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DECISION



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

FILE: B-188461

DATE: December 20, 1977

MATTER OF: Ambrose W. J. Clay et al. - Overtime Compensation

DIGEST:

Payment of overtime claims presented by employees of the Veterans Administration Hospital on the basis of Eugie L. Baylor v. United States, 198 Ct. Cl. 331 (1972), for uniform changing time may not be allowed. Irreconcilable conflict exists between employees and agency version of the facts. GAO decides claims on basis of written record and does not conduct adversary hearings. Where factual dispute cannot be resolved without adversary proceeding, GAO's practice is to resolve such disputes in Government's favor.

This action is a consideration of the claims of Messrs. Ambrose W. J. Clay, William Ellis, Arnold Sloss, James Spencer, and Richard O. Yates for overtime compensation for performance of preliminary and postliminary functions as employees of the Veterans Administration (VA) Hospital, Nashville, Tennessee. The claims are made on the basis of the holding by the Court of Claims in Eugie L. Baylor et al. v. United States, 198 Ct. Cl. 331 (1972). Mr. Clay's claim is an appeal from our Claims Division settlement dated November 30, 1976, disallowing his claim.

The record shows that the claimants have been employed by the VA as operating room staff personnel in the Surgical Service. The jobs involved require a change from usual attire to an appropriate uniform prior to the start of duty and change out of uniform at the close of a work shift. The employees contend that the VA never afforded time to complete their clothes change requirements, which resulted in them having to report 10 minutes earlier than the shift actually began and remaining 10 minutes after it ended.

The hospital director reports that although the employees in the operating room are required to be in the locker room or the operating room at the time their tour of duty is scheduled to begin, they are then allowed a reasonable amount of time (normally no more than 10 minutes) to change into scrub clothes and report for assignment. The director further states that "toward the completion of their tour of duty, they are relieved of their assignment in order that they may change out of scrub clothes and report off duty at the scheduled time. To our knowledge the claimants were never required to dress outside of their tours of duty at anytime and not be compensated therefor."

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The facts as presented by the agency and those presented by the employees are in direct conflict. This Office does not conduct adversary hearings in adjudicating claims but decides them on the basis of the written record presented to us by the parties. When the record contains a dispute of fact which cannot be resolved without an adversary proceeding, it is the long-standing practice of this Office to resolve the matter in favor of the Government. B-167782, January 21, 1970.

On the record before us, the settlement of November 30, 1976, denying the claim of Mr. Clay is sustained and the remaining claims are denied.


Deputy Comptroller General
of the United States