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DECISION



21241
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-205442

DATE: March 22, 1982

MATTER OF: Lee S. Shenk - Premium Pay for Standby Duty
at Home

DIGEST: Employee of National Park Service who was required to live in Government-furnished quarters and to be on call for emergencies after normal duty hours, is not entitled to premium pay for standby duty where employee's activities were not severely restricted and he was free to leave his residence provided he arranged for someone to respond to emergency calls. Neither would the employee's on call status be considered hours of work for payment of overtime under 5 U.S.C. § 5542.

This is in response to a request for an advance decision (reference W18(WR-AF)) submitted by Ms. Foon C. Lee, an authorized certifying officer of the Department of Interior's National Park Service. The request seeks our decision concerning the disposition to be made of a claim by Mr. Lee S. Shenk, a park ranger at the Point Reyes National Seashore, Point Reyes, California, for standby pay, or in the alternative, overtime compensation, for those times Mr. Shenk was required to be on call in the evenings to respond to park emergencies. The claim cannot be allowed since Mr. Shenk's activities were not severely restricted and his "on call status" cannot be considered hours of work so as to entitle him to overtime.

The submission states that Mr. Shenk, incident to his employment, was required to occupy Government-furnished quarters located within the Point Reyes National Seashore. As a part of his required occupancy Mr. Shenk was on call, 1 or 2 nights per week, to answer park emergency phone calls and to respond to emergencies as necessary. He was required to be at his residence from approximately 5-6 p.m. until 8 a.m., the next morning. However, he was free to leave his residence provided he gave notification to the dispatcher and found a replacement to handle calls in his absence. Other than being on call, Mr. Shenk had no other duties to perform while at home.

Mr. Shenk argues that since he was on call for his employer's benefit, he is entitled to receive standby compensation. Alternatively, he contends that even if he is not entitled to standby compensation, at least he should receive overtime compensation since the periods during which he was required to be on call were outside of his normal 40 hours schedule.

The National Park Service takes the position that it is precluded by decisions both of this Office and the Court of Claims from paying either standby or overtime compensation to Mr. Shenk under circumstances such as those presented here. We agree.

Mr. Shenk's claim for standby compensation is governed by section 5545(c)(1), title 5, United States Code, and the regulations promulgated thereunder. Section 5545(c)(1) (1976), 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."

The implementing regulation, at 5 C.F.R. § 550.143(b)(3), specifies that "at, or within the confines, of his station" includes:

"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 remain at his quarters and 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."

The requirement that an employee remain at, or within the confines of his station must be definite and the employee must be officially ordered to remain at his station. The employee's remaining at his station must not be merely voluntary, desirable, or a result of geographic location, or solely because the employee lives on the grounds. 5 C.F.R. § 550.143(a)(1) (1981); George W. Lovill, B-196465, April 15, 1980.

Mr. Shenk was not definitely limited or restricted since he was free to leave his residence as long as he provided for a replacement to whom calls could be diverted in his absence. Thus, he was not entitled to standby premium pay within the meaning of 5 U.S.C. § 5545(c)(1). Ralph E. Jamison, B-201628, May 21, 1981.

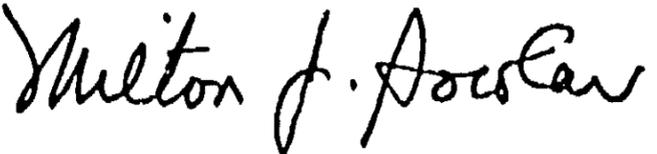
Regarding Mr. Shenk's alternative claim for overtime compensation, we believe that his on call time at home did not amount to "hours of work" within the meaning of 5 U.S.C. § 5542 (1976). That section provides:

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

We have consistently held that where an employee is allowed to standby in his own home with no duties to perform except to be available to answer the telephone, the time spent does not constitute hours of work. John T. Teske, B-190369, February 23, 1978. This is so because where, like Mr. Shenk, the employee is free to engage in a wide range of personal activity, it cannot be said that his time was spent predominately for his employer's benefit. See Rapp and Hawkins v. United States, 167 Ct. Cl. 852 (1964).

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Accordingly, since Mr. Shenk has not satisfied the requirement of either 5 U.S.C. §§ 5545 (c)(1) or 5542, his claim for compensation for time spent on call cannot be allowed.

for 
Comptroller General
of the United States