

DECISION

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

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FILE: B-183478**DATE:** September 24, 1984**MATTER OF:** Matter of James E. Alger, et al.,
Overtime Compensation for Guards**DIGEST:**

Claimants filed claims for overtime with GAO on May 23, 1973. At that time, the Barring Act, 31 U.S.C. § 71a (1970), permitted claims to be filed with GAO within 10 full years after accrual. In James E. Alger, et al., v. United States, Ct. Cl. No. 64-75, June 6, 1983, the Government acknowledged that claimant guards had worked overtime for which they had not been compensated, and judgment was entered by stipulation for the period of March 7, 1969, to February 13, 1976. We approve paying claimants 20 minutes overtime compensation for each full day they worked retroactive to May 23, 1963, 10 years from the time when they filed their original claims.

Richard S. Harrell, Esq., attorney for 25 guards^{1/} employed by the Department of the Army's Material Command at Fort Detrick, Maryland, has requested that we consider the

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Mr. Richard E. Barnard
Mr. Russell E. Barnard
Mr. Richard L. Beard
Mr. Henry L. Burall
Mr. George F. Crouse
Mr. Walter E. DeGrange
Mr. Roy J. Fritz
Mr. Ralph G. Gladhill
Mr. Kenneth R. Harris
Mr. Peter R. Kensicki
Mr. James B. Keyser
Mr. James W. Main
Mr. Leonard M. Markle

Mr. Wilbur F. McBride
Mr. Raymond A. McKinney
Mr. Howard W. McKnight
Mr. Harvey E. Michael
Mr. John W. Milyard
Mr. Carl E. Rentzell
Mr. Louis E. Smith
Mr. Glenn H. Summers
Mr. Harry L. Walters
Mr. Carroll R. Wetzel
Mr. Willie B. Wolfe

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claims of the guards for overtime compensation believed due incident to their duties at Fort Detrick from May 23, 1963, through March 7, 1969. In view of a recent court judgment allowing claimants 20 minutes of overtime compensation for each full day they actually worked from March 7, 1969, to February 13, 1976, claimants may be paid their claims for the earlier period to the extent that pay records exist to allow computation.^{2/}

BACKGROUND

Claimants (with the exceptions noted below) originally filed these claims with our Office on May 23, 1973. At that time claimants stated they were required to report to a central location, 15 minutes prior to their 8-hour shift, in order that they could answer roll call, put on their uniforms, receive daily instructions, receive weapons and ammunition, undergo inspection, and go to or be transported to their posts of duty. They also claimed that at the end of their 8-hour shift, they returned to the central location to return their weapons and ammunition to the arms room, change out of their uniforms into civilian clothing and be checked out, all this taking at least 15 minutes. Claimants stated that the above-described work had not been paid for and accordingly they based their claims on the then recent Court of Claims decision in Baylor v. United States, 198 Ct. Cl. 331 (1972).

This Office never ruled on these claims because claimants then filed suit in the U.S. Court of Claims (now Claims Court) demanding payment and it is the policy of this Office not to adjudicate a claim which is in court. On June 6, 1983, following the parties' Stipulation for Entry of Judgment, the United States Claims Court entered judgment against the United States in favor of the claimants for \$29,129.85. The stipulation stated that claimants were entitled to 20 minutes of overtime for each full day actually worked dating back to 6 years from the date they filed suit in court. Claimants are now asserting their overtime claims they had earlier filed at this Office.

^{2/} Claimants, Richard L. Beard, Walter E. DeGrange, Ralph G. Gladhill, Kenneth R. Harris and Peter R. Kensicki filed their claims with the General Accounting Office on September 13, 1973. Thus, their claims prior to September 13, 1963, are barred.

They claim here the portion of their original claims which were barred by the Claims Court's 6-year statute of limitations but which may still be adjudicated at GAO under 31 U.S.C. § 71a(1) (1970) which allowed this Office to settle claims up to 10 years prior to their being filed. In this regard, the Stipulation for Entry of Judgment states that nothing in the stipulation shall prevent claimants from seeking a determination under 31 U.S.C. § 3702^{3/} of their claims for overtime for the period May 23, 1963, through March 7, 1969, i.e., their claims within the Comptroller General's jurisdiction.

OPINION

Throughout the lengthy history of this case there were no legal issues to be resolved since the legal principles governing entitlement to compensation for pre-shift and post-shift guard work were set out in Baylor, above. Rather, the facts were in dispute, and they were only resolved upon the recent conclusion of the litigation when the Government conceded that the claimants had performed work for which they had not been compensated.

The Department of the Army initially resisted settling these claims in favor of claimants, stating that no pre- or post-shift duties were performed and that, in any event, there was an offsetting lunch period. However, based on evidence gathered during the litigation, the Department conceded the performance of authorized work activities outside of the 8-hour shifts. The Government has agreed that 20 minutes of pre- and post-shift work, which was not offset by duty-free lunch periods, was performed by the claimants on a daily basis. These pre- and post-shift duties were in fact a common practice in many installations staffed with guards during the 1960's and 1970's and compensation for these duties was not generally allowed until the decision in Baylor. See 53 Comp. Gen. 489 (1974).

In view of the Government's present position, therefore, we conclude that claimants are entitled to 20 minutes of overtime compensation for each full day actually

^{3/} This reference is to the Comptroller General's claims settlement authority as now codified in title 31, United States Code (1982), which replaces former 31 U.S.C. §§ 71 and 71a(1).

29293

B-183478

worked for the period May 23, 1963, through March 6, 1969. (March 7, 1969, has already been covered by the court judgment.) The number of days actually worked may be determined from Army payroll records. This award, however, is dependent on the availability of payroll records for the relevant period of time. If because of the passage of time payroll records are not available and no other good evidence of the claimants' work days exists, payment may not be made to the claimants for the periods that records are unavailable.

The claims will be remanded to the Army for a computation of the amounts due in accordance with the above.

for *Shilton J. Arrolan*
Comptroller General
of the United States