

DECISION

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

FILE: B-199646**DATE:** August 11, 1981**MATTER OF:** Internal Revenue Service - Entitlement to Overtime Compensation for Traveltime Outside Working Hours**DIGEST:** Internal Revenue Service employees, whose return trips to their official duty stations were interrupted by snowstorm, resumed their return travel outside regular duty hours. They are not entitled to overtime compensation for traveltime since their travel did not meet any of the conditions set forth in 5 U.S.C. § 5542(b)(2)(B) (1976).

This action is in response to a request from D. S. Burckman, Director, Personnel Division, Internal Revenue Service (IRS), for our determination of the entitlement of certain IRS employees to compensatory time or overtime compensation for travel outside of their regular duty hours occasioned by a severe snowstorm in the vicinity of Denver, Colorado, which interfered with normal travel in that area on Friday, January 25, 1980. The employees, who have requested compensation for time spent in travel status outside their regular duty hours, were returning home from training or temporary duty assignments at the time of the storm.

The first of the three groups of employees consists of five employees who were attending a training class in Dallas, Texas. They were scheduled to leave Dallas at 2 p.m. on Friday, but their flight was delayed there for 2 hours. Because of the blizzard, the plane could not land in Denver, and instead it landed at the Salt Lake City Airport at 5:30 p.m. The employees waited there for 1 and 1/2 hours, after which they were sent to a motel for the night at the expense of the commercial carrier. They left the motel at 8 a.m. Saturday morning, departed from Salt Lake City at 9 a.m., and arrived in Denver at 11:15 a.m. Four of these employees who lived in Denver arrived home at approximately 12 noon on Saturday; the fifth employee, who lives in Grand Junction, took a 9 p.m. flight from Denver which arrived at 10:30 p.m. Saturday night. He arrived at home at approximately 11 p.m. Saturday.

In the next instance, a manager who was in travel status in Fresno, California, was scheduled to arrive in Denver at

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6 p.m. on Friday, but his flight was diverted to Omaha, Nebraska, due to the storm. He, too, was sent to a motel for the night at the expense of the airline. He left the motel at 11 a.m. Saturday morning and resumed his flight at 1 p.m., arriving in Denver at 2:30 p.m. and at home at 3:30 p.m. Saturday.

The third case involves an employee who was stationed at Fort Collins, Colorado, which is 65 miles north of Denver. He had traveled by privately-owned vehicle to Denver for a meeting scheduled on January 25. Although he was to have begun the return trip to Fort Collins on Friday at 3:30 p.m., he left at 2:30 p.m. because of the weather conditions. While he was en route, the Highway Patrol closed the highway at 3:15 p.m., requiring him to stay in a motel until Saturday morning when he was able to resume travel. He arrived in Fort Collins at 10:30 a.m. Saturday morning.

All of these employees are exempt from the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-19 (1976), and are, therefore, compensated for overtime work in accordance with the provisions of title 5, United States Code. Regarding time spent in travel status, section 5542 provides as follows:

"(b) For the purpose of this subchapter--

* * * * *

"(2) time spent in a travel status away from the official-duty station of an 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."

At issue here is whether, pursuant to subsection (B)(iii) or (iv), the travel of these employees was carried out under arduous conditions or resulted from an event which could not be scheduled or controlled administratively.

In the regulations implementing 5 U.S.C. § 5542, Federal Personnel Manual (FPM) Supplement 990-2, Book 550, subchapter S1-3, at page 550-8.02, "arduous travel" is defined as including travel over unusually adverse terrain or during severe weather conditions. The regulation further states that:

* * * Travel by automobile over a hard surfaced road when no unusually adverse weather conditions are encountered * * * would not normally constitute travel under arduous conditions."

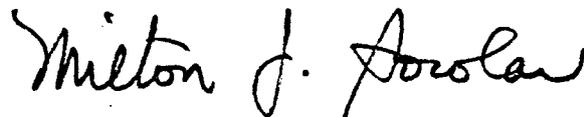
With regard to those employees who traveled by plane, it appears that the severe weather conditions interrupted their travel, but it cannot be said that their travel was carried out under arduous conditions since their flights were discontinued or diverted upon encountering the storm. The record indicates that when they resumed air travel the next morning, the arduous weather conditions had abated. Therefore, we conclude that they did not travel in arduous conditions. Robert J. Fitzgerald, B-195653, February 13, 1980.

Regarding the employee who traveled by automobile, the record indicates that the highways were closed when the weather conditions became extremely severe or unusually adverse. The fact that he was able to resume travel early the next morning indicates that the adverse conditions had subsided inasmuch as the highways had evidently been reopened. Although road conditions may have still been hazardous at the time he completed his trip, FPM Supplement 990-2, supra, provides that hazardous conditions do not necessarily constitute arduous conditions. Furthermore, in the absence of extremely unusual circumstances, travel by motor vehicle over hard-surfaced roads or by common carrier, including airlines, is not travel under arduous conditions, even though it may entail some risks. Nathaniel R. Ragsdale, 57 Comp. Gen. 43, 48 (1977). Thus, we conclude that this employee did

not travel under arduous conditions. See James C. Holman, B-191045, July 13, 1978; and 41 Comp. Gen. 82 (1961).

Likewise, the condition stated in clause 4 of 5 U.S.C. § 5542(b)(2)(B), travel resulting from an event which could not be scheduled or controlled administratively, is inapplicable to these employees. This provision refers, not to weather conditions, but to the ability of the agency or Government organization to control or schedule the events which necessitate the employees' travel at times outside their regular duty hours. See FPM Supplement 990-2, supra, at page 550-8.03. The record indicates no administratively uncontrollable event which required these employees to travel during the time for which they claim overtime compensation or compensatory time, as opposed to their traveling during regular duty hours.

Accordingly, these employees are not entitled to overtime compensation for travel outside their regular duty hours.



Acting Comptroller General
of the United States