

DECISION

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

FILE: B-218519

DATE: *October 15, 1985*

MATTER OF: Curtis N. Anderson - Request for Overtime
for Standby Duty at Home - Fair Labor
Standards Act

DIGEST:

A federal employee at a dam reservation claims overtime compensation for standby duty since he was required to live in government-owned housing on the dam site, respond to phone calls after hours and monitor the water elevation at the site. Such off-duty time is not compensable under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., since there is nothing in the record to indicate that his off-duty hours were so severely restricted so as to entitle him to overtime compensation under the Act.

This is in response to a request for a decision pursuant to 4 C.F.R. § 22 (1985), from the National Federation of Federal Employees (NFFE), on behalf of Curtis N. Anderson, a civilian employee of the Department of the Army, Corps of Engineers (Corps), Baltimore District. Mr. Anderson, who is employed as a maintenance worker at the Alvin R. Bush Dam, claims he is entitled to standby pay. This claim is for backpay from the time Mr. Anderson began working at the Bush Dam site (approximately 1984) to the present time.

Mr. Anderson is required to live in government-owned housing at the reservoir and be on duty call at all times. He has a government telephone in this residence, and receives calls after normal duty hours. Sometimes he must perform work in response to these calls, and it is the Corps' practice to allow him to claim overtime for work performed under such circumstances. Most importantly, Mr. Anderson must monitor the rainfall in the region and be prepared to follow emergency procedures if the water level at the dam rises to a predetermined height. He is, however, not restricted to his residence after normal duty hours, and the water elevation at the dam can be checked by phone, by means of a "telemark" service which monitors the lake elevation by satellite.

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The NFFE contends that since Mr. Anderson is required to live in government-owned housing, and be available for duty 24 hours a day, he is therefore entitled to standby pay. The NFFE cites as its authority for standby pay certain provisions of title 5 of the Code of Federal Regulations promulgated by the Office of Personnel Management (OPM) pursuant to the Fair Labor Standards Act (FLSA). 29 C.F.R. §§ 201-219 (1982). The provisions cited by NFFE in 5 C.F.R. § 551.431 (1984) state that:

"(a) An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:

"(1) The employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or

"(2) The employee, although not restricted to the agency's premises:

(i) Is restricted to his or her living quarters or designated post of duty;

(ii) Has his or her activities substantially limited; and

(iii) Is required to remain in a state of readiness to perform work."

There is no indication that Mr. Anderson is receiving annual premium pay for standby duty under the provisions of 5 U.S.C. § 5545(c)(1) (1982). Since the NFFE relies upon certain provisions promulgated by OPM pursuant to its authority under the FLSA, we will treat the submission as a request for overtime under that Act.

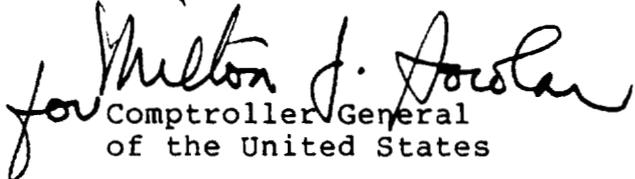
Under the FLSA an employee is either on duty or off duty. The Act does not recognize a semi-duty status such as standby duty. Therefore, it is necessary to determine whether the employee's off duty time is compensable as hours

of work under the FLSA. The OPM has published guidelines to help agencies determine whether the employee's off-duty time can be considered as hours of work. These provisions are found in 5 C.F.R. § 551.431, cited by the NFFE, and provide that in order for an employee to be considered working for purposes of the FLSA: (1) his whereabouts must be narrowly limited; (2) his activities substantially restricted; (3) he must be required to remain at his living quarters; and (4) remain in a state of readiness to answer calls for his service. See also FPM Letter 551-14, May 15, 1978.

The mere fact that an employee is required to live in government quarters would not qualify him for FLSA overtime. His off-duty movements and activities must be severely restricted. See Daniel W. McConnell, 61 Comp. Gen. 301 (1982).

Mr. Anderson has not furnished any proof that his normal off-duty time was so severely restricted so as to entitle him to FLSA overtime. Although Mr. Anderson often received calls at home, and was required to make monitoring phone calls to ascertain water elevation at the dam site, the fact remains that his time at home was predominantly for his own benefit. The Corps says that there is no requirement that restricts the employee to the site. He is not required to carry an electronic device for the purpose of being contacted, nor does he have to leave a telephone number where he can be reached. Although he is required to be available during times of high water, he can check this by telephone, and he is otherwise free to come and go as he pleases. Further, in the event that he is required to perform work in response to a call or an emergency during normal off-duty time, he is paid overtime.

Accordingly, we conclude that Mr. Anderson is not entitled to overtime compensation under the FLSA for the period in question.


Comptroller General
of the United States