectional duties which arose after normal duty hours. The Duty Supervisor's responsibility was to receive incoming telephone calls and to make such telephone calls as were necessary to attend to official matters. The claimants state that these calls related to such matters as assignment requests, job changes, and cancellation of vessel and aircraft activities.

The Duty Supervisor was required either to be available by telephone or to carry an electronic beeper with him so that he could respond to any incoming telephone calls. The record shows that the agency had not designated the Duty Supervisors' homes as their duty station.

The claimants contend that their activities were significantly restricted by the fact that they were expected to respond to telephone calls in 15-20 minutes. They claim that consequently they were unable to engage in such activities as eating out, attending ball games, fishing, golfing, hunting, attending church and shopping since once committed to some of those activities it could take 3-4 hours after a beeper call before they could reach a telephone.

The two provisions in title 5, United States Code, which provide authority to reimburse an employee for standby duty are sections 5545(c)(1) and 5542.

Section 5545(c)(1) authorizes the head of an agency to pay premium pay on an annual basis to an employee in a position "requiring him regularly to remain at, or within the confines of, his duty station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work." Regulations implementing this provision at 5 C.F.R. 550.143(b) provide the following guidance as to when time spent by the employee at his residence qualifies as time spent "at or within the confines of his station."

"(b) The words 'at, or within the confines, of his station', in § 550.141 mean one of the following:

"(1) At an employee's regular duty station,

"(2) In quarters provided by an agency, which are not the employee's ordinary living quarters, and which are specifically provided for use of personnel required to stand by in readiness to perform actual work when the need arises or when called,

"(3) In an employee's living quarters, when designated by the agency as his duty station and when his whereabouts is narrowly limited and his activities are substantially restricted. This condition exists only during periods when an employee is required to hold himself in a state of readiness to answer calls for his services. This limitation on an employee's whereabouts and activities is distinguished from the limitation placed on an employee who is subject to call outside his tour of duty but may leave his quarters provided he arranges for someone else to respond to calls or leaves a telephone number by which he can be reached should his services be required."

As previously stated the record shows that the claimants were not restricted to their residences but were free to leave as long as they could be reached by means of their electronic beeper and were within reasonable reach of a telephone. Thus, the situation here falls under the general rule that where an employee is not restricted to his residence and his residence is not designated as his duty station, he is not entitled to compensation by virtue of being on call. Matter of Teske, B-190369, February 23, 1978, and Matter of Sellers, B-182207, January 16, 1975.

Neither do we find that the restrictions placed on the claimants while on call during the period in question qualify them for overtime compensation under 5 U.S.C. § 5542 which provides in pertinent part as follows:

"(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or

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approved in excess of 40 hours in an administrative workweek, or * * * in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates * * *,"

In order to qualify for overtime compensation under this provision the claimant must establish that the on call time at home constituted hours of work within the meaning of those words as used in the law.

The case of Rapp and Hawkins v. United States, 167 Ct. Cl. 852 (1964) involved claims for overtime under circumstances similar to those in the instant case. It was held that claimants who were required to be within hearing distance of a telephone at all times were not performing work within the meaning of the overtime statutes and thus were not entitled to compensation for such services. The court in that case noted that "theoretically the duty officer could be disturbed at any hour during the night." Supra, at 859. To the same effect is Moss v. United States 173 Ct. Cl. 1169 (1965).

Since the record shows that the claimants were required to do no more than to be available to respond to the electronic beeper or to answer the telephone in the event the Duty Supervisor was needed to respond to matters of official business, they would not qualify for overtime compensation for standby duty under the rule set forth in the Rapp and Hawkins and Moss cases which we have consistently followed. See Sellers and Teske, supra.

In addition to their claims for overtime and annual premium pay for standby duty the claimants claim overtime under 5 U.S.C. § 5542 for the time they actually spent receiving and making telephone calls.

The claimants have stated that the many incoming Customs Inspection requests necessitate numerous telephone calls from them as Duty Supervisor to inspection personnel. They state that it is not unusual for the Duty Supervisor to place several calls before contacting the Customs Inspectors for an assignment and that on some weekends there have been in

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excess of one hundred telephone calls processed by the Duty Supervisor.

The claimants have submitted Duty Supervisor's Activity Logs which included a listing of telephone calls made and received while at home together with a brief description of each call. The documentation furnished by the claimants shows that Mr. Callis received and made approximately 98 calls during the period April 6, 1980, through August 24, 1980, that Mr. Carawan received and made approximately 155 calls during the period May 16, 1980, through September 15, 1980, and that Mr. Cates received and made approximately 119 calls during the period March 30, 1980, through September 2, 1980. The agency points out that this documentation does not reflect the duration of each call.

Based on the information available, the Customs Service estimates that each telephone call averaged no more than one minute. Applying this estimate to the Activity Logs furnished by the claimants, the Customs Service determined that the claims of all three individuals should be disallowed as de minimis. In its certificates of settlement the Claims Group upheld the agency's denial of the claims for telephone work as de minimis.

Time spent on the telephone incident to carrying out official business may be regarded as work within the meaning of 5 U.S.C. § 5542. See B-169113, March 24, 1970. We have held that occasional or irregular overtime work may be compensated in minimum periods of 15 minutes although it is within an agency's administrative discretion to issue regulations providing that compensation for such work may be in fractional periods of 10 minutes or less, provided that the fractional part of an hour administratively decided upon for the payment of overtime compensation results in a feasible and practical payroll operation. See 44 Comp. Gen. 410 (1965). Thus, the time spent by the Duty Supervisor on the telephone would be compensable only when it has met the minimum increment for the payment of overtime compensation.

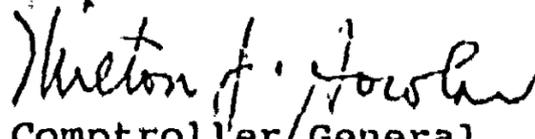
The claimants contend that the agency did not accurately estimate the time spent on each telephone call and state that very few telephone calls were limited in duration to one minute.

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We do not hold adversary hearings in order to resolve disputed issues of fact, but decide cases on the basis of the written record presented, 4 C.F.R. § 31.7 (1981). Thus, where the written record before us presents an irreconcilable dispute of fact between a Government agency and an individual claimant, we are bound to accept the agency's statement of the facts. Matter of Hughes B-192831, April 17, 1979.

In view of the record before us, we must accept the agency's evaluation that the time the claimants spent in receiving and making telephone calls on official business averaged no more than one minute per call. In the absence of evidence that the employee spent a continuous period at least as long as the minimum period for computing overtime pay as established by the agency on one or an uninterrupted series of telephone calls there is no proper basis for payment of these claims.

The Claims Group settlements are sustained and additional compensation may not be allowed Messrs. Callis, Carawan, and Cates for the claimed standby duty and overtime work. We note that the Office of Personnel Management has the authority to promulgate regulations concerning the payment of irregular or occasional overtime. See 59 Comp. Gen. 578 (1980). We encourage that Office to establish uniform regulations for the crediting of irregular or occasional overtime work.

for 
Comptroller/General
of the United States