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DECISION

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

2142

FILE: B-205219 DATE: March 15, 1982

MATTER OF: Lee R. McClure - Claim for Overtime Compensation for Time Necessary to Change Into and Out of Work Clothes

DIGEST:

Department of Air Force employee who worked as a meat cutter claims overtime at the rate of 1/2 hour per day for time spent daily changing into and out of work clothes, relying on Baylor v. United States, 198 Ct. Cl. 331 (1972). Disallowance by the Claims Group is sustained since there is no evidence that the agency either directly or indirectly required or induced claimant to change into and out of work clothes on the employment premises. Further, there is no evidence of the actual time needed daily for changing uniforms.

This decision is on an appeal to a settlement by the GAO Claims Group dated November 19, 1980, requested by Lee R. McClure. He is appealing the disallowance of his claim for payment of overtime compensation of 30 minutes a day for time required to change into his uniform and back into civilian clothes incident to his employment as a meat cutter during the period of April 1966 through January 31, 1977, at the Whiteman Air Force Base Commissary.

Our Claims Group affirmed the employing agency's disallowance of the claim, due to the lack of any evidence that overtime work was authorized or that claimant was required or induced to report early to change into work clothes or to stay late to change out of them. The Claims Group also pointed out the lack of any validation of the overtime hours claimed. Finally, the Claims Group stated that any claim for overtime prior to November 23, 1973, was barred under our 6-year statute of limitations, Act of October 9, 1940, 54 Stat. 1061, as amended, 31 U.S.C. § 71a. Thus, the relevant period for consideration is from November 23, 1973, through January 31, 1977.

We agree with the analysis of the Claims Group and therefore, sustain the disallowance of overtime compensation to Mr. McClure.

In support of his claim, Mr. McClure has stated that during the period in question, he was required to change into and out of a white uniform and safety shoes on his own time before beginning his job. Since January 1977, he has been allowed 30 minutes a day for changing uniforms. He thus seeks 30 minutes of overtime pay for each day worked prior to January 1977. He relies on a New York case cited in AFGE Washington Letter in April 1979, in which an employee was awarded backpay in similar circumstances. The Air Force believes that the claimant may also be relying on Baylor v. United States, 198 Ct. Cl. 331 (1972).

The Court of Claims expanded the interpretation of "authorization" in the case of Baylor v. United States, where it held that GSA regulations requiring building guards to change into and out of uniform at the workplace constituted an inducement that in effect forced the employees to work extra hours. Although there existed no specific requirement that the employees work overtime, the court stressed that the pre-duty and post-duty functions of changing into and out of uniform, obtaining and replacing firearms, and walking between the locker location and the post of duty were integral to the performance of the job. They also stated, at 359, that overtime "officially ordered" should be compensated, while only a "tacit expectation" of overtime by the employer would not warrant overtime pay. Further, the court noted that "hours of work" not in excess of 10 minutes per day should be regarded as de minimis, and not compensable. See 53 Comp. Gen. 489 (1974).

Based on the sparse record in Mr. McClure's case, we have no evidence that the employing agency's action rose to a level above a tacit expectation. Whiteman AFB informed the Claims Group that it does not have any overtime authorization for Mr. McClure. Nor does it have time and attendance reports for the claimant for the relevant periods.

Further, there were no regulations or handbooks to constitute indirect authorization for the overtime, in contrast to Baylor, supra. We have no evidence that the employees were required to change their uniforms on the work premises. See Banton v. United States, 165 Ct. Cl.

312, 318 (1964); Roy Moore, Jr., B-195813, December 12, 1979. We also have no proof of the amount of time actually used by Mr. McClure in changing his uniform. See 53 Comp. Gen. 489 (1974); Alfred W. Hill, et al., B-194751, November 7, 1980.

Finally, we have considered the New York case to which Mr. McClure referred in his original request for overtime. In that case, a backpay award was allowed to a GSA elevator operator in New York City because the GSA Handbook for Elevator Operators forbade the wearing of uniforms away from the building. In contrast, as stated above, we have no evidence that Mr. McClure was not allowed to change into and out of his uniform away from his place of employment. Thus, the New York case is not applicable.

For the reasons cited above, the disallowance of overtime pay by the Claims Group is affirmed.

for Milton J. Socolar
Comptroller General
of the United States