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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: William K. Knotts

File: B-248232

Date: September 22, 1992

DIGEST

1. A retired wage board employee claims compensation for 5,371 hours of overtime work he allegedly performed over an approximate 4-year period. The employee may not be paid overtime under 5 U.S.C. § 5544 (1988), since he has not met his burden of proving that the overtime work was authorized or approved or that there was inducement on the part of the supervisor for the employee to perform the overtime work. 4 C.F.R. § 31.7 (1992).

2. A retired wage board employee claims compensation for 284 hours of annual leave which was forfeited over an approximate 4-year period. The employee did not schedule the use of his annual leave in writing before the start of the third biweekly pay period prior to the end of the leave years in question. See 5 C.F.R. § 630.308 (1992). Further, the employee's use of his annual leave was never approved in writing by his supervisor. 5 U.S.C. § 6304(d)(1)(B) (1988). The employee also claims compensation for 324 hours of annual leave which he signed for and allegedly did not use. There is no supporting evidence of record to substantiate that the employee actually worked on the days in question.

DECISION

This decision is in response to an appeal by Mr. William K. Knotts, a retired employee of the Air Force Commissary Service, Department of the Air Force, of the settlement by our Claims Group, Z-2867013, dated November 8, 1991, which denied his claim for compensation for 5,371 hours of overtime work and 608 hours of annual leave for the period from July 1, 1984, through March 5, 1988.¹ With respect to the annual leave, compensation is claimed for 284 hours which

¹Although his claim was not received in GAO until Feb. 11, 1991, it was timely filed with the employing agency on March 8, 1988. See 4 C.F.R. § 31.5(a) (1992), as amended Dec. 19, 1989, 54 Fed. Reg. 51867.

was forfeited, and 324 hours during which Mr. Knotts claims that he worked but the time was charged to annual leave. For the reasons stated below, the claims are denied.

BACKGROUND

The record discloses that during the period under consideration, Mr. Knotts was a civilian wage board employee, Meat Cutter Foreman, in the commissary sales store, Shaw Air Force Base, South Carolina. His position was classified by the Department of the Air Force as exempt under the Fair Labor Standards Act (FLSA).²

Mr. Knotts claims he is entitled to compensation for 5,371 hours of overtime and 608 hours of annual leave, totaling \$108,645.33. The annual leave claim consists of 284 hours of annual leave which were forfeited over an approximate 4-year period, and an estimated 324 hours of annual leave for those days Mr. Knotts alleges that he was scheduled to be off but had to work because of equipment malfunction or employees taking sick or annual leave.

The cornerstone of Mr. Knotts' claim is that his immediate supervisor, Senior Master Sergeant Anthony W. Fields, had knowledge that Mr. Knotts was working overtime and had forfeited annual leave during the period in question, condoned the working of the overtime, and did not take any affirmative action to stop Mr. Knotts from working overtime. Affidavits submitted by Mr. Knotts' coworkers show that he worked long hours (in excess of 8 hours) on each day he was scheduled to work and that he also worked on Mondays, his offday.

In another affidavit, Mr. Robert J. Fournier, previously a commissary manager and who later worked in the regional office of the commissary service in South Carolina from 1984 through 1987, states that he was very familiar with the numerous requests made by Mr. Knotts for additional employees in the commissary in Charleston. Mr. Fournier states that he was aware of the number of extra hours worked by Mr. Knotts. He says that he warned his superiors in the Air Force Commissary Service about the abuse of overtime by Mr. Knotts' supervisors. Mr. Fournier states that the commissary service was aware of Mr. Knotts working overtime but not being paid and that it appeared to him that the supervisors were taking advantage of the situation.

²Mr. Knotts challenged his status as an exempt employee and claimed overtime under FLSA. Our Claims Group correctly stated that exemption status is determined by the Office of Personnel Management and not by our Office. 29 U.S.C. § 204(f) (1988); see Morris Norris, 69 Comp. Gen. 17 (1989).

As to the forfeiture of annual leave, Mr. Knotts argues that the fact that he did not schedule the use of the leave in advance must necessarily take into consideration the exigencies of the public business. He alleges malfeasance on the part of his supervisors in expecting him to perform work which could not be accomplished during regular working hours and indicating that failure to work overtime would adversely affect his performance rating.

Mr. Knotts has submitted a typewritten list of the months, days, and dates on which the stated hours of regular and overtime work were performed as proof of the number of overtime hours he worked during the period in question.

The Air Force contends that, although management officials and Mr. Knotts' coworkers recalled that he worked overtime, there is no evidence to support the conclusion that management officially ordered or approved this overtime work as required by 5 C.F.R. §§ 532.501 and 532.503(a)(1) (1992). The agency argues that since Mr. Knotts occupied a supervisory position prior to his retirement, and the record shows that he was "very meticulous" about the workers in his shop not making overtime, it is apparent that he was aware of the requirements for ordering and approving overtime.

