

## DECISION


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

FILE: B-175363

DATE: November 26, 1974

MATTER OF: Richard H. Bush - Overtime compensation

- DIGEST: 1. Federal Protective Officer (FPO) employed by the General Services Administration requested review of the disallowance by our Transportation and Claims Division of his claim for overtime compensation believed due because he was allegedly required to change into and out of uniform after duty hours at his place of employment. The disallowance is sustained, even though claimant may have performed overtime since even if immediate supervisor required such work, he was not authorized to do so and official who was properly authorized to order or approve overtime work did not require such work and had no knowledge that it was being performed.
2. Federal Protective Officer (FPO) employed by the General Services Administration appealed our Transportation and Claims Division's disallowance of his claim for overtime compensation allegedly due because he was required to eat his meals at his post. Disallowance is sustained, even though as a result of a grievance, management allowed FPOs to eat lunch out of public sight, since claimant's lunches were eaten during his normal 8-hour shifts for which he was already compensated.

This action results from an appeal from our Transportation and Claims Division's settlement, dated August 13, 1974, which disallowed the claim of Mr. Richard H. Bush for overtime compensation believed due incident to his early reporting and delayed departure during the period April 5, 1971, to October 16, 1972, and because he ate lunch on duty time while employed as a Federal Protective Officer (FPO) in Region 9 of the General Services Administration (GSA).

For the period from April 5, 1971, to October 16, 1972, Mr. Bush contends that he was required to be on post for a period of time in excess of his regular 8-hour shift so that he could change into and out of his uniform. Mr. Bush, therefore, claims overtime compensation for an average of 24 minutes per day of

367519/

B-175363

work which he believes was officially ordered and approved. Mr. Bush also claims compensation for all 30-minute lunch periods while employed by GSA because he was required to eat his lunch at his post.

Section 5542(a) of title 5, United States Code, provides that hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or in excess of 8 hours in a day, performed by an employee are overtime work and shall be compensable. Section 550.111(c) of title 5, Code of Federal Regulations, provides as follows:

"Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated."

Accordingly, payment of overtime compensation is contingent on whether the performance of overtime work was authorized and approved by an official having delegated authority. Our Transportation and Claims Division was advised by GSA that the sole authority to approve or order overtime work in the nature of the work in question for FPOs within Region 9, rested with the Regional Commissioner of the Public Buildings Service, GSA, and that he did not in fact approve or authorize such overtime.

Moreover, the Regional Commissioner of Region 9, GSA, advised that it was neither the policy nor the practice in Region 9 to require FPOs to report early and leave late in order to change into and out of uniform at their places of employment. Applicable regulations specifically permitted FPOs to travel between their residences and their places of employment in uniform, except for caps and badges. From September 14, 1970, to May 25, 1972, during which time Mr. Bush's claim arose, the pertinent regulation was PPH, PBS P 5930.2A, paragraph 20, September 14, 1970, which states as follows:

"Uniforms. All full-time guard and firefighter personnel are required to wear the prescribed uniform while on duty. Wearing or carrying away uniform items

B-175363

from the place of duty (except shirts which must be laundered at individual expense) is cause for disciplinary action unless specific approval is granted by the Building Manager. When approval is granted to wear the uniform between the place of employment and residence the badge and cap insignia must be removed."

Prior to this date a similar policy was in effect under PBS P 5930.1A, paragraph 124, August 12, 1963, and PBS P 5800.18A, change 19, January 23, 1968, which states as follows:

"(3) Employees are required to wear the uniform only in the performance of official duty. This may include the time in transit between home and the place of employment and between GSA duty locations." (Emphasis added.)

On May 25, 1972, the regulation was changed to permit FPOs to wear their uniforms while traveling between their residences and their places of employment without first seeking permission to do so. Physical Protection Handbook (PPH) PBS P 5930.2A, paragraph 20, May 25, 1972, states:

"Uniforms. All Federal Protective Officers (FPOs) and guards are required to wear the prescribed uniform while on duty. The uniform will not be worn when the officer is off duty except when traveling between his residence and place of employment. Any unauthorized use of the uniform is grounds for immediate disciplinary action."

It is understood that even for periods prior to May 25, 1972, when the regulations were changed to permit wearing of the uniform from work to the residence without prior permission, such a request from an FPO would have been routinely granted. Our Transportation and Claims Division, therefore, stated that absent information in the record to refute the administrative report, it was unable to find that there was any requirement that FPOs dress at their place of employment.

