

DECISION

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

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FILE:

B-164689

DATE:

MAR 26 1976

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MATTER OF:

Jacqueline Bailey - Entitlement to overtime
or compensatory time off

DIGEST:

Where employee of U. S. Marshals Service receives premium pay on an annual basis for administratively uncontrollable overtime and performs administratively scheduled irregular overtime for 2-1/2 hours in connection with training course, claim for time and one-half overtime compensation or compensatory time off is disallowed since 5 U. S. C. § 5545(c)(2) (1970) and implementing regulations provide that employees receiving premium pay on an annual basis receive such pay in lieu of all other forms of premium compensation for irregular or occasional overtime.

This action is in response to a letter dated October 8, 1975, from the Assistant Attorney General for Administration, an authorized certifying officer for the Department of Justice, requesting a decision as to whether Ms. Jacqueline Bailey, an employee of the United States Marshals Service, is entitled to time and one-half overtime compensation or, alternatively, compensatory time off, for 2-1/2 hours work performed in connection with a training course at the U. S. Marshals Service headquarters.

The record shows that at all times pertinent to this inquiry, Ms. Bailey was receiving premium pay on an annual basis for administratively uncontrollable overtime. After having worked 10-1/2 hours on April 16, 1975, Ms. Bailey was ordered to perform an additional 2-1/2 hours work in connection with a training course being held at the U. S. Marshals Service headquarters. Subsequently, she claimed time and one-half overtime pay for the additional 2-1/2 hours and, when that request was denied, requested alternatively that she be granted compensatory time off. This request was also denied. The Assistant Attorney General for Administration seeks a ruling as to the propriety of both determinations.

Section 5545(c) of title 5, United States Code (1970), provides with regard to compensation for administratively uncontrollable overtime work as follows:

"(c) The head of an agency, with the approval of the Civil Service Commission

"(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is determined as an appropriate percentage, not less than 10 per centum nor more than 25 per centum, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10, by taking into consideration the frequency and duration of irregular unscheduled overtime duty required in the position." (Emphasis added.)

Section 550.163(b) of title 5, Code of Federal Regulations (1975), provides as follows:

"(b) An employee receiving premium pay on an annual basis under § 550.151 [administratively uncontrollable overtime compensation] may not receive premium pay for irregular or occasional overtime work under any other section of this subpart. An agency shall pay the employee in accordance with other sections of this subpart for regular overtime work * * *."

Thus, both the statute, 5 U.S.C. § 5545(c), and implementing regulations, 5 C.F.R. §§ 550.151-550.164, contemplate that, with the exception of premium compensation payable for regularly scheduled overtime duty, employees who qualify for and receive premium pay on an annual basis for administratively uncontrollable overtime, receive such premium pay in lieu of all other forms of premium compensation--including that otherwise payable under 5 C.F.R. § 550.111 (1975) for irregular or occasional overtime. See 48 Comp. Gen. 334 (1968). However, the fact that 5 U.S.C. § 5545(c)(2) requires that the employee's hours of duty "generally" not be subject to administrative control does not convert irregular

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or occasional overtime to the additionally compensable category of "regularly scheduled overtime" when circumstances occasionally require directed overtime for short periods of time. B-168048, August 19, 1970. Additionally, it is well established that the term "regularly scheduled overtime" refers to work which is duly authorized in advance and scheduled to recur on successive days or after specified intervals as distinguished from overtime which is scheduled on a day-to-day or hour-to-hour basis and where the amount of overtime varies with no discernible pattern. 48 Comp. Gen. 334 (1968); 52 Comp. Gen. 319, 322 (1972).

In the present case, the 2-1/2 hours overtime work was not performed pursuant to a determination by the employee that additional work was required; instead, Ms. Bailey's supervisor determined that circumstances required the overtime and, accordingly, scheduled its performance at a specified date, place, and time. However, there is no indication that the overtime assignment was scheduled to recur on successive days or after specified intervals. To the contrary, from all indications in the record, the overtime in question was not scheduled to recur at all.

Under these circumstances and in view of the short period of time involved, there is no basis for regarding the overtime performed in connection with the training course as "regularly scheduled overtime." Since Ms. Bailey's entitlement to time and one-half overtime compensation as supplementary to the premium pay she received by reason of qualifying for administratively uncontrollable overtime compensation is dependent on the existence of regular scheduled overtime, the absence thereof precludes the requested additional entitlement and the claim therefor is disallowed.

Ms. Bailey alternatively seeks compensatory time off for the overtime in question. Since, as explained above, premium compensation for administratively uncontrollable overtime is in lieu of all other forms of premium pay for irregular or occasional overtime, Ms. Bailey's entitlement to compensatory time off depends inter alia, on whether compensatory time is a form of premium pay.

Section 5543 of title 5, United States Code (1970), provides for granting an employee compensatory time off in lieu of monetary payment for overtime under certain circumstances. Section 550.114 of title 5, Code of Federal Regulations (1975), the implementing regulation, provides, in pertinent part, as follows:

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"§ 550.114 Compensatory time off for irregular or occasional overtime work.

"(a) At the request of an employee, the head of a department may grant him compensatory time off from his tour of duty instead of payment under § 550.113 [overtime compensation] for an equal amount of irregular or occasional overtime work."

Although the cited regulatory and statutory provisions do not explicitly state that compensatory time off is another form of premium compensation for irregular or occasional overtime work, it is well established that compensatory time takes the place of monetary premium pay for irregular or occasional overtime. See 37 Comp. Gen. 362 (1957); 26 Comp. Gen. 750 (1947). Additionally, we point out that the statutory provisions governing compensatory time off are included in the United States Code as a part of chapter 55, subchapter V, under the heading "Premium Pay." See also Federal Personnel Manual, ch. 550-1, § 1 (April 9, 1973) and § 1-3.d (February 28, 1973). Considering the fact that compensatory time off is expressly in lieu of monetary premium compensation payable for irregular or occasional overtime and since the circumstances under which compensatory time off may be granted are delineated in the regulatory and statutory provisions respecting the administration of premium pay, we can discern no basis for concluding that compensatory time off is not a form of premium compensation.

Since premium compensation payable by reason of an employee's qualifying for administratively uncontrollable overtime is the only form of premium compensation properly payable for such an employee's irregular or occasional overtime work, there is therefore no authority for granting compensatory time off for irregular or occasional overtime work so long as the employee is receiving premium compensation on an annual basis for administratively uncontrollable overtime. Compare B-145178, March 26, 1961.

Accordingly, the fact that Ms. Bailey was receiving premium compensation on an annual basis precludes an additional entitlement, either in the form of time and one-half overtime compensation or

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compensatory time off, for such irregular or occasional overtime as was performed during the period in question.

R.F.KELLER
Deputy Comptroller General
of the United States