



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Richard R. Bourbeau - Title 5 Overtime Pay
Claim - Reconsideration

File: B-238987.2

Date: June 9, 1992

DIGEST

The statutory and regulatory requirements for overtime pay, in 5 U.S.C. § 5542 (1988) and 5 C.F.R. § 550.111(c) (1991), respectively, are met if an employee is required to perform overtime work. Prior decision denying claim for overtime pay is affirmed on reconsideration where employee, a senior supervisor, has not shown that he was required by his supervisor to perform overtime work.

DECISION

Mr. Richard R. Bourbeau requests reconsideration of our decision, Richard R. Bourbeau, B-238987, Sept. 7, 1990, which denied his claim for overtime pay under 5 U.S.C. § 5542 (1988). We affirm our previous decision.

Mr. Bourbeau is employed as a dual-status United States Army Reserve technician, whose position is not covered by the Fair Labor Standards Act. However, he is eligible to receive overtime pay under 5 U.S.C. § 5542 (1988) (Title 5 overtime pay), and he claims overtime pay for participation in administrative assemblies held in the evenings after his regular work hours. The period of time involved in this claim runs from October 1980 to September 1985.¹

In our previous decision, we held that Mr. Bourbeau was not entitled to receive overtime pay because he had not shown that he was ordered or induced by his supervisor/commanding officer to attend administrative assemblies.² On reconsideration, we find that although Mr. Bourbeau was required to attend administrative assemblies, he has not established

¹Mr. Bourbeau's original claim was received by our Claims Group on October 7, 1985, within the 6-year period provided for in 31 U.S.C. § 3702(b) (1988).

²Richard R. Bourbeau, B-238987, Sept. 7, 1990, affirming Claims Settlement, Z-2865731, Sept. 10, 1989.

that he was entitled to overtime pay for performing this duty.

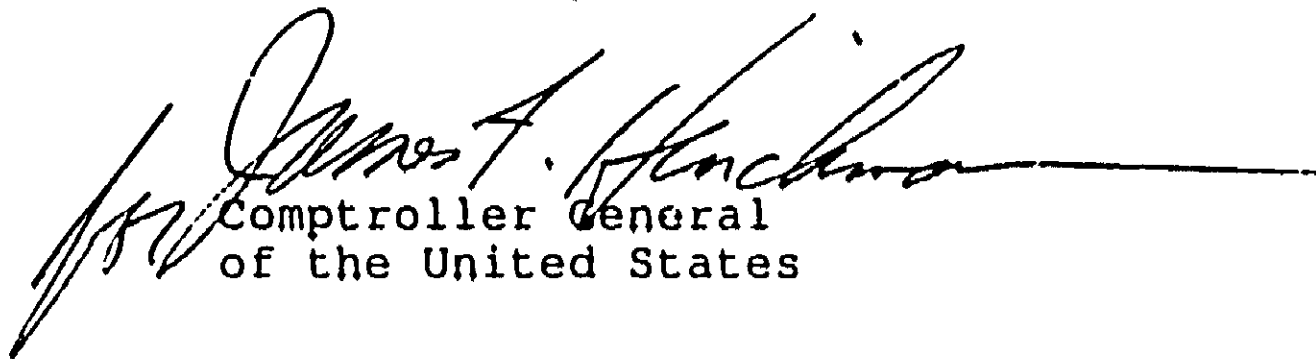
Mr. Bourbeau explains that as a dual-status United States Army Reserve technician he is both a civilian employee and a United States Army Reserve member. As a civilian employee he works a normal 40-hour week and serves as the Command representative. In his reserve capacity, he is Command Sergeant Major and attends weekend training drills and 2 weeks annual training. During the administrative assemblies, he states that he performs tasks associated with his civilian capacity. Thus, he contends that he is expected by his commander, who was also his civilian supervisor, to attend these administrative assemblies.

The Department of the Army does not dispute that Mr. Bourbeau is expected to attend these assemblies, but insists that Mr. Bourbeau was never coerced into working overtime. Army reports that it was and is command policy that: (1) when units have administrative assemblies, the Supervisory Staff Administrative Assistant/Command Sergeant Major would attend as many of these assemblies as possible; (2) when civilian employees are required to work at administrative assemblies, they will either work an adjusted work week or be given compensatory time off; and (3) civilian employees, who are also Army reservists with the same unit they work for and who attend administrative assemblies, be considered working in their civilian capacities unless they are being compensated as a reservist.

Mr. Bourbeau argues that the actual practice in his unit during the time period in question was different from the Army policy in that compensatory time off was not allowed during the official work week. He states that from October 1985 onward, the unit changed its practice so that he has been allowed time off for the attendance.

To prevail in this matter, Mr. Bourbeau has the burden of proving that he was required to attend administrative assemblies without being allowed compensatory time off during his official work week. He has not met this burden. As the Army points out, Mr. Bourbeau served as a senior supervisor during the time period in contention. As such it was his responsibility to insure that Command policy followed, not only for his employees but also in his own case. That policy was, and still is, that attendance at administrative assemblies will be accomplished without involving the payment of overtime.

Based on the record, we conclude that Mr. Bourbeau's claim must be denied. Accordingly, we affirm Richard R. Bourbeau, B-238987, Sept. 7, 1990.


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