

DOCUMENT RESUME

02600 - [A1882941]

[Appeal of Disallowance of Overtime Compensation]. B-188023.
July 1, 1977. 4 pp.

Decision re: Joan J. Shapira; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Veterans Administration: VA Hospital,
Portland, OR.

Authority: 5 U.S.C. 5542(a). 31 U.S.C. 71a (Supp. V). 4 C.F.R.
31.7. B-187891 (1977). Baylor v. United States, 198 Ct. Cl.
331 (1972).

An employee appealed disallowance of a claim for
overtime compensation, stating that overtime was necessary and
submitted evidence of approval. The disallowance was affirmed
since approval was not given by the authorized official, a
portion of the claim was received by GAO after six years, and
GAO does not conduct adversary hearings. (HTW)

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DECISION



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

*Feldman
Civ. Per*

FILE: B-188023

DATE: July 1, 1977

MATTER OF: Joan J. Shapira - Overtime Compensation

- DIGEST:
1. Although evidence presented by Veterans Administration employee tends to demonstrate that she performed additional work outside her regular tour of duty with the knowledge of her immediate supervisor, she is not entitled to overtime compensation since the Assistant Hospital Director was the official authorized to order or approve overtime and there is no evidence to show that he ordered, approved, induced or was even aware of the additional work performed.
 2. 31 U. S. C. § 71(a) (Supp. V, 1975) requires that all claims cognizable by the General Accounting Office (GAO) be received by the GAO within 6 years after the date the claim first accrued or be barred. Therefore, that portion of claim for overtime compensation from January 12 through July 10, 1969, received by GAO July 10, 1975, may not be considered.
 3. Veterans Administration employee whose claim for 6,320 hours overtime was disallowed by General Accounting Office (GAO) on written record requested in-depth investigation and reconsideration of claim based on oral testimony. GAO does not conduct adversary hearings in adjudicating claims, but decides them on the basis of the written record presented by the parties.
4 C. F. R. § 31.7.

By a letter received in our Office dated November 12, 1976, Ms. Joan J. Shapira appealed our Claims Division's disallowance of her claim for 6,320 hours of overtime compensation during the period January 12, 1969, through December 1971, while she was employed as a clerk at the Veterans Administration (VA) Hospital, Portland, Oregon.

B-188023

By Settlement Certificate No. Z-2596383, June 28, 1976, our Claims Division denied Ms. Shapira's claim on the basis that the overtime for which compensation was requested was not officially "ordered or approved" as required by 5 U.S.C. § 5542(a).

Section 71a of title 31 of the United States Code (Supp. V, 1975) requires that all claims cognizable by the General Accounting Office (GAO) be received in this Office within 5 years after the date such claim first accrued or be forever barred. Ms. Shapira's claim was received by our Office on July 10, 1975. Thus, under the express provisions of the law, that portion of Ms. Shapira's claim for overtime compensation from January 12 to July 10, 1969, is barred and may not be considered.

Ms. Shapira states that she assumed clerical duties beyond a normal workload because of clerical employee turnover and a reorganization of the administrative assistant's duties. In addition, she states that overtime was required due to a lack of adequate staffing and an accumulated backlog in clerical workload.

In support of her contention that overtime was approved by an authorized individual, Ms. Shapira submitted numerous time in/time out sheets for the laboratory service which indicate that she worked overtime. These sheets are signed by Dr. James Orendurff, her immediate supervisor. In addition, Ms. Shapira submitted pages from an overtime book from another division of the laboratory service, which she claims is indicative of the procedure for the approval of overtime by superiors in the laboratory services. Ms. Shapira contends that this procedure is similar to the procedure followed in her division and, therefore, is probative evidence in her overtime claim. These contentions and the evidence presented by Ms. Shapira were considered by our Claims Division in determining that she was not entitled to the overtime compensation claimed. Ms. Shapira now states that the Claims Division failed to consider a statement of Dr. Orendurff regarding his authority to grant approval for overtime; she alleges that Dr. Orendurff was pressured into not telling the truth about her claim and was threatened with dismissal. Finally, Ms. Shapira contends that the Claims Division erred in accepting statements and information submitted by VA and requested that we conduct an in-depth investigation of her claim.

B-188023

Insofar as pertinent, the VA regulations in effect during the period of Ms. Shapira's claim, MP-5, Part 1, provided that field station heads or their designees are authorized to order or approve irregular or occasional overtime. Authority to approved regularly scheduled overtime was not delegated to the field activity level, but was retained by the Central Office. By VA Station Memorandum No. 135-65-70, December 30, 1955, in effect during the period of Ms. Shapira's claim, the Director of the VA Hospital, Portland, Oregon, delegated authority to order or approve irregular or occasional overtime occurring in administrative services to the Assistant Hospital Director. The fact that such authority was not further delegated to the direct supervisory levels is confirmed by a statement dated September 8, 1975, from Dr. Orendurff:

"I certify that I was knowledgeable of the timekeeping policies pertaining to overtime specifically that overtime had to be requested in advance by myself and approved by Hospital Management.

"During this period, I was aware that Joan Shapira performed some duties over and above the normal eight-hour day and forty-hour week. However, with the limited exception of some compensatory time, overtime was not officially requested nor approved. Joan Shapira did maintain some supplemental records for her own convenience as timekeeper. While I was aware of and initiated such records, these records were not official nor necessarily completely accurate."

We are unable to identify any statement by Dr. Orendurff other than that quoted above relating directly to the issue of Ms. Shapira's overtime entitlement. With respect to her specific request that we take testimony from witnesses to corroborate her contention that Dr. Orendurff's statement is untrue and the product of improper coercion, this Office does not conduct adversary hearings in adjudicating claims but decides them on the basis of the written record presented by the parties. 4 C. F. R. § 31.7 (1975); B-187891, June 3, 1977.

We have reexamined the record in Ms. Shapira's case and, even disregarding Dr. Orendurff's statement, find no basis to conclude that the overtime which she claims to have worked was approved or ordered by proper authority. The VA regulations discussed above

B-188023

explicitly delegate authority to order or approve irregular or occasional overtime to the Assistant Hospital Director. While the evidence which Ms. Shapira has presented would tend to substantiate her claim that she in fact worked hours in excess of her regular tour of duty and that Dr. Orendurfi was aware of this fact, she has presented no evidence to show that the Assistant Hospital Director ordered, approved, induced or was even aware of the additional work allegedly performed. In the absence of such evidence, the disallowance of Ms. Shapira's claim for overtime compensation by Settlement Certificate No. Z-2596383, June 28, 1978, is affirmed. See Baylor v. United States, 198 Ct. Cl. 331 (1972).


Deputy Comptroller General
of the United States