



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Civilian Aircraft Pilots - Fair Labor Standards Act - Application of Claims Court Judgment
File: B-203128
Date: June 2, 1987

DIGEST

1. Employees sought retroactive overtime compensation under the Fair Labor Standards Act (FLSA). By decision Civilian Aircraft Pilots, 61 Comp. Gen. 191 (1982), the General Accounting Office (GAO) declined to consider the merits of these claims since the Office of Personnel Management (OPM) found the employees exempt from FLSA coverage and GAO will not review OPM determinations of exempt/nonexempt status under FLSA. The employees now seek reconsideration of that decision because the United States Claims Court overturned the OPM finding and determined that they were nonexempt under FLSA and entitled to overtime compensation under that statute. Walter D. Sabey, et al. v. United States, 6 Cl. Ct. 36 (1984). In view of that decision, the GAO will now consider these claims on their merits. Our decision in Civilian Aircraft Pilots, above, is modified only as to these employees.

2. Fair Labor Standards Act (FLSA) claims which are filed with the General Accounting Office (GAO) are subject to the 6-year statute of limitations under 31 U.S.C. § 3702(b)(1), in contrast to the 2-year time limitation on "actions at law" under the FLSA. Where by court action an employee has established his right to retroactive overtime compensation under the FLSA for the 2-year period prior to the date the complaint was filed and has previously filed a claim here, additional amounts found due may be paid for an earlier period, but not before 6 years prior to the date such claim was filed with the GAO.

DECISION

This decision is in response to correspondence from Mr. James M. Peirce, President, National Federation of Federal Employees (NFFE), asserting a claim on behalf of

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nine civilian employees^{1/} of the United States Army, Fort Monmouth, New Jersey, to receive additional retroactive payment for overtime under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq. (1982). We hold that the claimants, except for Thomas S. Casagrande and Thomas F. McNamara, are entitled to the retroactive payments for the following reasons.

BACKGROUND

By a letter of April 24, 1981, received here April 30, 1981, the NFFE sought to stay the running of the Barring Act, 31 U.S.C. § 3702(b)(1) (1982), as applied to the FLSA claims of the nine claimants. They also sought a determination by this Office of the FLSA "exempt/nonexempt" status of the claimants. Accompanying that letter were authorizations executed by seven of the nine claimants naming NFFE as their representative for purposes of pursuing these FLSA claims.^{2/} Therefore, such FLSA claims as the seven claimants whose representation authorizations were included with the claim may have had, which were cognizable by this Office and which accrued from April 30, 1975, onward, were protected from the application of the 6-year Barring Act.

In our decision Civilian Aircraft Pilots, 61 Comp. Gen. 191 (1982), rendered in this case, we held that the Office of Personnel Management (OPM) had the exclusive administrative jurisdiction to determine whether employees were covered by various provisions of the FLSA. Since OPM had determined that the employees in question were exempt from FLSA overtime coverage, there was no basis for this Office to review that determination or further consider their claims for backpay.

On February 18, 1983, 12 plaintiffs initiated litigation in the United States Claims Court on the issue of the correctness of the ruling by OPM that they were exempt under FLSA. Eight of the plaintiffs named were on the list of names

^{1/} These employees are: Walter D. Sabey, Bissell E. McElyea, Edward J. Sumek, Thomas F. McNamara, Thomas S. Casagrande, Thomas L. Cameron, George W. Dunn, Robert H. Leymann, and John F. Morrissey.

^{2/} The two whose authorization were not included were Thomas F. McNamara and Thomas S. Casagrande.

submitted here by the NFFE.^{3/} The Court ruled in that case that OPM was in error and that the plaintiffs were nonexempt for purposes of FLSA overtime pay. The Court awarded overtime backpay commencing February 18, 1981, which was 2 years prior to the date the complaint was filed.^{4/}

Based on our decision Transportation Systems Center, 57 Comp. Gen. 441 (1978), in which we held that our 6-year Barring Act, not the 2-year FLSA limitation applied to FLSA claims filed with this Office, the NFFE now seeks additional overtime backpay for the period prior to February 18, 1981.

OPINION

Since our earlier decision in this case, Civilian Aircraft Pilots, above, declined to review the OPM finding that the claimants were exempt under FLSA, we never reached the merits of the claims. In its ruling, the Claims Court, in essence, found that from the time the FLSA was first made applicable to Federal employees (May 1, 1974), the claimant pilots should have been classified as nonexempt for the purposes of FLSA. Because the Claims Court heard extensive testimony from all parties and thoroughly considered the "exempt/nonexempt" issue, we hereby adopt the Court's holding and find that, to the extent allowed by our Barring Act, all of the claimants, except Casagrande and McNamara, are entitled to backpay for FLSA overtime worked prior to February 18, 1981. Our prior decision Civilian Aircraft Pilots, above, is hereby modified only to the extent it applies to these claimants. This Office still does not review decisions by OPM on an employee's exempt/nonexempt status under FLSA. We must now determine what time limitations are applicable to the individual claimants.

^{3/} They were: Sabey, McElyea, McNamara, Casagrande, Cameron, Dunn, Leymann, and Morrissey.

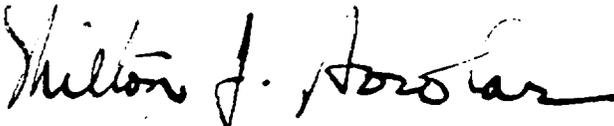
^{4/} In Walter D. Sabey, et al v. United States, 6 Cl. Ct. 36 (1984), judgment was entered for all of the claimants listed in footnote 3 except McElyea and McNamara. This judgment confirmed the decision rendered from the bench by Judge H. Robert Mayer, on May 24, 1984.

In our decision Transportation Systems Center, above, we held that although there is a time limitation on "actions at law" under the FLSA, there is no specific statutory time limitation within which FLSA claims must be filed with the General Accounting Office. We held that the time limit under our 6-year Barring Act, presently 31 U.S.C. § 3702(b)(1), applied. However, we went on to say that the 6-year limitation period is not tolled until a claim has been filed with our Office and that the filing of a claim with the employing agency or other activity of the Federal Government does not toll the running of the statute.

An organization such as the NFFE is permitted to file claims with this Office on behalf of its members. However, 4 C.F.R. § 11.4 requires that such claim be supported by appropriate documentary evidence of its authority to act. Under 4 C.F.R. § 11.4, a simple written declaration signed by a claimant authorizing the agent to act for him and submitted here with the filed claim is acceptable.

In the present case, the claim filed by NFFE with this Office was received here on April 30, 1981, and contained representation authorizations signed by Messrs. Sabey, McElyea, Sumek, Cameron, Dunn, Leymann and Morrissey. Therefore, such additional FLSA overtime backpay entitlement they have may be paid for the period April 30, 1975, through February 17, 1981.

Such payment authorization, however, does not apply to Messrs. McNamara and Casagrande. No claims over the signature of those individuals or signed representation authorizations have been received here. Thus, the Barring Act continues to run against them.

for 
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