

duty was from 5:30 to 11:30 a.m. Upon completion of the training course on the morning of March 18, Mr. Flory proceeded to the airport and departed at 2:35 p.m. on the first available flight to Detroit. Mr. Flory's flight arrived at the Detroit airport at 6:45 p.m. and he then proceeded by automobile and arrived at his residence at 8 p.m.

The agency advises that Mr. Flory traveled from Florida to Detroit as a passenger and neither he nor Local 2077 has disputed this statement. Furthermore, Mr. Flory traveled from the Detroit airport to his residence as a passenger since he states on his travel voucher that his wife drove.

Overtime for Federal employees is authorized by title 5, United States Code, and also by the Fair Labor Standards Act (Act), 29 U.S.C. 201 et seq. for employees who are not exempt from the Act. A nonexempt employee's entitlement to overtime compensation may be based on title 5, the Act, or both. The agency has denied the employee's claim for compensatory time on the basis that his travel-time did not constitute hours of work under either 5 U.S.C. 5542(b)(2)(B) or the Act, 29 U.S.C. 201 et seq.

Section 5542 of title 5, United States Code, provides in pertinent part 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--

\* \* \* \* \*

"(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."

An agency may grant compensatory time or pay overtime compensation under title 5, United States Code, for travel performed outside an employee's regular workday or workweek only if one or more of the conditions set forth in section 5542(b)(2)(B) have been met. There is nothing in the record which indicates that the conditions listed in items (i), (ii) or (iii) apply to Mr. Flory's travel. Similarly, there is no evidence that Mr. Flory's return travel on March 18, 1982, resulted from an administratively unscheduled or uncontrollable event. In order to meet the statutory requirement, the event which necessitated an employee's travel outside of his regular duty hours must have been one that could not have been scheduled or controlled administratively. Matter of Holman, B-191045, July 13, 1978. The record only shows that the purpose of the travel on March 18, 1982, was for the employee to return to the locality of his permanent duty station. An employee's mere presence at his permanent duty station is not normally considered an administratively uncontrollable event, even when the employee has been scheduled to work the following day. See Holman and Matter of Currier, 59 Comp. Gen. 95 (1979). Accordingly, Mr. Flory's time in a travel status during hours outside his regular workday on May 18, 1982, did not constitute hours of employment within the meaning of 5 U.S.C. 5542(b)(2)(B) and thus he is not entitled to payment of overtime compensation or to compensatory time off under title 5, United States Code.

The Fair Labor Standards Amendments of 1974, Public Law 93-259, approved April 8, 1974, extended FLSA coverage to certain Federal employees effective May 1, 1974. Under the Act nonexempt employees are entitled to overtime compensation for hours worked in excess of 40 hours a week which management "suffers or permits" to be performed. See para. 3c of Federal Personnel Manual (FPM) Letter No. 551-1, May 15, 1974. We note that there is no statutory provision under the Fair Labor Standards Act for granting compensatory time off in lieu of overtime pay. Thus, when an employee has not worked overtime under title 5, United States Code, he is not entitled to compensatory time off for overtime hours

of work under the Fair Labor Standards Act. See FPM Letter No. 551-6, June 12, 1975.

Time spent traveling outside the employee's regular working hours is "hours of work" under the Fair Labor Standards Act if a nonexempt employee (1) drives a vehicle or performs other work while traveling, (2) travels as a passenger on a one-day assignment away from the official duty station or (3) travels as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours. 5 C.F.R. 551.422 (1982). Also, see FPM Letter No. 551-10, April 30, 1976. As set forth above, Mr. Flory's claim for overtime is based on travel as a passenger on a workday during hours outside of his regular working hours incident to his return from an overnight assignment. Thus, his traveltime would not be compensable under the applicable criteria implementing the Fair Labor Standards Act unless he performed work while traveling. There is nothing in the record which would indicate that the employee performed work during his return travel. Accordingly, the time that the employee spent in a travel status on March 18, 1982, did not constitute hours of work under the Fair Labor Standards Act. We note that even if the time in travel status were hours of work under the Fair Labor Standards Act such work would not appear to have been compensable as overtime. The record indicates that under the Act Mr. Flory worked only 28-3/4 hours in the workweek which together with the claimed traveltime would total 35-1/4 hours. As stated above, the Fair Labor Standards Act provides entitlement to overtime for all hours of work in excess of 40 hours a week. See 5 C.F.R. 551.501 (1982) and para. 3c of FPM Letter No. 551-1, May 15, 1974.

In accordance with the above, Mr. Flory is not entitled to either compensatory time or overtime compensation for his traveltime on March 18, 1982.

