

DOCUMENT RESUME

02295 - [A1472476]

[Evidence to Support Claim for Overtime Compensation]. B-148238.
May 20, 1977. 4 pp.

Decision re: George E. Gilmore, Agency for International
Development; by Robert P. 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).

Authority: 5 U.S.C. 5542(a). 31 U.S.C. 71. 55 Comp. Gen. 402. 5
C.F.R. 550.111(c). Baylor v. United States, 198 Ct. Cl. 331,
359.

Disallowance of claim of employee who allegedly worked
1,122 hours of overtime was reaffirmed on the grounds that
claimant had supplied insufficient evidence to support claim.
Employee submitted only list of overtime hours allegedly worked
and vague and indefinite statements of former supervisors to
support claim. (Author/DJM)

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DECISION

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

FILE: B-188238

DATE: May 20, 1977

MATTER OF: George E. Gilmore - Overtime compensation -
Evidence to support claim

DIGEST: Claim of employee who allegedly worked 1,122 hours of overtime was disallowed on ground that claimant had supplied insufficient evidence to support claim. 31 U.S.C. § 71, which provides that all claims by and against Government shall be settled by GAO, leaves to discretion of this Office what evidence is required to support such claims. Therefore, disallowance is affirmed where claimant submitted only a list of overtime hours allegedly worked and vague and indefinite statements of former supervisors to support claim since such evidence is held to be insufficient.

By letters dated January 18 and January 24, 1977, Mr. George E. Gilmore appealed the certificate of settlement issued by our Claims Division on January 18, 1977, which disallowed his claim for 1,122 hours overtime compensation allegedly earned during the period March 25, 1971, through December 22, 1973, while employed in the Agency for International Development (AID) at Country Operations Rural Development Support (CORDS) Headquarters, Saigon, Vietnam.

The pertinent facts are stated in the certificate of settlement which reads, in part, as follows:

"The record shows that you were employed as an Assistant Program Officer with AID at CORDS Headquarters, Program Division, Office of Policy, Plans and Programs, Saigon, Vietnam, during the period March 25, 1971 through December 22, 1973. You state that during this period, you were 'required' to work Saturday mornings and, as the need arose, other hours outside your normal work-week. In this regard, there is evidence in the record that it was the policy of CORDS at that time to require civilian employees to work additional hours outside their established work-week but to limit the number of hours for which they could receive overtime compensation. It is

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stated that eventually an unwritten policy developed whereby no executive level employees would receive overtime compensation despite the additional hours worked. As a result, you now claim entitlement to compensation for these overtime hours. Although no official records have been furnished, you have submitted a listing of the number of overtime hours allegedly worked during the period of your employment and statements of two supervisors regarding such overtime hours."

The claim was disallowed on the basis that Mr. Gilmore had submitted only a listing of claimed overtime hours compiled by Mr. Gilmore himself and statements from two former supervisors as evidence of entitlement. Claims Division determined that such evidence did not have sufficient probative value nor was it specific enough as to allow reconstruction of the actual hours of overtime worked.

Mr. Gilmore contends that the evidence he submitted is sufficient and that overtime for the hours listed is, therefore, compensable. He states in his letter of January 18, 1977, "Since both of my supervisors have certified and substantiated my claim it would appear to me that my claim is supported and justifies payment." Moreover, Mr. Gilmore indicates that although it might be possible for him to obtain memorandums stating the times and locations of various meetings he had attended and although he might be able to obtain statements as to the standard workweek and overtime worked, he has not done so because such information would undoubtedly be incomplete and would require a Freedom of Information Act request of AID which would be costly, time consuming, fruitless, and would in no way enhance the value of his former supervisors' statements.

Section 5542(a), title 5, United States Code (1970), provides in pertinent part, that hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or in excess of 8 hours a day, performed by an employee are overtime work and shall be paid at overtime rates. Additionally the applicable regulation, 5 C.F.R. 550.111(c) (1976), provides that:

"(c) Overtime work in excess of any included in a regularly scheduled administrative workweek

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may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated."

The administrative report did not make a recommendation on the claim submitted by Mr. Gilmore. The report stated, in pertinent part, that:

"A review of the time and attendance reports covering the period of the claim for overtime revealed that Mr. Gelmore (sic) worked only a normal eight hour day from Monday through Friday only, or, was absent on annual, sick, holiday or home leave. No hours were apparently wever (sic) reported by the AID Office in Vietnam showing Mr. Gilmore as having performed overtime work either during the normal work week or other than the normal work week. Therefore, the Agency could not and did not compensate Mr. Gilmore for overtime during the period of his claim."

The administrative report also contained statements from two of Mr. Gilmore's former supervisors, Norman L. Sweet and George T. Bliss. Mr. Bliss indicated that employees were expected to work on Saturdays and Sundays, if required by the job, and that Mr. Gilmore's estimate of overtime hours worked was "probably reasonably correct." Mr. Sweet indicated that, although he encouraged employees to put in the hours necessary to do their jobs in a professional manner, he did not remember having ordered employees to work overtime.

In Baylor v. United States, 198 Ct. Cl. 331, 359 (1972), the court stated, in pertinent part, that:


"Where the facts show that there is more than only a 'tacit expectation' that overtime be performed, such overtime has been found to be compensable as having been 'officially ordered or approved,' even in the absence of a regulation specifically requiring a certain number of minutes of overtime. Where employees have been 'induced' by their superiors to perform overtime in order to effectively complete their assignments and due to the nature of their employment, this overtime has been held to have been 'officially ordered or approved' and therefore compensable."

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The present record does not firmly establish whether or not there was more than a "tacit expectation" that Mr. Gilmore work overtime, although there is some evidence that he may have been "induced" to perform such work.

However, we need not decide whether Mr. Gilmore was "induced" within the meaning of the Baylor case. Even if the record clearly showed that Mr. Gilmore had been affirmatively induced by his supervisors to work overtime, the claim would not be properly payable since claimant has not provided sufficient evidence upon which a reasonable estimate of the actual number of hours worked could be based. Section 71, title 31, United States Code (1970), provides that all claims by and against the Government shall be settled by the General Accounting Office. The statute leaves to the discretion of this Office the amount of evidence that is required in support of such claims, and we do not sanction the payment of claims of doubtful validity due to the lack of official records or suitable evidence from which the amount of overtime pay may be reasonably reconstructed. See 55 Comp. Gen. 402 (1975). Even where an employee is entitled to overtime compensation, payment cannot be made where the claimant has submitted only a list of the hours claimed. Time and Attendance Reports, personal daily diaries, and certificates of former supervisors showing the amount of overtime worked by the claimant or a statement as to the standard workweek, including overtime performed by the claimant or other similarly situated employees are examples of supporting evidence which might be sufficient. Mr. Gilmore has not supplied such information, and the statements of his former supervisors are too vague and indefinite to support payment.

For the foregoing reasons, the settlement certificate of January 18, 1977, disallowing Mr. Gilmore's claim for overtime compensation is sustained.


Deputy Comptroller General
of the United States