

McGraw

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DECISION

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

FILE: B-199253

Claim For **DATE:** March 25, 1981

MATTER OF: Mr. James E. King - Premium Pay on an Annual Basis

DIGEST: Claimant requests payment of premium pay on an annual basis for administratively uncontrollable overtime duty from May 1, 1978, the day he started in his current position, to August 26, 1978, the last day of the period he was certified as eligible to receive the premium pay in his previous position. Claim denied since eligibility to receive premium pay ended when claimant left his previous position to assume new position, the duties of which did not qualify for premium pay under 5 C.F.R. 550.151, et. seq.

Mr. James E. King has appealed a settlement of our Claims Division (No. Z-2813803) which denied his claim for premium pay on an annual basis for administratively uncontrollable overtime duty. Mr. King has been employed as an Immigration Officer of the Immigration and Naturalization Service (INS) at Freeport, Bahamas, since May 1, 1978. Prior to taking this position, he was a Border Patrol Officer at Whitehall, New York. While a Border Patrol Officer, he qualified for annual premium pay based upon administratively uncontrollable overtime for a period which ended on August 26, 1978. Mr. King claims that as an Immigration Officer he is entitled to that pay from May 1, 1978, to August 26, 1978.

The Department of Justice has issued procedures governing the payment of premium pay for administratively uncontrollable overtime for its employees. Employees who qualify for such pay are:

"in positions in which the hours of duty cannot be controlled administratively, and which require substantial amounts of irregular or occasional overtime duty * * *"
DOJ Order 1551.4A (1975).

In Appendix 1 of the Department of Justice Order 1551.4A (1975) most of the positions for which an employee can receive this premium pay are listed. One of them is

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"Immigration Officer, Foreign area, engaged in investigative duties." Mr. King claims that as an Immigration Officer assigned to a foreign area he is entitled to premium pay because he performed investigative type duties and because he was certified eligible for such pay through August 26, 1978, while a Border Patrol Officer. He states that the extent of his investigative responsibilities is not accurately reflected in his position description.

We do not question Mr. King's claim that he performed certain investigative type duties while an Immigration Officer. However, notwithstanding the listing at Appendix I, the performance of investigative duties does not itself entitle an Immigration Officer in a foreign area to receive this premium pay. Paragraph 8 of Department of Justice Order 1551.4A specifically states:

"* * * The positions listed in Appendix I have been determined to meet generally the criteria set out in section 550.153 of the civil service regulations. Mere occupancy of an authorized position, however, does not qualify an employee for administratively uncontrollable overtime pay. An employee qualifies by performing an average of at least three hours' overtime work a week which meets fully the requirements of section 550.153 of the civil service regulations. * * *"

To meet the requirements of 5 C.F.R. 550.153 referred to in the above-quoted paragraph, the employee's position must be one in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular or occasional overtime work with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. Mr. King does not claim that his position meets these criteria and, in fact, documentation which he has submitted indicates that his duties do not qualify for administratively uncontrollable overtime pay. The following is quoted from a letter written by Mr. King's supervisor in regard to his and another employee's entitlement:

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"* * * officers at this station are expected to perform some investigative duties but not to the extent that it warrants rewriting of the description making investigations one of the major duties of the office as indicated in the denial.

"* * * Almost all if not all the time spent on other than purely inspectional duties is performed during regular assigned working hours."

Accordingly, we find no basis to disagree with the finding of the Claims Division that Mr. King's duties as an Immigration Officer did not entitle him to administratively uncontrollable overtime pay in that position. His argument that he is entitled to such pay as a result of his prior eligibility as a Border Patrol Officer is equally without merit.

For purposes of this case, the basic rule concerning the duration of administratively uncontrollable overtime pay contained in 5 C.F.R. 550.162(a) is applicable. It states in pertinent part that:

"an employee's premium pay on an annual basis under § 550.141 or § 550.151 begins on the date that he enters on duty in the position concerned for purposes of basic pay, and ceases on the date that he ceases to be paid basic pay in the position." (Emphasis supplied.)

Whether a person gets premium pay for administratively uncontrollable overtime is dependent upon the duties of the particular position he holds during the time for which he claims premium pay. Thus, Mr. King's claim may not be paid on the basis that he would have received this pay for the period from May 1, 1978, to August 26, 1978, if he had remained in his position as a Border Patrol Officer.

Accordingly, we sustain the Settlement Certificate dated July 16, 1979, issued by our Claims Division, which disallowed

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Mr. King's claim for premium pay for administratively uncontrollable overtime.

Milton J. Aowlan

Acting Comptroller General
of the United States