

DECISION



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

17567 Mr. Agazarian

FILE: B-199456

DATE: March 30, 1981

MATTER OF: Donna Berry REQUEST for compensation for traveltime]

DIGEST: Employee traveled by commercial air carrier on a legal holiday, Thanksgiving Day, where reservation for return travel on the previous day was canceled as a result of extension of administrative hearing at which employee appeared as a witness. Since the return travel did not result from an administratively uncontrollable event within the meaning of 5 U.S.C. 5542(b)(2)(B), and since it does not otherwise qualify as hours of employment under 5 U.S.C. 5542(b)(2)(A), employee is not entitled to pay under section 5542 or 5546 of title 5 for the traveltime involved.

This action concerns the request of Mr. Alfred M. Zuck, Assistant Secretary for Administration and Management, Department of Labor, as to whether Ms. Donna Berry, an employee of the Department's Occupational Safety and Health Administration, may be paid premium pay for time spent in travel on a holiday.

The record shows that in November 1979, Ms. Berry was on an official duty assignment in Springfield, Massachusetts, incident to her appearance as a witness in an administrative hearing. She had reservations for air travel on Wednesday, November 21, for her return to her official duty station in Columbus, Ohio. An extension of the hearing required that she cancel the return reservations. Because of the Thanksgiving holiday travel demand the only return reservations available were on Thursday November 22, Thanksgiving Day or on the following Tuesday.

The employee elected to travel on Thanksgiving Day, a legal holiday, and has submitted a claim for 7 1/2 hours of premium pay for travel on that day between the hours of 1:05 p.m. and 6:29 p.m. The agency advises that this claim is based on the employee's contention that this return travel resulted from an

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event which could not be controlled administratively because of the existing travel conditions at that time.

Section 5546 of title 5, United States Code, provides in pertinent part as follows:

"(b) An employee who performs work on a holiday designated by Federal statute, Executive order* * * is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for that holiday work which is not--

"(1) in excess of 8 hours; or

"(2) overtime work as defined by section 5542(a) of this title."

This section authorizes the payment of holiday premium pay for work performed on a holiday during the employee's regular tour of duty. Hours of work performed on a holiday outside the employee's regular duty hours would be compensable at overtime rates under the authority of 5 U.S.C. 5542. 50 Comp. Gen. 519, 524 (1971), 38 id. 560 (1959) and 37 id. 1 (1957).

Concerning whether traveltime is hours of employment for purposes of 5 U.S.C. 5542 as well as 5 U.S.C. 5546, subsection 5542(b)(2) provides in pertinent part as follows:

"(2) time spent in a travel status away from the official-duty station of any employee is not hours of employment unless-

"(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

"(B) 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 agency advises that the applicable labor-management agreement contains the following provision.

"When travel results from an event which cannot be scheduled or controlled administratively such travel is hours of employment for pay purposes"

The above provision essentially incorporates the language of 5 U.S.C. 5542 (b)(2)(B)(iv) concerning when traveltime is hours of employment.

The agency notes that although the Government has control over the scheduling of an administrative law judge's hearing, the development of a case is not necessarily within the Government's control. The agency asks that we consider the circumstances of Ms. Berry's travel to have been "administratively uncontrollable" in view of the unexpected delay, beyond its control, which prevented her return travel within her regular work hours.

The fact that an employee's scheduled return trip is canceled by an event outside the control of the agency is not itself determinative of whether such travel is hours of employment under 5 U.S.C. 5542 (b)(2)(B)(iv) as the phrase "could not be scheduled or controlled administratively" refers to the ability of an agency to control the event which necessitates an employee's travel. See 51 Comp. Gen. 727, 732 (1972). Thus, in order to meet the statutory requirement, the event which required the employee to return on a nonworkday must be one that cannot be scheduled or controlled administratively. James C. Holman, B-191045, July 13, 1978. We have held that an employee's mere presence on the next workday at the official

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duty station is not normally considered such an administratively uncontrollable event. Raymond Ratajczak, B-172671, April 21, 1976, and Holman, supra. The record does not indicate an uncontrollable event which necessitated Ms. Berry's return travel.

The agency notes that due to the unavailability of space on commercial air carriers, Ms. Berry would have been unable to return to her official duty station on her regularly scheduled workday, Friday, November 23, the day after Thanksgiving. The inability of an agency to schedule travel within an employee's regular working hours does not entitle the employee to compensation under 5 U.S.C. 5542(b)(2)(B) unless the circumstances of the travel meet the criteria set forth therein. See 55 Comp. Gen. 590 at 591 (1975) and Shirley B. Hjellum and Gary B. Humphrey, B-192184, May 7, 1979.

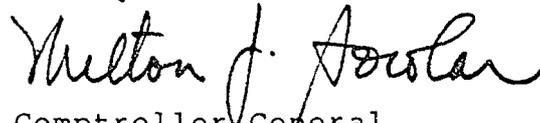
In view of the above, the time Ms. Berry spent traveling on Thanksgiving Day, did not result from an administratively uncontrollable event. Thus, such traveltime is not hours of employment under 5 U.S.C. 5542b(2)(B) and accordingly there is no entitlement under that provision to premium pay under 5 U.S.C. 5546.

Although it appears that part of Ms. Berry's travel may have been performed within the hours of her regularly scheduled administrative workweek, such traveltime on a holiday is not considered to be hours of employment under 5 U.S.C. 5542(b)(2)(A). This Office has held that such provision was intended to apply only to days on which an employee is "regularly scheduled" to work so that travel performed on a holiday, although within the employees' regularly scheduled administrative workweek, did not constitute hours of employment unless the employees were regularly scheduled to work on that particular holiday.

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46 Comp. Gen. 293 (1966). As the record does not show that Ms. Berry was regularly scheduled to work on Thanksgiving Day, traveltime on that day is not hours of employment under 5 U.S.C. 5542(b)(2)(A) and does not provide a basis for entitlement to premium pay under 5 U.S.C. 5546.

In accordance with the above, the employee's claim for premium pay for travel on a holiday may not be allowed.)



Acting Comptroller General
of the United States