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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

[Computation of Overtime Pay]

In Reply
Refer to: B-197877 (HID)

November 26, 1980

Mr. Paul J. Comeaux
Supervisory Firefighter
Naval Support Activity, Mare Island
Vallejo, California 94592

DLC 03050
05601

Dear Mr. Comeaux:

We refer to your letter dated January 31, 1980, which was forwarded to our Office by the Naval Supply Center, Oakland, California, requesting that our Office review the correctness of the computation of monies due you as the result of overtime you have worked as an employee of the Naval Support Activity, Mare Island, Vallejo, California. *AGC 00969*

The record indicated that during the pay period ending December 2, 1978, you performed 25 hours of authorized overtime duty as a result of attending required supervisory training. Both you and your agency, the Naval Supply Activity, agree on the number of hours of overtime that you have worked and that you are a nonexempt employee under the Fair Labor Standards Act (FLSA). Nevertheless, it is your position that the agency is not computing correctly the amount of money owed to you using the procedures provided in Federal Personnel Manual (FPM) Letter 551-5, January 15, 1975.

Attachment 2, page 5, of FPM Letter 551-5, states the following regarding the computation of FLSA overtime.

"An employee's regular rate of pay must first be determined in order to compute his overtime pay entitlement under the FLSA. Section 7(e) of the FLSA requires inclusion in the 'regular rate' of 'all remuneration for employment paid to, or on behalf of, the employee' except for certain specific exclusions. Premium pay on an annual basis for regularly scheduled standby duty (5 U.S.C. § 5545(c)(1)) and premium pay on an



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annual basis for administratively uncontrollable work (5 U.S.C. § 5545(c)(2)) do not qualify as statutory exclusions from the 'regular rate' and therefore, they are included in computing an employee's total remuneration.

"The employee's hourly 'regularly rate' is then determined by dividing the employee's total remuneration for employment in any work period by the total number of hours in the employee's tour of duty under the FLSA (all hours actually on duty including scheduled and unscheduled periods).

"Regular Rate = $\frac{\text{Total Remuneration for the Work Period}}{\text{Tour of Duty}}$ "

Following the method of computation for determining overtime under FLSA for firefighters at Attachment 4, page 2, of FPM Letter 551-5, your compensation under FLSA is computed as follows:

A. Tour of duty

| | |
|--------------------|-----------|
| Scheduled duty | 144 hours |
| Unscheduled duty | 25 hours |
| Total tour of duty | 169 hours |

B. Computation of regular rate

Basic pay + standby duty pay for scheduled duty (144 hours) = \$694.40

Straight time rate (694.40 ÷ 144 hours) = \$4.82

Straight time pay for 25 hours unscheduled overtime duty (\$4.82 x 25) = \$120.50

Total remuneration for 169 hours = \$814.90

Regular rate (\$814.90 ÷ 169 hours) = \$4.82

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C. Additional compensation for overtime duty

Straight time pay for 25 hours
unscheduled overtime duty ($\$4.82 \times 25$) = $\$120.50$

Overtime hours in excess of 108 hours
(169 - 108) = 61 hours

1/2 x Regular rate $\$4.82 \times 61$ hours = $\$147.01$

Overtime pay entitlement = $\$267.51$

Once an employee's hourly "regular rate" is determined as in B above, the employee is then entitled to additional compensation, see C above, at a rate of one-half times the "regular rate" for each hour the employee's tour of duty exceeds the maximum hours limitation provided in section 7(k) of the FLSA, found at 29 U.S.C. § 207(k) (1976). The "maximum hours limitation" is defined in the case of an employee to whom a work period is at least 7 but less than 28 days, such as yourself, as the amount the tour of duty exceeds in the aggregate a number of hours which bears the same ratio to the number of consecutive days in the work period as 216 hours bears to 28 days. Therefore, in your situation, the "maximum hours limitation" would be 108 since your work period is 14 days.

As is stated in Attachment 2, page 5, of FPM Letter 551-5:

"The employee's additional compensation for overtime work is computed at one-half times the 'regular rate' and not one and one-half times the 'regular rate' for all overtime hours under the FLSA. A simple explanation is that in computing an employee's total remuneration for the work period, the employee has already been compensated at 100 percent for all hours in his tour of duty. Therefore, once the employee's 'regular rate' is computed, the employee is then entitled

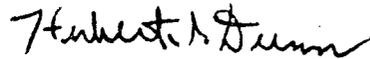
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to additional compensation of 50 percent times his 'regular rate' for those hours in excess of the maximum hours limitation of section 7(k) of the FLSA. This method of computing an employee's overtime entitlement under the FLSA results in the employee being compensated for overtime work at a rate of 'one and one-half times the regular rate at which he is employed.'"

Therefore, the total compensation due you for the pay period in question, when the overtime entitlement is computed under FLSA, is \$961.91 (\$694.40 basic pay plus standby duty pay, plus \$267.51 additional compensation for overtime duty.

Therefore, it appears that your gross total pay of \$961.91 for the pay period ending December 2, 1978, was correctly calculated under FLSA by your agency.

Sincerely yours,



Herbert I. Dunn
Attorney-Adviser