



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

883

B-168323

DEC 22 1969

DEC 22 1969

Mr. R. J. Schullery, Authorized  
Certifying Officer  
Accounting Programs Division  
Federal Aviation Administration  
Department of Transportation

Dear Mr. Schullery:

We refer to your letter of November 5, 1969, concerning the claim of a Mr. George McCalla, a General Schedule employee of the Federal Aviation Administration stationed at the facility in Aurora, Illinois. The claim in the amount of \$670.53 represents pay for 112 hours overtime.

It appears from the information presented that in the case of employees working the shift commencing 11 p.m. on one day and ending at 7 a.m. on the succeeding day it has been the practice of the administration to credit the full 8 hours of service to the day on which the shift began rather than crediting 1 hour on the day the shift began and the other 7 hours to the day the shift ends. The following example illustrates the practice:

Presently Prescribed Method  
of Recording Hours Worked

Actual Hours Worked on  
Calendar Day/Workweek Basis

Assigned Shift	Regular Hours
1500-2300	8
1500-2300	8
1500-2300	8
RDO	
RDO	
2300-0700	8
2300-0700	8
Total	40

Assigned Shift	Regular Hours
1500-2300	8
1500-2300	8
1500-2300	8
RDO	
RDO	
2300-0700	1
2300-0700	8
Total	33

2300-0700	8
2300-0700	8
2300-0700	8
2300-0700	8
2300-0700	8
RDO	
RDO	
Total	40

2300-0700	8
2300-0700	8
2300-0700	8
2300-0700	8
2300-0700	8
RDO	
Total	47

eeb

759093/087750

B-168323

You point out that on 16 different occasions Mr. McCalla actually worked 47 hours in 1 week but only 33 hours in a preceding week and received straight time pay for 40 hours in each such week. You express the opinion that the practice of the agency is in error and that under the provisions of 5 U.S.C. 5542 Mr. McCalla is entitled to 7 hours overtime compensation for each of those weeks in which he actually worked 47 hours. However, you submit for our consideration and reply the following questions:

"1. Must the agency offset the 112 hours of overtime payment with collection of 112 hours of regular pay or should the agency consider waiving collection of the overpayment of pay for the 112 hours not worked in accordance with the provisions of P. L. 90-616 and implementing GAO regulations?

"2. May annual leave be charged the employee either with or without his consent for the 112 hours not worked? If not, may the agency administratively excuse the 112 hours not worked since the employee was not scheduled to work these hours?"

We concur in your view that in any administrative workweek in which Mr. McCalla actually worked more than 40 hours he became entitled to payment at overtime rates rather than straight time rates for the work in excess of 40 hours. For those weeks in which he worked 33 hours but received pay for 40 hours he is indebted to the United States for 7 hours pay at the straight time rate. Concerning the matter of waiving the erroneous payments under the authority of Public Law 90-616 you will note that waiver is authorized only where the collection would be against equity and good conscience and not in the best interests of the United States. Since both the overpayments and underpayments in Mr. McCalla's case resulted from the same misconception on the part of the employing activity as to the proper method of payment for time worked and since Mr. McCalla has filed claim for additional compensation (overtime) there apparently will be a net benefit to him even after deducting the amounts owing by him from the additional compensation to which he is entitled. Under such circumstances we do not consider that collection of the indebtedness by way of offset would be against equity or good conscience and not in the best interest of the United States. Accordingly, our view is that in Mr. McCalla's case and any other case where the overtime payable exceeds the overpayment which would be collected by offset no waiver should be granted. In a situation where straight time rates would exceed overtime rates there would appear to be adequate basis for waiving the indebtedness of the employee provided there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim

B-168323

885

and provided such overpayments were received on or after July 1, 1960.

Concerning your second question, if adequate leave records are available and the employee so requests we would have no objection to his being charged annual leave for those weeks he worked only 33 hours. However, since the Government appears to have been at fault in the entire matter we do not consider it appropriate to charge any employee annual leave for such absence unless he consents. On the other hand, we find no proper basis for the granting of administrative leave for those weeks in which the employee worked only 33 hours.

Accordingly, Mr. McCalla's claim and similar claims may be settled administratively in accordance with the foregoing.

Sincerely yours,

DEPT COLLECTIONS  
Waiver  
Civilian employees  
Compensation overpayments  
Set-off of underpayments  
Assistant

R. F. Keller  
Comptroller General  
of the United States