



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Louis R. Crooks - Overtime Compensation
File: B-229193
Date: December 11, 1987

DIGEST

1. Claim for overtime compensation is time-barred under 31 U.S.C. § 3702(b)(1) to the extent that it accrued more than 6 years before it was received by the General Accounting Office (GAO). Filing of a claim with the employing agency does not toll the running of the limitation period, nor is the limitation period affected by the employing agency's delay in processing the claim and forwarding it to GAO.

2. Record is insufficient to establish entitlement to overtime compensation under 5 U.S.C. § 5544 in the absence of clear evidence that the claimant employee was either officially required or was affirmatively authorized or induced to work overtime hours. The claimant's mere statements to this effect, which are not corroborated by agency records or the statements of his supervisors, do not satisfy the claimant's burden of proof.

DECISION

Mr. Louis R. Crooks, a civilian employee of the Department of the Army, has appealed a settlement by our Claims Group, Z-2864556, dated July 1, 1987, which denied his claim for overtime compensation for work performed on several occasions from 1979 through 1984. We affirm the Claims Group's denial of Mr. Crooks' claim.

BACKGROUND

During the period relevant to his claim, Mr. Crooks was employed by the Department of the Army as a grade WS-5 Transportation Warehouse Supervisor at Fort Jackson, South Carolina. In connection with the so-called "Exodus Program," which evidently involved large troop movements by rail from Fort Jackson, Mr. Crooks contends that he performed overtime work on the following occasions:

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December 18, 1979: From 0300 to 0730 hours and 1615 to 2345 hours.

December 18, 1980: From 0300 to 0730 hours and 1615 to 0005 hours.

December 17, 1981: From 0530 to 0730 hours and 1615 to 2315 hours.

December 16, 1982: From 0530 to 0730 hours and 1615 to 2253 hours.

December 20, 1983: From 0530 to 0730 hours and 1615 to 2248 hours.

December 19, 1984: From 0430 to 0730 hours and 1615 to 0003 hours.

In its July 1, 1987 settlement, the Claims Group concluded that since GAO did not receive Mr. Crooks' claim until September 16, 1986, that portion of his claim for overtime work performed on December 18, 1979, was barred from consideration by the 6-year statute of limitations contained in 31 U.S.C. § 3702(b)(1) (1982). The Claims Group denied the remaining portions of Mr. Crooks' claim on the basis that the record was not sufficient to establish his entitlement to overtime compensation. It noted that, according to statements by the agency, Mr. Crooks was an "exempt" employee not eligible for overtime compensation under the provisions of the Fair Labor Standards Act; overtime had never been officially ordered or approved for him; and he apparently had been granted compensatory time off for most of the hours for which he now claimed overtime pay.

In his appeal of the Claims Group's settlement, Mr. Crooks asserts, with regard to the statute of limitations issue, that he had submitted his claim to the Department of the Army within the 6-year period and that Fort Jackson kept the claim for some time before sending it on to GAO. Concerning the remainder of his claim, Mr. Crooks categorically denies the statements made by the Army officials. Specifically, he asserts that he worked overtime hours pursuant to orders from his supervisors. He further asserts that, contrary to the statements by his supervisors, he was never granted compensatory time off for the overtime hours he worked.

ANALYSIS AND CONCLUSIONS

The Claims Group was correct in concluding that the 1979 portion of Mr. Crooks' claim is barred by the statute of limitations. Section 3702(b)(1) of title 31, United States Code, provides in relevant part:

"A claim against the Government presented under this section . . . must be received by the Comptroller General within 6 years after the claim accrues . . . "

A claim for overtime compensation accrues at the time that the overtime was performed. Thus, Mr. Crooks' claim was received by our Office more than 6 years after the 1979 portion of his claim accrued. The running of the statute of limitations is not tolled by filing a claim with the employing agency, nor is the running of the limitation period affected by delays in processing the claim within the agency prior to its submission to our Office. See e.g., Edward J. Reed, Mar. 5, 1985; Jerry L. Courson, B-200699, Mar. 2, 1981.

For the reasons discussed hereafter, the Claims Group was also correct in rejecting on the merits the remaining portions of Mr. Crooks' overtime claim.

As noted previously, the agency specifically stated that Mr. Crooks was an "exempt" employee who was not subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. Accordingly, he is not entitled to overtime compensation under that Act; instead, his entitlement to overtime compensation is governed by the applicable provisions of title 5, United States Code. See Carl L. Haggins, B-216952, Oct. 18, 1985. As a prevailing rate employee, Mr. Crooks is subject to 5 U.S.C. § 5544 (1982), which provides in part:

"(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours in a day or 40 hours in a week . . ."

Office of Personnel Management regulations implementing this section define "overtime work" as meaning "authorized and approved hours of work performed by an employee in excess of eight hours in a day or in excess of 40 hours in an administrative workweek . . . " 5 C.F.R. § 532.501 (1987) (Emphasis supplied). Likewise, the courts have held that in

order to be compensable under 5 U.S.C. § 5544 overtime hours must have been authorized or approved by an appropriate government official. See Baker v. United States, 218 Ct. Cl. 602 (1978); Gaines v. United States, 158 Ct. Cl. 497, 500, cert. denied, 371 U.S. 936 (1962).

Along the same lines, our decisions addressing overtime entitlements for General Schedule employees under 5 U.S.C. § 5542 (1982)^{1/} have held that, while there need not be an express order or approval for overtime, an authorized supervisory official must at least actively induce the employee to perform overtime. Mere knowledge on the part of a supervisor that overtime work is being performed or even a "tacit expectation" that overtime will be performed is not sufficient to establish the requisite approval. See e.g. Carl L. Haggins, cited above; Emma A. Welsh, B-214880, Sept. 25, 1984.

In the present case Mr. Crooks has presented no evidence beyond his own assertions that his claimed overtime was authorized or approved by his supervisors. The record contains a statement by each of the three individuals who supervised Mr. Crooks during the periods relevant to his claim. While the supervisors' statements do not take issue with Mr. Crooks' assertion that he actually worked the hours he claims, they give no indication of having ordered, requested or approved overtime. The most the statements indicate is that Mr. Crooks may well have worked the hours he claims, but probably would have been granted (apparently informally) compensatory time off for any such overtime hours. The time records submitted by Mr. Crooks do not show that he received any compensatory time off for the periods in question. By the same token, however, they do not indicate that he worked overtime hours on the days he claims to have done so.

Therefore, we are left essentially with Mr. Crooks' unsubstantiated statements that he in fact worked certain overtime hours under orders from his supervisors. We cannot allow Mr. Crooks' claim on the basis of these mere assertions. As the Claims Group pointed out in its settlement,

^{1/} Unlike section 5544 of title 5, which applies to overtime for prevailing rate employees such as Mr. Crooks, section 5542, the General Schedule overtime provision, expressly refers to "hours of work officially ordered or approved" in excess of 40 in an administrative workweek or 8 in a day. However, as noted previously, the concept of official authorization or approval has been applied under section 5544 as well by the implementing regulations and judicial precedents.

the burden is on the claimant to establish the liability of the government and his right to payment. See 4 C.F.R. § 31.7 (1987). Mere assertions of overtime hours actually worked coupled with indefinite statements on the part of former supervisors cannot establish an entitlement to overtime. See George E. Gilmore, B-188238, May 20, 1977.

Accordingly, the Claims Group's denial of Mr. Crooks' claim for overtime compensation is affirmed.

for Milton L. Fowler
Comptroller General
of the United States