

*M. Skane*  
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**DECISION**



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

*[Entitlement to Standby Premium Pay]*

FILE: B-197476

DATE: August 26, 1980

MATTER OF: Standby Premium Pay - Sick Leave Pending  
Disability/Retirement - Lump-sum/Annual  
Leave Payment

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**DIGEST:** FAA employee is not entitled to premium pay for standby duty while on extended sick leave pending disability retirement because there is no reasonable expectancy that he will perform standby service in the future. Moreover, since he is not entitled to such pay at date of separation and he would not have received it had he remained in the service, such pay may not be included in his lump-sum annual leave payment.

The Assistant Secretary for Administration, Department of Transportation, has requested a decision as to whether a Federal Aviation Administration (FAA) employee on extended sick leave expected to terminate with disability retirement (possibly for 8 months) is entitled to premium pay for regularly scheduled standby duty and whether such premium pay should be included in his lump-sum annual leave payment. Based upon the following discussion, this Office concludes that the employee's entitlement to premium pay for standby duty on an annual basis terminates when he goes on sick leave under these circumstances and that such premium pay may not be included in his lump-sum annual leave payment.

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*AGC00030*

Under 5 U.S.C. § 5545(c)(1) the head of an agency, with the approval of the Office of Personnel Management (OPM), may provide that an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Paragraph (2) of this subsection authorizes annual premium pay for administratively uncontrollable overtime.

OPM's implementing regulations are contained in part 550 of title 5, Code of Federal Regulations.

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Section 550.162(a) of these regulations provides that except as otherwise provided in this section, an employee's premium pay on an annual basis under 5 U.S.C. § 5545(c) (1) or (2) begins on the date that he enters on duty in the position concerned for the purposes of basic pay, and ceases on the date that he ceases to be paid basic pay in the position. Paragraphs (b) and (c) are exceptions to paragraph (a). Paragraph (b) provides for the payment of annual premium pay on a seasonal basis. Paragraph (c) limits annual premium pay during temporary assignments to other duties and training. Paragraph (e) provides that an agency shall continue to pay an employee premium pay on an annual basis while he is on leave with pay during a period in which premium pay on an annual basis is payable under paragraphs (a), (b), and (c) of this section.

As noted in the submission, the entitlement of an employee on extended sick leave pending disability retirement to premium pay on an annual basis for administratively uncontrollable overtime under these provisions of law and regulations was considered in 43 Comp. Gen. 376 (1963) and B-175788, June 1, 1972. These decisions hold in substance that in this situation section 550.162(e) of the regulations pertaining to leave with pay status is not conclusive as to entitlement, that this regulation does not contemplate a situation where there is no reasonable expectation that the employee will return to work, and that an employee on leave with pay no longer is entitled to receive premium compensation when it is administratively determined that there is no basis for anticipating that his irregular, unscheduled overtime work will continue.

While, as the submission points out, there are some differences between annual premium pay for administratively uncontrollable overtime and such pay for regularly scheduled standby duty, we can find no basis for concluding that such differences justify a different result with regard to the issue here involved. One difference mentioned no longer exists. Formerly section Sl-5(b) of FPM Supplement 752-1 defined the reduction or discontinuance of premium pay for standby duty (but not for administratively uncontrollable overtime) as an adverse action

within the purview of part 752 of the Civil Service regulations. However, FPM Supplement 752-1 was revoked by FPM Bulletin No. 752-8, February 2, 1979, and [this premium pay is no longer considered basic pay for the purposes of adverse actions under chapter 75 of title 5, United States Code, as amended by the Civil Service Reform Act of 1978, and the revised regulations in part 752 of title 5, Code of Federal Regulations (1980).

Accordingly, it is our opinion that the holdings in 43 Comp. Gen. 376 and B-175788, supra, apply with equal force to premium pay on an annual basis for regularly scheduled standby duty and that an employee on extended sick leave expected to terminate with disability retirement is not entitled to such premium pay. This may be viewed as another exception to the previously cited section 550.162(a) which is required by a reasonable interpretation of 5 U.S.C. § 5545(c)(1). While during the period of sick leave the employee remains on the rolls and technically continues to be assigned to his position, he in fact is not, nor is he expected in the future to be "in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantive part of which consists of remaining in a standby status."

The remaining question is whether this employee is entitled to have premium pay on an annual basis for standby duty included in his lump-sum payment for annual leave under subsection 5551(a) of title 5, United States Code. This subsection provides that [an employee who is separated from the service is entitled to receive a lump-sum payment for accumulated and current accrued annual leave to which he is entitled by statute. The lump-sum payment shall equal the pay the employee would have received had he remained in the service until expiration of the period of the annual leave.]

As the submission indicates, this question was considered in 36 Comp. Gen. 18 (1956) and 38 id. 161 (1958). In the former it was held that an employee who was receiving premium pay for administratively uncontrollable overtime at the time of his separation was entitled to have such premium pay included in his lump-sum

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payment to the extent he would have received such pay had he remained in the service for the period covered by the lump-sum payment. In the latter it was held that employees who received premium pay for either administratively uncontrollable overtime or standby duty for "selected periods" and who were receiving such pay at the time of their separations occurring within a "selected period" were entitled to have such pay for the duration of the "selected period" included in their lump-sum payments.

However, as we have indicated, (it is our view that the employee in the case at hand is not entitled to this premium pay during the period of extended sick leave terminating in disability retirement and he is not entitled to it at the time of separation.) In these circumstances we can perceive no sound basis for concluding that he would have received it had he remained in the service until the expiration of the annual leave. Accordingly, it is our opinion that this employee is not entitled to have premium pay on an annual basis for standby duty included in his lump-sum payment for annual leave.)

*Harry R. Van Cleave*

For the Comptroller General  
of the United States