*Milton J. Jordan*  
for Comptroller General  
of the United States

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548****FILE:** B-208829**DATE:** November 16, 1982**MATTER OF:** Roger D. Flory

**DIGEST:** Employee claims entitlement to compensatory time for 6-1/2 hours of travel as a passenger in connection with his return to his residence in the locality of his permanent duty station. The employee is not entitled to compensatory time off or to payment for overtime since his traveltime did not meet the criteria for hours of work under 5 U.S.C. 5542(b)(2)(B) or the Fair Labor Standards Act.

This action is in response to a request for an advance decision concerning the entitlement of Mr. Roger D. Flory, an employee of the Michigan Air National Guard, to compensatory time for time he spent in a travel status as a passenger while returning to his residence in the locality of his official duty station upon the completion of training in Florida. This matter has been jointly submitted by the Civilian Personnel Officer, Detachment 1, Headquarters Michigan Air National Guard, Selfridge Air National Guard Base, Michigan, and the Chief Steward of American Federation of Government Employees Local 2077 under our procedures set forth at 4 C.F.R. Part 22 (1982) for decisions on appropriated fund expenditures which are of mutual concern to agencies and labor organizations. For the reasons set forth below the time which the employee spent on travel outside of his regular duty hours did not qualify as hours of work under either 5 U.S.C 5542(b)(2)(B) or the Fair Labor Standards Act, 29 U.S.C. 201 et seq. Accordingly, he is not entitled to either compensatory time or to the payment of overtime compensation.

The record shows that Mr. Flory, a Flight Engineer Instructor, grade GS-9, has been designated a nonexempt employee for purposes of the Fair Labor Standards Act. On Sunday March 14, 1982, Mr. Flory departed his residence in Sterling Heights, Michigan, to attend a Flight Simulator training course which began the following morning. During the period of his training Mr. Flory's daily tour of

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duty was from 5:30 to 11:30 a.m. Upon completion of the training course on the morning of March 18, Mr. Flory proceeded to the airport and departed at 2:35 p.m. on the first available flight to Detroit. Mr. Flory's flight arrived at the Detroit airport at 6:45 p.m. and he then proceeded by automobile and arrived at his residence at 8 p.m.

The agency advises that Mr. Flory traveled from Florida to Detroit as a passenger and neither he nor Local 2077 has disputed this statement. Furthermore, Mr. Flory traveled from the Detroit airport to his residence as a passenger since he states on his travel voucher that his wife drove.

Overtime for Federal employees is authorized by title 5, United States Code, and also by the Fair Labor Standards Act (Act), 29 U.S.C. 201 et seq. for employees who are not exempt from the Act. A nonexempt employee's entitlement to overtime compensation may be based on title 5, the Act, or both. The agency has denied the employee's claim for compensatory time on the basis that his travel-time did not constitute hours of work under either 5 U.S.C. 5542(b)(2)(B) or the Act, 29 U.S.C. 201 et seq.

Section 5542 of title 5, United States Code, provides in pertinent part as follows:

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

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

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"(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."

An agency may grant compensatory time or pay overtime compensation under title 5, United States Code, for travel performed outside an employee's regular workday or workweek only if one or more of the conditions set forth in section 5542(b)(2)(B) have been met. There is nothing in the record which indicates that the conditions listed in items (i), (ii) or (iii) apply to Mr. Flory's travel. Similarly, there is no evidence that Mr. Flory's return travel on March 18, 1982, resulted from an administratively unscheduled or uncontrollable event. In order to meet the statutory requirement, the event which necessitated an employee's travel outside of his regular duty hours must have been one that could not have been scheduled or controlled administratively. Matter of Holman, B-191045, July 13, 1978. The record only shows that the purpose of the travel on March 18, 1982, was for the employee to return to the locality of his permanent duty station. An employee's mere presence at his permanent duty station is not normally considered an administratively uncontrollable event, even when the employee has been scheduled to work the following day. See Holman and Matter of Currier, 59 Comp. Gen. 95 (1979). Accordingly, Mr. Flory's time in a travel status during hours outside his regular workday on May 18, 1982, did not constitute hours of employment within the meaning of 5 U.S.C. 5542(b)(2)(B) and thus he is not entitled to payment of overtime compensation or to compensatory time off under title 5, United States Code.

The Fair Labor Standards Amendments of 1974, Public Law 93-259, approved April 8, 1974, extended FLSA coverage to certain Federal employees effective May 1, 1974. Under the Act nonexempt employees are entitled to overtime compensation for hours worked in excess of 40 hours a week which management "suffers or permits" to be performed. See para. 3c of Federal Personnel Manual (FPM) Letter No. 551-1, May 15, 1974. We note that there is no statutory provision under the Fair Labor Standards Act for granting compensatory time off in lieu of overtime pay. Thus, when an employee has not worked overtime under title 5, United States Code, he is not entitled to compensatory time off for overtime hours

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In accordance with the above, Mr. Flory is not entitled to either compensatory time or overtime compensation for his traveltime on March 18, 1982.

*for Milton J. Fowler*  
Comptroller General  
of the United States