

13447 P1 M-I

DECISION



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

FILE: B-196465

DATE: April 16, 1980

MATTER OF: George W. Lovill - Premium Pay for Standby
Duty at Home

DIGEST: Employee is not entitled to premium pay for standby duty at residence on Government reservation. Although he was on call and was paid overtime for emergency gauge reading and other types of work after his regular hours of duty, his activities and movements on off-duty hours were not severely restricted and he was not on ready alert. Also, where there is irreconcilable dispute over facts between individual claimant and agency, we are bound to accept agency's statement of facts.

This decision concerns the appeal by Mr. George W. Lovill of our Claims Division settlement dated July 18, 1979 (Z-2813745). The settlement denied his claim for overtime standby compensation. For the reasons stated below we sustain the settlement.

Mr. Lovill is employed by the United States Army Corps of Engineers as a Reservoir Manager. He contends that his position required him to live in Government housing during the period July 18, 1972, to April 9, 1974, and July 1, 1976, to January 30, 1978, and that the nature of his position required him to be on call 24 hours per day. Mr. Lovill refers to his job description and various other documents in support of his contention. He says that his job description states that inspection and surveillance is the continuous responsibility of an incumbent and that other internal documents require him to notify a District Safety Officer when an accident occurs, and that he read gauges at various times while off duty. Mr. Lovill also has furnished pages from a Master Manual for Reservoir Regulation, pertaining to Big Sandy River Basin, dated July 1964, which provides general instructions that the damtender-in-charge or one of his assistants shall be in or near the reservation at all times. In addition, Mr. Lovill relies on our decision, Ralph E. Conway, B-176924, September 20, 1976, wherein we held that a lockmaster, a wage board employee, was entitled to overtime compensation for standby duty where the record showed his activities and movements were extremely restricted and he was on ready alert.

~~009662~~

112070

B-196465

The agency denied Mr. Lovill's claim because his regular tour of duty has consistently been Monday through Friday, 7:30 a.m. to 4 p.m., and he was advised that his regular non-duty time, except for periods of emergency operations, was his own personal time with which he could pursue his own interests on or off the facility. The only condition was that he notify the Area Manager when he planned to be absent overnight. Our Claims Division agreed with the agency's determination.

Mr. Lovill's claim was received in this Office November 6, 1978; thus, the portion of his claim prior to November 6, 1972, is barred from our consideration by the 6-year statute of limitations in section 71a of title 31, United States Code.

Section 5545(c)(1) of title 5, United States Code (1976), authorizes the head of an agency to pay premium pay on an annual basis to an employee in a position "requiring him regularly to remain at, or within the confines of his duty station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work." Regulations published in title 5 of the Code of Federal Regulations, section 550.143(a)(1), state that the requirement that an employee remain at, or within the confines of his station must be definite and the employee must be officially ordered to remain at his station. The fact that an employee lives on the grounds does not, by itself, indicate that an employee is in a standby status. See also Federal Personnel Manual Supplement 990-2, chapter 550, subchapter S1-6c(1).

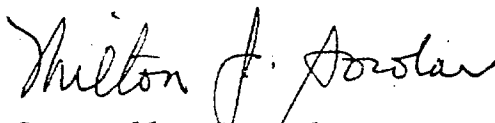
Our Office has held that an employee who is required to remain at a worksite is not entitled to overtime compensation for standby duty for non-duty hours when he is not required to hold himself in readiness to perform work outside of duty hours. Paul E. Laughlin, 57 Comp. Gen. 496 (1978) and court cases cited therein. On the other hand our Office held in Conway, *supra*, that a wage board employee is entitled to overtime pay for standby duty during non-work hours when he resides on a Government reservation, his activities and movements are extremely restricted, and he is on ready alert. Subsequently, we held in Forest Service Dispatchers, B-189742, December 27, 1978, that General Schedule employees are not entitled to overtime pay under 5 U.S.C. § 5542 (1976) for standby duty at their homes but are entitled to premium pay under 5 U.S.C. § 5545(c)(1) for standby duty at home under conditions similar to those in Conway.

B-196465

It is our opinion that the documents submitted as evidence by Mr. Lovill in support of his claim are merely descriptive of his duties and do not constitute a directive restricting him to his residence. Also, the agency states that Mr. Lovill was free to spend his off-duty hours however and wherever he wished and he was not required when he did occupy his quarters to hold himself in "ready alert." The agency reports that Mr. Lovill has been paid overtime for emergency gauge reading, outflow gate operations, and special maintenance activities and such overtime averaged 1.3 hours per pay period. However, there is no evidence that the overtime severely restricted Mr. Lovill's activities and movements. Since an employee is not entitled to premium pay unless his activities and movements are severely restricted, we hold that Mr. Lovill is not entitled to premium pay under 5 U.S.C. § 5545(c)(1). See John T. Teske, B-190369, February 23, 1978.

Mr. Lovill has also disputed the facts as presented by his agency. This Office does not hold adversary hearings in order to resolve disputed issues of fact, but decides them on the basis of the written record presented. 4 C.F.R. § 31.7. Thus, where the written record before us presents an irreconcilable dispute of fact between a Government agency and an individual claimant, we are bound to accept the agency's statement of the facts. William C. Hughes, Jr., B-192831, April 17, 1979.

Accordingly, the settlement of our Claims Division is sustained.

for the 
Comptroller General
of the United States