

DECISION

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

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JUL 8 1976
098328

FILE: **B-147880**

DATE:

MATTER OF: **Overtime compensation - Civilian guards, Frankford Arsenal**

DIGEST: Under the doctrine of res judicata, the overtime claims of members of the civilian security force employed by the Department of the Army at the Frankford Arsenal, whose claims were denied by the Court of Claims in Banton v. United States, 165 Ct. Cl. 312 (1964), may not be reconsidered by the Army or the General Accounting Office. Under 28 U.S.C. 2519, the Court of Claims' determination in favor of the Government bars any further claim arising out of the same matter.

This decision involves the claims of Messrs. Generosa J. Foglia, Robert G. Hart and Daniel T. Pelligrine for overtime compensation in connection with duties performed as civilian security policemen employed by the Department of the Army at the Frankford Arsenal, Philadelphia, Pennsylvania. The claims of these individuals and others similarly employed were initially disallowed by our Claims Division in 1961. The disallowances of the claims of two of the employees similarly situated were sustained by our decisions B-145842, August 28, 1961, and B-147084, September 21, 1961. The claimants named above initiated appeals under the Court of Claims' holding in Euzie L. Baylor et al. v. United States, 198 Ct. Cl. 331 (1972) and our decision 53 Comp. Gen. 489 (1974).

The claims in question have been forwarded to this Office by the Department of the Army as doubtful claims pursuant to B-174069, September 11, 1974, wherein we held that employing agencies should pay all appeals supported by facts meeting the Baylor case criteria and that only doubtful appeals should be forwarded for consideration by the Comptroller General. The Department of the Army is in doubt as to the proper disposition of these particular claims in part because they were considered and specifically denied by the Court of Claims in Walter E. Banton, Jr. et al. v. United States, 165 Ct. Cl. 312, cert. den. 379 U.S. 890 (1964). These claims are representative of similar ones pending before the Department of the Army.

Messrs. Foglia, Hart and Pelligrine were three of the 96 plaintiffs involved in the Banton case, each of whom claimed a total of one hour per day overtime compensation, consisting of 30 minutes for early reporting and 30 minutes for a lunch period which they claimed was not duty-free. The Court of Claims denied their claim

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for early reporting, finding that members of the security force were allowed to change uniforms at home and that, while some preferred to change into and out of uniform at work, early reporting for such purpose was voluntary and hence noncompensable. Although members of the force were required to be armed with pistol or revolver at the beginning of their tour of duty, the Court found that the maximum time involved for an entire shift of men to draw their weapons and ammunition was only 5 minutes. In addition the Court found that members of the force had received a 30-minute duty-free lunch period, even though they were subject to emergency call during such lunch period, inasmuch as the record failed to demonstrate that they had performed substantial official duties during that period.

Consideration of the appeals here presented is foreclosed by the doctrine of res judicata. Section 2519 of title 28 of the United States Code (1970) provides that a final judgment of the Court of Claims against any plaintiff shall forever bar any further claim, suit or demand against the United States arising out of matters involved in the case or controversy. Accordingly, this Office has no authority to reconsider the claims presented since they have been resolved by final judgment of the Court of Claims in favor of the Government. 5 Comp. Gen. 334 (1925); 47 id. 574 (1968); B-129449, February 2, 1976.

Other claims involving appeals from matters finally adjudicated and disallowed by the Court of Claims should likewise be disallowed.

Paul G. Deabling
For ¹ Comptroller General
of the United States