B-175363

However, Mr. Bush claimed that memoranda written by the Assistant Buildings Manager and the Acting Assistant Buildings Manager in charge of the buildings in which Mr. Bush worked, in effect required FPOs to perform preshift and postshift overtime duties. The memorandum of the Assistant Buildings Manager, dated January 26, 1972, stated:

"Effective immediately all uniformed G.S.A. employees must use and maintain lockers in the G.S.A. locker rooms. Private lockers for clothing and personal effects are not to be maintained in shop, storage or office space.

"All G.S.A. employees are to use the locker rooms to change clothes and/or prepare to go to work or go home.

"Employees are again reminded that they are to be in uniform and ready to go to work at the shift starting time. Preparations to go home are to be taken care of after the end of the shift period. Foremen and supervisors must enforce this rule."

The memorandum from the Acting Assistant Buildings Manager dated October 16, 1972, stated:

"Recent changes to the Physical Protection Handbook, PBS P 5930.2A permit the Federal Protective Officer to wear his uniform when travelling between his residence and place of employment. Any previous memo from this office on that subject is hereby rescinded. FPOs may wear their uniform to and from work provided they do not stop on the way."

Mr. Bush interpreted the above two memoranda as indicating that prior to October 16, 1972, FPOs were required to change into and out of uniform at their locker locations. The General Services Administration, however, explains that the Assistant Buildings Manager's letter of January 26, 1972, was directed to those FPOs who chose to change their clothes in the building in which they worked and was intended to restrict them to the properly designated areas for changing, i.e., the locker rooms. Further, the October 16, 1972 memorandum from the Acting Assistant Buildings Manager was not

B-175363

intended to suggest that prior to October 16, 1972, wearing of the uniform between residences and places of employment was not allowed, but was intended as a clarification of PPH, PBS P 5930.2A, paragraph 20, May 25, 1972, supra, which for the first time allowed FPOs to wear their uniforms between their residences and places of employment without obtaining prior permission. Although Mr. Bush places a different interpretation on the above-cited memoranda from the Assistant Buildings Manager and from the Acting Assistant Buildings Manager, our Transportation and Claims Division held that the explanation offered by the GSA was reasonable, especially in the light of the provisions relating to wearing of uniforms to and from home in the regulations cited, supra. We agree with this determination.

In addition, our Transportation and Claims Division held that even if the October 16, 1972 memorandum from the Acting Assistant Buildings Manager and the January 26, 1972 memorandum from the Assistant Buildings Manager are construed in the manner suggested by Mr. Bush as indicating that FPOs were required to change their clothes at their places of employment and even if requests to wear their uniforms in travel to and from their residences were not perfunctorily granted, there is still no entitlement to overtime since the sole authority to approve or order the overtime work in question for FPOs within Region 9, was the Regional Commissioner in Region 9 and he in fact did not authorize or approve such overtime. In this connection it was held in Baylor v. United States, 198 Ct. Cl. 331 (1972), on which Mr. Bush relies, that even though overtime may not have been specifically ordered, overtime may in certain circumstances still be compensable. The court stated that overtime work which has been induced by the appropriately authorized superior is held to be authorized and approved for purposes of compensation under 5 U.S.C. § 5542(a). In the instant case, the Regional Commissioner has stated that it was not the policy within Region 9 to require early reporting or late departure for uniform-changing purposes. Since it would appear, therefore, that the Regional Commissioner did not know of any practice to the contrary and hence could not be held to have induced FPOs to report early or leave late in order to change into and out of uniforms at their places of employment, our Transportation and Claims Division was unable to conclude that any overtime work by Mr. Bush was either authorized or approved by the appropriate official. Again, we must concur.

B-175363

With respect to Mr. Bush's claim for overtime compensation for his lunch periods while employed at GSA, our Transportation and Claims Division found that Mr. Bush worked a regular 8-hour tour of duty and that he ate his lunch within that period for which he was compensated. Therefore, it held that the fact that Mr. Bush may have been on duty for periods within his regular 8-hour tour of duty during which he ate his lunch did not entitle him to additional compensation. We sustain this finding as well.