In his affidavit, Senior Master Sergeant Fields states that, as indicated on Mr. Knotts' time and attendance cards during the period under consideration, Mr. Knotts did work overtime on some occasions when he, Sergeant Fields, directed him to do so and it usually occurred when there were special requirements, i.e., scheduled inventories, case-lot sales, and similar events. Sergeant Fields states that he was aware that Mr. Knotts was working overtime on some other occasions, but that he did so without prior approval. Sergeant Fields stated that he did not recall any instances where Mr. Knotts requested approval of overtime work which was disapproved.

With respect to the forfeiture of annual leave, Sergeant Fields avers that Mr. Knotts was never denied the use of annual leave. He states that when Mr. Knotts was in a situation in which he could potentially lose annual leave, he made it a point to urge Mr. Knotts to schedule the use of such leave so that he would not lose it. Sergeant Fields states that Mr. Knotts never approached him, formally or informally, on restoring his forfeited annual leave.

Mr. Knotts filed a grievance on his claims that was eventually denied by the Air Force Civilian Appellate Review Agency.

OPINION

Under the provisions of 5 U.S.C. § 5544(a) (1982), a wage board employee is entitled to overtime when an official with competent authority orders or approves hours of work in excess of 8 hours a day or 40 hours a week. Therefore, the determinative issue presented is whether the work for which Mr. Knotts seeks overtime compensation was work officially ordered or approved within the meaning of section 5544 and the implementing regulations, 5 C.F.R. §§ 532.501 and 532.503(a) (1) (1992).

The standards to be utilized in determining whether overtime work was properly ordered or approved have been set forth by the United States Claims Court in Baylor v. United States, 198 Ct. Cl. 331 (1972). The court in Baylor examined a range of situations from a regulation specifically requiring overtime to the situation where there is only a "tacit expectation" that overtime is to be performed, and the court indicated that such a tacit expectation does not constitute an official order or approval of the overtime. Based on Baylor, we have held that only where there is "more than a tacit expectation" that overtime be performed or employees have been "induced" by their supervisors to perform overtime work in order to effectively complete their assignments will overtime work be deemed to have been officially ordered or approved.³

In this case, Mr. Knotts has not met his burden of proving that he was affirmatively authorized or approved to work overtime or that he was induced to work overtime during the period of the claim. The record contains contradictory statements from various individuals. Based on our review of these statements and the other evidence submitted, we find that the evidence presented by the claimant is insufficient to overcome the conflicting statements of the Air Force's witnesses. Since, under 4 C.F.R. § 31.7 (1992), the burden of proof is on the claimant to establish his right to payment, Mr. Knotts' claim for overtime pay must be denied.⁴

With respect to 284 hours of annual leave which was forfeited by Mr. Knotts, the record does not disclose that Mr. Knotts scheduled the use of this annual leave in writing before the start of the third biweekly pay period prior to the end of the leave years in question.⁵ Further, this

³Ronald L. Barnhart, 68 Comp. Gen. 385 (1989); 55 id. 55 (1975); 53 id. 489 (1974).

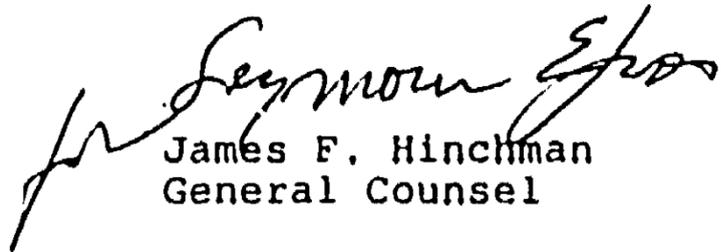
⁴See George E. Gilmore, B-188238, May 20, 1977.

⁵See 5 C.F.R. § 630.308 (1992).

Office has held that where the employee's use of his annual leave was never approved in writing by his supervisor, it was not scheduled in advance within the meaning of 5 U.S.C. § 6304(d)(1)(B) (1988) (exigencies of the public business).⁶

As to the 324 hours of annual leave which Mr. Knotts states that he signed for, but worked on those days, there is no evidence, other than his assertions, to substantiate that he actually worked on the days in question.

Accordingly, Mr. Knotts' claim for compensation for 5,371 hours of overtime work and 608 hours of annual leave for the period from July 1, 1984, through March 5, 1988, is denied. The settlement action by our Claims Group is affirmed.


James F. Hinchman
General Counsel

⁶See George H. Mikos, B-245117, Jan. 21, 1992; aff'd. on reconsideration, June 19, 1992; Rikka Pulliam, B-229228, Jan. 21, 1988.