

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: [agency component]
Animal and Plant Health Inspection
Service
U.S. Department of Agriculture
[city & State]

Claim: Standby duty premium pay

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 08-0006

/s/ for
Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

4/2/2008
Date

On January 23, 2008, the U.S. Office of Personnel Management (OPM) received a request dated January 1, 2008, seeking to file a claim for “lost per-diem allowance” and “Standby-Duty/On-Call Time” under sections 5544 and 5545 of title 5, United States Code (U.S.C.), by the claimant in his capacity as President of American Federation of Government Employees (AFGE), Local [number], on behalf of other “Animal Health Technicians/Mounted Patrol Inspectors” and himself who patrol along the Rio Grande. The record shows the claimant occupies [position] in the [agency component], Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), in [city & State].

The claimant seeks review of his claim under part 178 of title 5, Code of Federal Regulations (CFR). Information from the agency shows the claimant is nonexempt from the overtime pay provisions of the Fair Labor Standards Act (FLSA). Therefore, his claim for compensation for time spent on standby duty or in an on-call status falls under the FLSA claim provisions of subpart G of 5 CFR part 551.

The claimant seeks to represent six coworkers and one former coworker, apparently in his capacity as a union official. OPM is not a party to collective bargaining agreements (CBAs) between other Federal agencies and their unions. Therefore, the claimant has no standing to represent anyone other than himself before OPM since he was not designated in writing to represent these other individuals as required in 5 CFR 551.704. In addition, part 551 provides for the filing of individual claims and not a group claim as the claimant appears to request.

OPM has authority to adjudicate FLSA claims for most Federal employees under the provisions of section 4(f) of the FLSA. However, OPM cannot take jurisdiction over FLSA claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA) between the employee’s agency and labor union for any time during the claim period, unless that matter is or was specifically excluded from the agreement’s NGP. The Federal courts have found Congress intended such a grievance procedure is to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452, 1454-55 (Fed. Cir. 1990) (en banc), *cert. denied*, *Carter v. Goldberg*, 498 U.S. 811 (1990); *Mudge v. United States*, 308 F.3d 1220 (Fed. Cir. 2002). Section 7121(a)(1) of title 5, U.S.C., mandates that the grievance procedures in negotiated CBAs be the exclusive administrative procedures for resolving matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

Information provided by the claimant’s servicing HR office at our request confirms the claimant was in a bargaining unit position during the period of his claim. The CBA between the VS, APHIS, USDA and AFGE Local [number] states the NGP is not to be used on matters concerning “Any appeal for which there is a statutory appeal procedure.” However, the fact the NGP is silent on FLSA claims and, therefore, does not specifically exclude them from the scope of the NGP, is sufficient to remove this claim from OPM’s jurisdiction. Therefore, the claimant’s “Standby-Duty/On-Call Time” claim must be construed as covered by the NGP covering the claimant. Accordingly, OPM has no jurisdiction to adjudicate this claim.

Although we may not render a decision on this claim, we note the claimant appears to request compensation for standby duty because he stays at camps while patrolling along the Rio Grande and agency policy states “Camp employees may go home one night during the work week.”

FLSA regulations governing time spent on standby duty or in an on-call status are found in 5 CFR 551.431. As stated in 5 CFR 551.431(a)(2): “An employee is not considered restricted for ‘work-related reasons’ if, for example, the employee remains at the post of duty voluntarily, or if the restriction is a natural result of geographic isolation or the fact that the employee resides on the agency’s premises. For example, in the case of an employee assigned to work in a remote wildland area or on a ship, the fact that the employee has limited mobility when relieved from duty would not be a basis for finding that the employee is restricted for work-related reasons.” (5 CFR 550.112(k)(2), covering FLSA exempt employees, replicates these criteria). Therefore, geographic isolation alone while patrolling the Rio Grande would not be a basis for granting the claimant compensation for standby duty.

OPM does not have authority to consider or settle per diem claims. U.S. General Services Administration’s Civilian Board of Contract Appeals (CBCA) decides claims by Federal employees under 31 U.S.C. § 3702 for reimbursement of expenses incurred while on official temporary duty travel or in connection with relocation to a new duty station, and claims under 5 U.S.C. § 5564 for the proceeds of the sale of property of certain Federal civilian employees. As a courtesy, OPM mailed the claimant’s per diem claim request to the CBCA.

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