

**DECISION**

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

50932

FILE:

DATE: SEP 15 1975

B-182695

MATTER OF:

97534

DIGEST:

Horace M. Thorne-Overtime-Compensatory Time-  
Position Classification

Employee claims overtime pay in lieu of compensatory time and questions the classification of his position. Since Civil Service Commission determinations on classification appeals are binding on this Office under section 5 U.S.C. § 5112(a) (1970), GAO has no authority to determine position classifications or to modify agency or Commission classification actions. With respect to overtime, employee's position of Project Analyst GS-301-12 was determined by his agency and the Commission to be exempt from Fair Labor Standards Act. Under discretionary authority of 5 U.S.C. 5543(a), agency policy provides compensatory time rather than pay for authorized overtime for employees above grade GS-10, step 10.

This action concerns an appeal by Mr. Horace M. Thorne from the disallowance of his claim for 8 hours overtime compensation for work performed on May 4, 1974, in lieu of 8 hours of compensatory time authorized by his agency, the Department of Health, Education and Welfare (HEW), Office of Education, as set forth in Settlement Certificate of September 11, 1974, issued by our Transportation and Claims Division. Mr. Thorne seeks an explanation and justification for the application of "Public Laws 93-259, 80-617, and 93-112, Section 501" to his position and to the 8 hours overtime that he worked on May 4, 1974. Additionally, he asks for a determination of whether his position at the Office of Education is a Project Analyst, GS-301-12, or a GS-1720-13, Education Program Specialist, and thus a professional position.

Under the provisions of 5 U.S.C. § 5105, the Civil Service Commission has the authority and responsibility for the preparation and publication of standards for classification of positions subject to the General Schedule. Each agency is required by 5 U.S.C. § 5107 to place its positions unless otherwise provided

in their appropriate class and grade to conform with the standards published by the Commission. 5 U.S.C. § 5107 provides that subject to section 5337 of title 5, United States Code, actions of an agency under the authority of section 5107 are the basis for pay and personnel transactions until changed by certificate of the Commission. Under the provisions of 5 U.S.C. § 5110, the Commission is required to review agency classification actions and correct such actions which are not in accord with published standards. The Commission's correction certifications are binding on all administrative, certifying, payroll, disbursing, and accounting officials.

Additionally, 5 U.S.C. § 5112 provides:

"§5112. General authority of the Civil Service Commission.

"(a) Notwithstanding section 5107 of this title, the Civil Service Commission may—

"(1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position;

"(2) place in an appropriate class and grade a newly created position of a position coming initially under this chapter;

"(3) decide whether a position is in its appropriate class and grade; and

"(4) change a position from one class or grade to another class or grade when the facts warrant.

"The Commission shall certify to the agency concerned its action under paragraph (2) or (4) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

"(b) An employee affected or an agency may request at any time that the Commission exercise the authority granted to it by subsection (a) of this section and the Commission shall act on the request."

B-182695

Since an employee may exercise his right under section 5112(b) to have the Commission review his position classification, and since determinations by the Commission on classification appeals are binding on this Office under section 5112(a), we have no authority to modify such action. Thus, the matter of the proper position classification of Mr. Thorne's position is for consideration by his agency and the Commission.

With respect to Mr. Thorne's claim for overtime pay rather than compensatory time for May 4, 1974, as the Settlement Certificate pointed out, certain employees are exempt from coverage under the Fair Labor Standards Amendments of 1974, Public Law 93-259, effective May 1, 1974. Under section 13(a)(1) of the Fair Labor Standards Act, employees who occupy positions in an executive, administrative, or professional capacity are exempt from the provisions of section 6--other than section 6(d) pertaining to nondiscrimination--and section 7. Both the agency and the Commission have determined that Mr. Thorne's position is exempt under section 13(a)(1). Thus, the claim for overtime is not compensable under the provisions of the Fair Labor Standards Act.

With respect to overtime under the provisions of title 5, United States Code, section 5543(a) thereof reads as follows:

"(a) The head of an agency may--

"(1) on request of an employee, grant the employee compensatory time off from his scheduled tour of duty instead of payment for an equal amount of time spent in irregular or occasional overtime work; and

"(2) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for GS-10 shall be granted compensatory time off from his scheduled tour of duty equal to the amount of time spent in irregular or occasional overtime work instead of being paid for that work under section 5512 of this title."

The policy of HEW in not authorizing overtime compensation under the circumstances is in accord with section 5543(a)(2) which

B-182695

provides that employees whose rate of basic pay is in excess of the maximum rate of pay for grade GS-10 shall, be granted at the discretion of the authorized compensatory time for authorized overtime work.

Public Law 80-617, now codified in 5 U.S.C. § 7153, referred to by Mr. Thorne concerns the prohibition against discrimination in Federal employment because of physical handicap. Public Law 93-112, approved September 26, 1973, 87 Stat. 355, is the Rehabilitation Act of 1973. Section 501 of that Act establishes within the Federal Government the Interagency Committee on Handicapped Employees. Responsibility under these statutes rests primarily with each Federal agency and the Civil Service Commission. On the record before us, there is no indicated violation of either statute with respect to Mr. Thorne's claim for overtime.

Upon reconsideration the settlement of September 11, 1974, by the Transportation and Claims Division disallowing Mr. Horace M. Thorne's claim is sustained.

R. F. Keller

Acting Comptroller General  
of the United States