

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

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FILE: B-211696**DATE:** September 26, 1983**MATTER OF:** Overtime Compensation for Fire-
fighters on Temporary Duty**DIGEST:**

There is no basis for providing Federal firefighters who attend training with additional compensation where their entitlement to overtime compensation under the Fair Labor Standards Act is reduced due to a shorter tour of duty while attending the training.

This action is in response to a request from Mr. James M. Peirce, President, National Federation of Federal Employees, for a decision on whether firefighters at Andrews Air Force Base are entitled to the same compensation that they would normally receive during their regularly scheduled 144-hour tour of duty at the Base for those work periods in which they attend required training away from their official duty station. This matter has been presented under our procedures set forth at 4 C.F.R. Part 22 (1983) for decisions on appropriated fund expenditures which are of mutual concern to agencies and labor organizations. For the reasons set forth below, the firefighters whose entitlement to overtime compensation under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., has been reduced as a result of attendance at training are not entitled to additional compensation.

Information forwarded with Mr. Peirce's letter indicates that the firefighters at Andrews Air Force Base, Maryland, are regularly scheduled to work a tour of duty of 144 hours in each biweekly work period and that they receive overtime compensation under the Fair Labor Standards Act for those hours in excess of 108 hours in their biweekly tour of duty. Thus, the firefighters ordinarily receive overtime compensation under the Act for 36 hours in each biweekly work period. Apparently, the firefighters are required to attend periodic training away from their official duty station, and for those biweekly work periods in which a firefighter attends a training course his entitlement to overtime compensation under the Act is either eliminated or reduced. The Federation contends that a firefighter should not have to lose overtime compensation as a result of attendance at mandatory training but should instead receive his regular salary as if normal work were being performed.

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In general, a Federal firefighter is scheduled to work a tour of duty of 72 hours per week consisting of three 24-hour shifts. During each 24-hour shift he is in a work status for 8 hours and in a standby status, including a designated sleep period for the remaining 16 hours. For this extended tour of duty, he receives his basic rate of pay and premium pay of 25 percent of his basic rate for the standby duty as authorized under 5 U.S.C. § 5545(c)(1). See 55 Comp. Gen. 908 (1976). Since he receives premium pay for the regularly scheduled standby duty, he is not entitled to receive overtime pay under 5 U.S.C. § 5542(a) for regularly scheduled overtime within this 144-hour biweekly work period.

Overtime compensation under the Act for Federal firefighters is authorized by subsection 6(c)(1)(A) of the Fair Labor Standards Amendments of 1974, Public Law 93-259, approved April 8, 1974, 88 Stat. 60, which added subsection 7(k) to the Fair Labor Standards Act, 29 U.S.C. § 207(k). This amendment extended overtime compensation benefits to firefighters requiring that they be paid at a rate of not less than one and one-half times their regular rate for all hours in excess of 108 hours for their tour of duty in a biweekly pay period. See Federal Personnel Manual (FPM) Letters 551-5, January 15, 1975, and 551-16, January 15, 1980, for a more detailed explanation.

Under the Fair Labor Standards Act only those hours that the employee is actually on duty are included as hours worked. See paragraph C7, Attachment 2 to FPM Letter 551-5, January 15, 1975, and 5 C.F.R. 551.401 (1983). Thus, a firefighter's entitlement to overtime compensation under the Act would be reduced for those biweekly work periods in which his tour of duty is reduced as a result of training.

The firefighter's time in training would appear to be hours of work under the Act. See 5 C.F.R. § 551.423 (1983). Since the submission states that a firefighter's overtime compensation under the Act is reduced or eliminated as a result of his attendance at training, we presume that such training is scheduled for less than 72 hours a week which would result in a biweekly tour of duty of less than 144 hours. For example, if a firefighter performs his regular 72-hour tour of duty at his official duty station for 1 week of a biweekly work period, but attends a 40-hour

training course for the other week, his tour of duty for that work period would be 112 hours rather than the 144 hours usually worked. In the example cited, the firefighter's entitlement to overtime compensation under the Act would be for 4 hours rather than for 36 hours.

The Federation contends that a firefighter should not have to lose overtime pay which he would otherwise receive if mandatory training was not being taken. In support of this view the Federation cites our decision Matter of Overtime Compensation for Firefighters, B-207710, February 28, 1983, 62 Comp. Gen. 216, wherein we considered whether firefighters scheduled to work 144 hours in a biweekly work period and compensated under the Act for hours in excess of 108 hours were entitled to the same amount of overtime when they were on court leave for jury duty during part of their 144-hour regularly scheduled tour of duty. We held that the firefighters were not entitled to overtime under the Act for any time lost due to jury duty since overtime under the Act is only for hours actually worked. However, we also held that the firefighters were entitled to receive the same amount of pay which they would otherwise receive for their regularly scheduled tour of duty in a biweekly pay period notwithstanding periods of court leave since the court leave provision, 5 U.S.C. § 6322, expressly provides that an employee is entitled to leave for jury duty without reduction or loss in pay. Similarly, we held in Matter of Gipson, B-208831, April 15, 1983, that under the authority of 5 U.S.C. § 6323, which expressly provides that an employee is entitled to leave for military duty without reduction or loss of pay, a firefighter is entitled to the same amount of pay that he would otherwise receive for his regularly scheduled tour of duty in a biweekly pay period notwithstanding periods of military leave.

Those decisions are clearly inapplicable to the case before us. Unlike the provisions regarding court leave and military leave, we are not aware of any provision of law which provides that an employee who attends training is protected against a reduction or loss of pay. In fact, 5 U.S.C. § 4109 precludes the payment of overtime compensation under title 5, United States Code, to employees during periods of training. Thus, we cannot agree with the Federation's position that a firefighter should not lose overtime compensation as a result of training. Accordingly,

B-211696

if a firefighter's overtime entitlement under the Act is reduced as a result of a shorter biweekly tour of duty due to training, there is no basis upon which he may receive the same amount of compensation as he would otherwise receive when working a 144-hour tour of duty in a biweekly work period.

Accordingly, a firefighter is not entitled to any additional compensation when his entitlement to overtime under the Act is reduced as a result of training.

for *Millon J. Fowler*
Comptroller General
of the United States