

DECISION



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

FILE: B-205219

DATE: August 27, 1984

MATTER OF: Lee R. McClure, et al. - Claims for
FLSA Overtime

DIGEST:

1. Four Air Force employees claimed overtime compensation under the Fair Labor Standards Act (FLSA), but the Air Force denied payment in view of our prior decision denying the overtime claims of these employees. B-205219, March 15, 1982. However, in our prior decision, we considered and denied the employees' claims only under Title 5, United States Code. Thus, our prior decision does not bar the employees' entitlement to FLSA overtime. B-205219, March 15, 1982, clarified.

2. Four Air Force employees claimed overtime compensation under the Fair Labor Standards Act (FLSA), and, after investigation, the Office of Personnel Management (OPM) issued a compliance order finding FLSA overtime compensation to be due. The Air Force refuses to follow the compliance order since, based on decisions of our Office, OPM does not have authority to adjudicate claims or settle accounts under the FLSA. Although we retain final authority to adjudicate claims or settle accounts under the FLSA, we hold that agencies may pay nondoubtful claims pursuant to OPM compliance orders without resort to a decision from our Office.

ISSUES

The first issue in this decision involves the entitlement of four employees to overtime compensation under the Fair Labor Standards Act (FLSA) in light of a prior decision

by our Office denying their claims for overtime compensation. We hold that, since our prior decision addressed only the employees' entitlement to overtime under Title 5 of the United States Code, that decision does not bar their entitlement to overtime under the FLSA.

The second issue in this decision concerns the jurisdiction of the Office of Personnel Management (OPM) and our Office in handling FLSA claims. We accord great weight to OPM's determinations under its authority to administer the FLSA with respect to Federal employees, but we retain jurisdiction to decide doubtful claims or payments under the FLSA. Where an agency has no legitimate objections to an FLSA determination by OPM, payment may be made without resort to a decision by our Office.

BACKGROUND

This decision is in response to claims filed by four meat cutters employed by Whiteman Air Force Base, Messrs. Lee R. McClure, John E. McGraw, Gareld J. Wildeman, and William A. Carleton (now deceased), for overtime compensation under the FLSA. In addition, the Office of Personnel Management (OPM) has requested clarification of the jurisdiction of OPM and our Office with respect to FLSA claims.

The claims of these four employees for overtime compensation while changing into and out of work clothes were initially denied by our Claims Division in 1980. That determination was sustained in our decision B-205219, March 15, 1982, but our decision made no mention of the statutory basis for the overtime claims.

The employees also filed claims under the FLSA, and, after investigation by OPM, that agency determined that the time spent changing into and out of work clothes was compensable under the FLSA. The Commander of the Whiteman Air Force Base declined to accept OPM's compliance order on these claims on two grounds: (1) that OPM does not have authority to adjudicate claims or settle accounts under the FLSA, citing B-195921, October 20, 1982; and (2) that the claims were denied by our decision in B-205219, March 15, 1982. There is no indication that the Air Force has objected to OPM's determination on any other grounds.

The request from OPM asks that we clarify whether or not we were addressing the claimants' entitlement to overtime under the FLSA in our prior decision in B-205219. In addition, OPM requests that we delineate the authority of

GAO and OPM with respect to FLSA claims since, in view of the language in B-195921, cited above, and B-200112, May 5, 1983, Federal agencies may not follow OPM's FLSA Compliance Program and may conclude that all FLSA claims must be handled by our Office.

DISCUSSION

With regard to the claims of these four employees for overtime compensation under the FLSA, we note that our prior decision in B-205219 did not identify which type of overtime compensation was claimed, Title 5 of the United States Code or FLSA. We also note that employees who are subject to the overtime provisions of both Title 5, United States Code, and the FLSA are entitled to overtime compensation under the law giving the greater benefit. Lynch and Drozd, 61 Comp. Gen. 115 (1981).

There was no mention in the claims of these employees previously considered by this Office of possible entitlement under the FLSA, and our claim settlements and our decision in B-205219 cited prior decisions and court cases dealing solely with overtime entitlement under Title 5 of the United States Code. Therefore, our prior decision in B-205219 pertained only to the claimants' entitlement to overtime compensation under Title 5, United States Code, and not to their possible entitlement to overtime compensation under the FLSA. B-205219, March 15, 1982, clarified.

With respect to OPM's request that we clarify the jurisdiction of OPM and GAO concerning FLSA claims, we note that under the Fair Labor Standards Amendments of 1974, Public Law 93-259, April 8, 88 Stat. 55, Federal employees were included in coverage under the FLSA and the Civil Service Commission (now Office of Personnel Management) was authorized to "administer" the FLSA with respect to Federal employees. 29 U.S.C. §§ 203 and 204(f) (1976).

We have held that we will not review OPM determinations regarding whether employees are exempt or nonexempt from coverage under the FLSA. 61 Comp. Gen. 191 (1982); and B-51325, October 7, 1976. However, in view of our authority to settle claims by or against the Government and our authority to render decisions on matters involving the expenditure of appropriated funds, we have held that OPM does not have final authority to adjudicate claims or settle accounts under the FLSA. See 31 U.S.C. §§ 3526, 3529, and 3702 (1982) and B-51325, October 7, 1976. See also B-200112, May 5, 1983, and B-195921, October 20, 1982.

24164

B-205219

Nevertheless, in view of the authority of OPM to administer the FLSA, we have held that we will accord great weight to OPM determinations and will not overrule such determinations unless they are clearly erroneous or contrary to law or regulation. John L. Svercek, 62 Comp. Gen. 58 (1982); Paul Spurr, 60 Comp. Gen. 354 (1981); and Bruce Mandell, B-202859, April 6, 1982. These latter three decisions each involved requests by the employing agency that we modify the compliance order issued by OPM, and, in each case, we upheld OPM's determinations under the standards set forth above.

In our decision in Spurr we cited OPM's FLSA compliance and complaint system as set forth in Federal Personnel Manual Letter 551-9, March 30, 1976, and we suggested that the proper forum for rebutting factual findings by OPM is during OPM's investigation of the complaint.

Concerning the jurisdiction of OPM and GAO with regard to FLSA claims, our Office retains jurisdiction over questions concerning the propriety of payments under the FLSA; that is, we will consider requests from the heads of agencies, certifying or disbursing officers, and claimants or their representatives who question OPM determinations under the FLSA Compliance Program. The party questioning OPM's determination would have the burden of proof to show that the determination was clearly erroneous or contrary to law or regulation. Spurr, cited above.

We anticipate that where an agency has no basis to object to OPM's determination under the FLSA, the agency will proceed to comply with OPM's determination assuming there are no other questions concerning the propriety of the payment. Just as agencies now process nondoubtful backpay or overtime claims under Title 5 of the United States Code without requesting a decision from our Office, we expect that agencies will also comply with OPM's determinations under the FLSA without resort to a decision from our Office unless an agency has legitimate doubt as to the legal or factual basis of the determination.

Accordingly, we hold that payment of the claims of these four employees for overtime compensation under the FLSA is not precluded by our prior decision in B-205219. Additionally, since no evidence has been presented contesting the substance of the OPM determination, we have no basis to question that determination.

Milton J. Acosta
for Comptroller General
of the United States