

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

FILE:

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97672MATTER OF: **B-183577**

DIGEST:

**Clarence E. Harris - Overtime pay while in travel status**

Time spent (4-½ hours) in travel outside of regular working hours by wage grade employee driving military truck on return trip from temporary duty post to permanent duty station, constitutes "hours of work" within meaning of Fair Labor Standards Act (FLSA) and entitles him to overtime compensation. However, under provisions of title 5, United States Code, and FLSA, overtime compensation is not payable for time spent (1-½ hours) in travel by employee as passenger in Government vehicle on aforesaid return trip as employee performed no actual work during this period.

This action arises from a request for an advance decision by 1st Lieutenant W. A. Griffin, USAF, Accounting and Finance Officer, Headquarters 29th Flying Training Wing (ATC), Department of the Air Force, Craig Air Force Base (AFB), Alabama, whether Mr. Clarence E. Harris, a civilian employee at Craig AFB, may be paid overtime compensation for work allegedly performed by him while in travel status.

The pertinent facts and circumstances giving rise to this claim are as follows:

"On 29 January 1975, Mr. Harris, along with 2 military men, was required to travel to Dobbins AFB, GA via military truck to repair a T-38 aircraft, owned by Columbus AFB, MS. The 3 men departed Craig AFB at approximately 0800 hours and arrived at Dobbins AFB at 1500 hours EST. They proceeded to work on the aircraft until approximately 2145 hours EST. They started work again the next morning (30 Jan) at 0700 hours EST and completed repairing the aircraft and loading their vehicle by 1630 hours EST. Mr. Harris then called his supervisor, Mr. Hugh Kirkpatrick, to request instructions. Mr. Kirkpatrick, in turn, asked Maintenance Control (MSGT Long) who instructed him to have Mr. Harris return that night. They left Dobbins at that time and arrived at Craig AFB at 2130 hours CST."

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The record further discloses that on the return trip from Dobbins AFB on January 30, 1975, Mr. Harris, an Aircraft Mechanic, WG-8852-10, drove the truck approximately 4-½ hours of the 6 hours required for the return trip. Upon arrival at Craig AFB, he assisted in unloading the truck for about 1 hour. Mr. Harris is claiming a total of 7 hours overtime pay for work performed on January 30, 1975. Agency officials have recognized that overtime is payable for the 1 hour worked by Mr. Harris in helping to unload the truck upon return to his permanent duty station at Craig AFB. Therefore, overtime compensation is claimed for the remaining 6 hours of time spent in travel on January 30, 1975, while returning to Craig AFB from Dobbins AFB, of which 4-½ hours were spent by the claimant in driving the truck and 1-½ hours were spent by him as a passenger in the truck. Mr. Harris' duty hours were from 7 a.m. to 3:45 p.m. with a lunch period of 45 minutes.

The administrative office questions the payment of overtime to Mr. Harris while in a travel status because of Air Force Regulation 40-552, paragraph 4, which is based upon the provisions of section 5544(a), title 5, United States Code, that governs overtime compensation for wage board employees and provides, in pertinent part, as follows:

" \* \* \* Time spent in a travel status away from the official duty station of an employee subject to this subsection is not hours of work unless the travel (i) involves the performance of work while traveling (ii) is incident to travel that involves the performance of work while traveling (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

The information furnished fails to establish that Mr. Harris met any of the above conditions specified in the regulation in order for travel time to be regarded as hours of work under 5 U.S.C. § 5544(a).

On May 1, 1974, Public Law 93-259, 88 Stat. 56, the Fair Labor Standards Amendments of 1974, became effective and amended the Fair Labor Standards Act (FLSA) of 1938 to include all Federal employees, with certain exceptions not material here. All nonsupervisory employees in WG positions, as is the claimant, are covered under the new law. For overtime purposes, covered or "nonexempt" employees under FLSA are now covered by two laws, title 5 of the United States Code and the FLSA, and may receive the greater benefit where the FLSA and the other statute are inconsistent. The FLSA requires payment to nonexempt employees of

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overtime (for hours in excess of 40 a week) for all work which the employer "suffers or permits" to be performed. The FLSA statute also empowers the United States Civil Service Commission to administer the FLSA with respect to most Federal employees.

The Commission has compiled tentative regulations for travel time as hours of work under the FLSA. The tentative regulations provide that an employee who for whatever purposes, drives an automobile or truck to a given destination at the request of or on behalf of the employing activity is performing work while traveling and shall have such time spent traveling counted as hours of work. However, travel performed as a passenger outside of the employee's regular working hours is not included in hours worked.

Therefore, under the FLSA the 4- $\frac{1}{2}$  hours Mr. Harris drove the military truck outside of his regular working hours in returning to his permanent duty station is compensable as overtime work. The 1- $\frac{1}{2}$  hours that Mr. Harris was a passenger in the military truck in returning to his permanent duty station outside of his regular working hours is not hours of work and is not compensable as overtime.

S. V. Edwards

~~James~~

Deputy,

Comptroller General  
of the United States