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DECISION



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

FILE: B-190803

DATE: February 9, 1978

MATTER OF: Arthur L. Butler - Overtime Compensation

DIGEST: Civilian guard claimed overtime for pre-shift and post-shift activity. Dispute exists between agency and employee concerning amount of time required to perform such activity. GAO decisions are based upon the written record. Where the written record before us presents a material dispute of fact that cannot be resolved without an adversary hearing, we are required to deny the claim because the claimant has failed to establish his claim. Based on administrative determination that such time totalled 2 minutes daily, claim is denied since Court of Claims has required that such time equal or exceed 10 minutes to be compensable.

By a letter dated October 25, 1977, Mr. Arthur L. Butler appealed the denial by our Claims Division of his claim for overtime compensation.

Mr. Butler's claim is for certain pre-shift and post-shift activity alleged to have been performed as a Federal Protective Officer of the General Services Administration (GSA), Region 9, in Phoenix, Arizona, from February 6, 1972, to February 3, 1974. Specifically, Mr. Butler has claimed a total of 20 minutes each day during the claim period for obtaining and returning a weapon, and to travel between the weapon control point and his post of duty.

In Settlement Certificate No. Z-2610515, dated October 12, 1977, our Claims Division denied Mr. Butler's claim for overtime compensation. Among the reasons for the Claims Division's conclusion was the fact that there was no requirement by GSA Region 9 that employees should report early or leave late for the purpose of changing into or out of uniform at their place of employment. Further, the Acting Regional Administrator of Region 9 informed the Claims Division that the time to draw and replace weapons and to travel between the control point and the post of

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duty was 2 minutes per day. Since such amount was considered to be de minimus, or of insufficient quantity to be transformed into compensable overtime, Mr. Butler's claim was denied.

Mr. Butler's appeal basically disputes the conclusion that the amount of time spent in pre-shift and post-shift activity was de minimus in amount. In so doing, Mr. Butler has reiterated his contention that the total amount of time required to perform such activity was at least 20 minutes daily. In addition, he suggests that guards employed in GSA Region 9 were not treated equally with those employed in other regions.

In Baylor v. United States, 198 Ct. Cl. 331 (1972), the Court of Claims considered the claims of certain GSA guards for overtime for pre-shift and post-shift activities. Finding that the overtime activities involved had been officially ordered and approved by properly authorized officials, the court held that the plaintiffs were entitled to recover insofar as each was able to substantiate his claim. The court provided, however:

"* * * when an employee has been found to have devoted a substantial measure of time and effort so as to qualify such time as compensable working time, an offset does not operate to render the remainder de minimis unless the net overtime after application of the offset is ten minutes or less per day." 198 Ct. Cl. at 366.

Thus, the court established a requirement that the net daily overtime be 10 minutes or more in order to qualify as compensable working time. This requirement has been uniformly applied in decisions of this Office. See 53 Comp. Gen. 489 (1974).

The essential controversy in this case is whether the pre-shift and post-shift activity consumed 20 minutes, as claimed by Mr. Butler, or 2 minutes, as determined by the agency. Pursuant to 4 C.F.R. § 31.7, this Office does not hold adversary hearings in order to adjudicate claims,

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but decides them on the basis of the written record presented by the parties. Therefore, if the written record before us presents a material dispute of fact that cannot be resolved without an adversary hearing, we are required to deny the claim because the claimant has failed to establish the claim. Samuel V. Britt, B-186763, March 28, 1977. Here, the statement by the claimant is insufficient to overcome the administrative determination that the amount of time involved totalled 2 minutes per day. Since the Court of Claims has required that an employee work at least 10 net minutes of pre-shift and post-shift overtime, the amount claimed by Mr. Butler is not compensable.

In addition, Mr. Butler has suggested that there is some disparity between the several regions within GSA concerning the payment of overtime claims. We have no information as to the practices in other regions of GSA, and are therefore unable to conclude that there exists any disparity among them. However, any specific erroneous overtime payments--and we are unaware of any--which may have been made by GSA would not provide the basis for payment of the present claim.

In view of the above, the denial of Mr. Butler's claim by our Claims Division is sustained.

Deputy

R. F. Kestner
Comptroller General
of the United States

Wm. Harbeck *gp.*

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

TO : Director, Claims Division

February 9, 1978

FROM : ^{Deputy} Comptroller General *W. K. 112*

SUBJECT: Arthur L. Butler - Overtime Compensation - B-190803-O.M.

Returned herewith is your file Z-2610516 forwarded here on November 30, 1977, in connection with the appeal by Mr. Arthur L. Butler from your denial of his claim for overtime compensation. That denial is sustained by our decision of today B-190803, copy attached.

Attachments