In appealing the disallowance of his claim, Mr. Bush states, in effect, that despite the guidelines on uniform-changing set out in the Physical Protection Handbook (PPH), supra, the Buildings Manager who had the authority to implement the rules in the PPH, designed a situation in which FPOs were required to change their uniforms on the post. Mr. Bush also claims that the settlement by the Transportation and Claims Division gave too much credence to the report from GSA and he questions whether we have received and reviewed all of the evidence submitted on his behalf. In this regard Mr. Bush states that his time cards should be obtained so that no doubt may exist that he worked overtime. Mr. Bush also cites a letter to him from the Acting Assistant Buildings Manager dated October 12, 1972, which he believes proves that overtime work was required. The letter states in part:

"\* \* \* We do agree that you have been required to report to work some few minutes before some of your shifts. \* \* \*

"Certainly we did not direct anyone to punch in before the start of nor out after the end of their shift. Nearly all of the PBS employees in this field office are required to be in the building somewhat prior to their work starting time in order to punch in on time. Although the amount of time for the FPOs may average slightly more than that of other employees, we do not know how much more, if any. \* \* \*"

Mr. Bush concludes with the assertion that the holding in Baylor, supra, supports his claim. Mr. Bush appears to claim that the Assistant Buildings Manager here was an appropriately authorized superior since the court in Baylor, supra, found that the Chief, Buildings Management Division, GSA Region 3, was the appropriately authorized superior in that case.

B-175363

In support of his claim for overtime compensation for his lunch periods, Mr. Bush states that a successful grievance action was instituted against the Buildings Management on the ground that there was a management requirement that FPOs eat lunch while standing at their posts in public view. This policy was subsequently changed so that FPOs were given a set time to eat lunch, sitting out of public view but subject to emergency call.

As stated above, we agree with our Transportation and Claims Division that the letters of the Assistant Buildings Manager and of the Acting Assistant Buildings Manager, supra, cited by Mr. Bush as requiring overtime work, did not in fact require overtime work and we agree with GSA's reading of the meaning of those letters as stated above. However, even if the letters were to be interpreted as requiring or inducing overtime work, the Assistant Buildings Manager and the Acting Assistant Buildings Manager had no written delegation of authority to order and approve overtime work and, therefore, there was no proper authorization existing for such overtime work. Baylor, supra; see also Kenneth D. Anderson et al. v. United States, 201 Ct. Cl. 660 (1973). Therefore, even if the Assistant Buildings Manager and the Acting Assistant Buildings Manager directed overtime work to be performed, such work is not compensable since the direction was unauthorized and it is a well established rule that the Government can be neither bound nor estopped by the unauthorized acts of its agents. B-176580, August 7, 1974.

Moreover, the decision in Baylor, supra, does not support Mr. Bush's view that the Assistant Buildings Manager or the Acting Assistant Buildings Manager were appropriately authorized superiors. Baylor dealt with the overtime requirements imposed on guards in GSA's Region 3 and the court's findings of fact, including the determination that the Chief, Buildings Management Division, was an appropriately authorized superior in GSA's Region 3, are limited in application to overtime situations arising in Region 3. This is, of course, to be distinguished from the court's findings of law which are generally applicable to similar overtime situations existing in all regions and which findings we also follow here. The record before us indicates that the only official who had the delegated authority to authorize overtime work for FPOs in GSA's Region 9 was the Regional Commissioner of Region 9. There is no evidence that the Regional Commissioner had knowledge of any requirement that FPOs perform such overtime

B-175363

work. Mr. Bush actually acknowledges that the Regional Commissioner did not know of the practices being conducted by lower management which may have required overtime work. Therefore, even if Mr. Bush performed overtime work, since the Regional Commissioner did not authorize, approve or induce its performance, there is no authority in the law for payment to be made for any such overtime worked. In this connection we have not obtained time cards, as suggested by Mr. Bush, since they would be irrelevant on the question of who was competent to authorize or approve overtime.

With respect to Mr. Bush's claim for one-half hour overtime compensation for lunch periods during which he worked or was on call, section 6101 of title 5, United States Code, requires that an agency ordinarily assign an employee to a basic administrative workweek of 40 hours and a basic workday of 8 hours for a full-time employee. Since Mr. Bush worked a straight 8-hour day there could be no free time allotted to him during which he could have taken his lunch. Mr. Bush's situation is to be distinguished from the case in which an employee is assigned an 8-1/2 hour shift with a half-hour lunch period. If, in the latter situation, the employee is on duty during his lunch period, he is entitled to overtime pay for that half hour. However, the time spent by Mr. Bush in eating his lunches was part of his official work periods for which he was already compensated. While, as a result of a grievance action, it was administratively determined to allow Mr. Bush to eat his lunches on Government time, out of sight of the public, this does not entitle Mr. Bush to overtime since the lunch periods remained part of his normal 8-hour paid shifts.

Accordingly, upon review of all items of evidence, including those which Mr. Bush believes we may not have seen or considered, we find that we have no alternative but to sustain the disallowance of his claim.

  
Deputy Comptroller General  
of the United States