

U.S. Office of Personnel Management
Office of Merit Systems Oversight and Effectiveness
Classification Appeals and FLSA Programs

Office of Merit Systems Oversight and Effectiveness
1900 E Street, NW
Washington, DC 20415-6000

Fair Labor Standards Act Decision
Under section 4(f) of title 29, United States Code

Claimant: [the claimant]

Agency classification: Drill Rig Operator Helper
WG-5729-05

Organization: U.S. Geological Survey
[name] Division
Regional Hydrologist Office
[name] Region
[name] Drilling Project
United States Department of the Interior
[location]

Claim: Worked more than 80 hours per pay
period without overtime compensation.

OPM decision: Overtime payment due.

OPM decision number: F-5729-05-01

/s/

Deborah Y. McKissick
FLSA Claims Officer

1/31/02

Date

As provided in section 551.708 of title 5, Code of Federal Regulations (CFR), this is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which Office of Personnel Management administers the Fair Labor Standards Act. The agency should identify all similarly situated current and, to the extent possible, former employees, and ensure that they are treated in a manner consistent with this decision. There is no right of further administrative appeal. This decision is subject to discretionary review only under conditions and time limits specified in 5 CFR 551.708 (address provided in 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

Decision sent to:

[the claimant]
[the claimant's address]

Mr. Richard Winston
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Introduction

On May 8, 2000, the Dallas Oversight Division of the Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [the claimant]. The agency designated his FLSA exemption status as nonexempt, and as such, the claimant believes he is owed payment for overtime worked for the claim period from [dates in claim period]. The claimant worked in the United States Geological Survey, [Division], Department of the Interior, [location], Colorado. The claimant was a Drill Rig Operator Helper, WG-5729-5. Because of program changes in OPM, the Dallas Oversight Division sent the claim to OPM's Office of Merit Systems Oversight and Effectiveness (OMSOE) for processing on September 19, 2001. We accepted and decided his claim under section 4(f) of title 29 (FLSA), United States Code.

In reaching our FLSA decision, we have carefully reviewed all information furnished by the claimant and his agency. We also conducted a telephone interview with the claimant's supervisor.

General issues

The claimant believes the maxiflex provision of the agency's Alternative Work Schedule (AWS) Plan violates the FLSA because it requires employees to work 80 hours during the pay period (first 80) before being entitled to overtime compensation. The claimant believes that he has not been properly compensated for hours worked during his claim period of [dates]. The agency has designated the claimant's position as nonexempt.

Background information

The essential facts surrounding this claim are not in dispute.

- The claimant worked as a Drill Rig Operator Helper, WG-5729-5, assisting journey workers, Drill Rig Operators, in moving in, setting up, operating, maintaining and operating rotary core rigs during the period of [dates].
- The claimant worked an Alternative Work Schedule, a maxiflex schedule.
- When the claimant worked less than 80 hours during the first week of a pay period, the claimant was permitted to work in the [agency's field office] to complete the basic work requirement of 80 hours.
- According to the claimant's Time and Attendance Report, the claimant routinely performed overtime during many pay periods during the claim period.

Evaluation

The claimant's supervisor stated that the claimant worked a maxiflex work schedule, for the claim period from [dates]. 5 CFR § 610.111(d) gives the head of an agency authority to establish a basic work requirement for each employee working a flexible or compressed

work schedule and the basic work requirements must meet the Federal regulations for a maxiflex schedule.

The claimant's supervisor stated that the claimant's drilling team worked a maxiflex schedule – usually ten 10-hour days, followed by three days off. A maxiflex schedule is a type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.

OPM's review of the claimant's time sheet for the claim period revealed that the claimant routinely worked more than 80 hours for most of the pay periods during the claim period. The claimant's supervisor suggested that the claimant was compensated, at least on some occasions, by taking an equivalent amount of time off. Compensatory time off may be approved from an employee's basic work requirement for wage grade employees. See 5 CFR § 551.531(b). However, except when compensatory time has been approved at the request of the wage grade employee, the agency must provide monetary compensation for overtime worked.

Claims against the Government must be predicated, if at all possible, upon official records. The time sheets forwarded by the agency show that the claimant worked more than 80 hours for most of the pay periods during [dates]. The claimant's supervisor stated that he authorized compensatory time off for the claimant and his drilling team. However, the agency did not provide documents that suggest that the claimant requested the compensatory time off. The lack of documents and the supervisor's comments lend credibility to the claim.

Conclusion

Under title 5 of the United States Code (5 USC), Section 5543, an agency may grant compensatory time off instead of overtime payment to employees meeting the definition given in 5 USC §5541. The claimant had a flexible work schedule that included a daily tour of duty of more than 8 hours. However, the agency did not provide documentation as evidence that the claimant requested the compensatory time off in lieu of monetary compensation for overtime worked during the claim period. Therefore, the agency is liable for payment at the overtime rate in effect when the claimant earned less than the value of any compensatory time that it can precisely establish was taken by the claimant.

Based on the above analysis, the claimant is owed compensation under the overtime provisions of the FLSA. Therefore, he is due pay under the Act.

Decision

For each pay period in the claim period, [dates], the claimant is generally due FLSA overtime pay for the total hours of work exceeding 80 hours.

Compliance instructions

Since we found no willful violation on the part of the agency, the claimant can receive back pay for two years from the date his claim was received by OPM, which was [date]. Therefore, he can receive pay for the requested claim period of [dates].

Although sunsetted, the guidance, found in FPM Letter 551-24 (attachment 1) for computing pay when FLSA overtime is due, is still relevant. The claimant's overtime pay must be calculated on a pay period basis. Therefore, for each pay period in the claim period, the agency is to compute the claimant's pay entitlement using the guidance in the FPM letter. The claimant is due this amount minus whatever he has already been paid for the pay period.

5 CFR §550.806 and FPM Letter 550-78 (attachment 2), also sunsetted, but still relevant, show that the claimant is also owed interest on the back pay discussed above. The agency is to compute that interest as described in the regulation and the FPM Letter.

The agency should pay the claimant the total owed him. If the claimant believes that the agency has computed the amount incorrectly, he may file a new FLSA claim with OPM.

Attachments:

FPM Letter 551-24

FPM Letter 550-78