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DECISION

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

FILE: B-201628

DATE: May 21, 1981

MATTER OF: Ralph E. Jamison - 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 eligible for overtime for emergency operations 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 an irreconcilable dispute over facts between individual claimant and agency, we are bound to accept agency's statements of facts. B-196465, April 16, 1980.

Mr. Ralph E. Jamison requests reconsideration of our Claims Group's November 21, 1980 denial of his claim for standby overtime compensation. The denial is sustained.

Mr. Jamison, an employee of the United States Corps of Engineers, at Mosquito Creek Dam and Reservoir, was assigned as a wage board employee, Maintenance Man, during the period July 30, 1967, through August 28, 1977, and as a General Schedule employee, Facility Manager, from August 29, 1977, through July 13, 1978. He contends that his employment required him to live in Government housing and that he was ordered to remain at his duty post after duty hours on a 24-hour basis to be available to perform work in connection with flood emergencies, disturbances and demonstrations, weather reporting, and emergency gate operations.

The Pittsburgh District Corps of Engineers confirms that Mr. Jamison was at one time required to live in Government housing. However, the administrative report indicates that beginning in the latter part of 1969 or the middle of 1970, area and reservoir managers within the Pittsburgh District were informed that those employees who lived in Government housing were not required to remain at or near their residences or duty posts after their regularly scheduled tour of duty. This is confirmed by statements of other district personnel. Although subject to call for emergency duty and required to leave a telephone number where they could be reached, employees who lived in Government housing were free to spend time outside duty hours as they pleased.

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The Corps has estimated that emergency situations, such as those requiring after hours reports on weather conditions or emergency gate changes at a flood control reservoir, occurred no more than 2 or 3 times a year and Mr. Jamison acknowledges that he would have been paid overtime if he had performed such activities.

Mr. Jamison in his original claim relies on our decision, Ralph E. Conway, B-176924, September 30, 1976, wherein we held that a lockmaster, a wage board employee, was entitled to overtime compensation under 5 U.S.C. 5544(a) for standby duty where the record showed his activities and movements were extremely restricted and he was on ready alert. Our Claims Group denied Mr. Jamison's claim because he was not required to stay at his duty post after regularly scheduled duty hours and, except for emergency situations occurring few times each year, his time when not on duty might be spent as he pleased. In his appeal, he has submitted excerpts from a 1976 inspection report which indicates that Government housing units are located within the dam complex to provide necessary surveillance and that employee-occupants are "on call" outside regular duty hours. In addition he relies upon language from the Damtenders Reservoir Regulation Manual which states that the Chief Damtender and his first assistant must be immediately available outside duty hours and provides that all employees are subject to call for emergency duty and their whereabouts should always be known. He further states that he was never notified that he need not remain near or at his duty post and that his work schedule included standby call each weekend, 24 hours per day.

Mr. Jamison's claim was received in this Office July 18, 1978, thus, the portion of his claim prior to July 18, 1972, is barred from our consideration by the 6-year statute of limitations in section 71a of title 31, United States Code.

During the period of his claim prior to August 29, 1977, Mr. Jamison was a wage board employee whose entitlement is governed by 5 U.S.C. 5544(a). Under that subsection, a wage board employee who regularly is required to remain at or within the confines of his post of duty in a standby or on-call status is entitled to overtime pay for hours of duty exclusive of eating and sleeping time. For the

subsequent period that he was a General Schedule employee, Mr. Jamison's entitlement is governed by 5 U.S.C. 5545(c)(1) which 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 SI-6c(1).

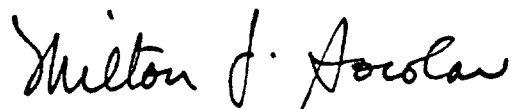
We have similarly construed 5 U.S.C. 5544(a) and 5 U.S.C. 5545(c)(1) as authorizing overtime or premium pay only when the employee's activities are extremely restricted or when he is required to hold himself in readiness to perform work outside of duty hours. Paul E. Laughlin, 57 Comp. Gen. 496 (1978) and court cases cited therein. We held in Conway, supra, that a wage board employee is entitled to overtime pay for standby duty during nonwork hours when he resides on a Government reservation, and when his activities and movements are extremely restricted, and he is on ready alert. To the same effect see 55 Comp. Gen. 1314 (1976). Subsequently, we held in Forest Service Dispatchers, B-189742, December 27, 1978, that General Schedule employees are entitled to premium pay under 5 U.S.C. 5545(c)(1) and the implementing regulations at 5 C.F.R. 550.143(b)(3) for standby duty at home under conditions similar to those in Conway.

It is our opinion that the documents submitted as evidence by Mr. Jamison in support of his claim are merely descriptive of his duties and do not constitute a directive restricting him to his residence. There is documentation to support Mr. Jamison's claim that he was expected to be "available" outside duty hours. However, none of the documentation indicates that that availability requirement restricted him to the vicinity of his residence or precluded him from leaving a telephone number where he could be reached as was done by similarly situated employees.

The agency states that Mr. Jamison 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 "at or near the dam at all times." The agency reports that while Mr. Jamison was presumably contacted from time to time in connection with minor disturbances and other matters connected with the public use of the reservoir, no memorandums or manuals were ever issued which required the manager to be "available" after duty hours for these purposes. Nor was there any indication that he was in a "ready alert" status. Mr. Jamison states that those instances outside of regular duty hours requiring a change of a dam gate would have been paid as overtime. However, there is no evidence that the overtime, if worked, severely restricted Mr. Jamison'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. Jamison is not entitled to premium pay under 5 U.S.C. 5544(a) or 5 U.S.C. 5545(c)(1). See John T. Teske, B-190369, February 23, 1978, and George W. Lovill, supra.

We recognize that Mr. Jamison disputes 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.



Acting Comptroller General
of the United States