



United States  
**Office of  
Personnel Management**

Washington, DC 20415-0001

In Reply Refer To:

Your Reference:

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Date: July 30, 2004 •

Claimants: [name]

File Number: 04-0003

OPM Contact: Robert D. Hendler

On October 1, 2003, the claimant submitted a claim to the U.S. Office of Personnel Management (OPM) for uncompensated overtime for travel during his four month deployment to Afghanistan. He is employed with the Department of the Army, U.S. Army Corps of Engineers (USACE), [district], in [city & State]. We received the agency administrative report on March 4, 2004. For the reasons discussed herein, the claim is denied.

The claimant states that the events relating to his travel were administratively uncontrollable by the Corps of Engineers and, since he was identified as an Emergency-Essential civilian for deployment, he should be paid for 57 hours of overtime that has been disallowed by his agency. He states that the required reporting time for him to be at the CONUS Replacement Center (CRC) and other destinations to and from Afghanistan were administratively uncontrollable by the USACE because the CRC and U.S. Central Command (CENTCOM) established those times and dates. The claimant also says that because he was working for and being paid by CENTCOM, the Corps of Engineers had no control over his flight times and schedule. The claimant states that he received travel orders on January 30, 2003, with a specified departure date of February 3, and describes the specifics of his travel to and from Afghanistan.

Information provided by USACE shows that the claimant occupied a Fair Labor Standards Act exempt [position] during the period of the claim. The statutory provision governing the issue raised in this claim, under 5 U.S.C., § 5542(b)(2), is supplemented by 5 CFR 550.112(g)(2)(iv) and provides as follows,

(2) time spent in a travel status away from the official duty station of an employee is not hours of employment unless -

(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under

arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station.

Congress has affirmatively prohibited payment for travel time unless the conditions of the statutory exception are met. *William C. Boslet*, B 196195, February 2, 1981.

The USACE decision states that the claimant deployed as a member of the Contingency Real Estate Support Team to provide real estate leasing support for South East Asia, and received orders for a 120-day assignment to Afghanistan to provide such support for CENTCOM under Operation Enduring Freedom. The agency claim decision states that the travel at issue was administratively controllable because the travel was controlled by an agency in the Executive Branch and, by implication, was not the result of an event that could not be controlled administratively. It provided the following examples to the appellant to explain its rationale:

Example I: USACE employees deployed overseas are told to report at 1500. Since the agency determined the reporting time, the travel can be scheduled and controlled administratively, and it is not considered hours of work.

Example 2: A typhoon hits Guam on a Friday, and USACE employees are called for immediate deployment to the disaster site to work such missions as providing power, debris removal, temporary shelter, etc. Since the typhoon could not be controlled administratively, time spent traveling to the event and returning to the official duty station is considered hours of work.

The phrase "could not be scheduled or controlled administratively" refers to the ability of an executive agency, as defined in 5 U.S.C. § 105, to control the event that necessitates an employee's travel. The control is assumed to be the agency, whether the agency has sole control or the control is achieved through a group of agencies acting in concert, such as a training program or conference sponsored by a group of agencies, or sponsored by one in the interest of all, or through several agencies participating in an activity of mutual concern. The claimant's travel was controlled by a component of an Executive Agency in concert with his agency. Occupying an Emergency-Essential position is not controlling in this matter. The dates and travel specifics provided by the claimant show that the travel did not result from an event that could not be scheduled or controlled administratively. *Charles S. Price*, et al., B-222163, August 22, 1986, Comptroller General Decision, B-193127, May 31, 1979; *Perry L. Golden and Wayne Woods*, 66 Comp. Gen. 620 (1987); *Morris Norris*, 69 Comp. Gen. 17 (1989).

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the government agency involved in the claim. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. Where the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. *Jimmie D. Brewer*, B-205452, March 15, 1982, as cited in *Philip M. Brey*, B-261517, December 26, 1995. We concur with the agency's interpretation of the law and regulation that the claimant is not eligible for overtime for the travel time that he is claiming because his situation did not meet the defined criteria. The claim is denied.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States Court.