

DECISION



M. Volpe PLM I

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

8172

FILE: B-167602

DATE: October 30, 1978

MATTER OF: Lorenzo G. Baca, et al. - Overtime
Compensation

DIGEST: Former General Services Administration guards request reconsideration of prior GAO decisions denying their claims for overtime compensation for preshift and postshift duties. Since guards have failed to meet their burden of proof in showing that overtime was "ordered or approved", prior decisions are sustained. We do not reach questions of whether to offset duty-free lunch or whether duties were more than de minimus.

This action is in response to a request for reconsideration of our prior decisions B-167602, August 11, 1977, and August 4, 1976, and 53 Comp. Gen. 171 (1973), denying the claims of 15 former General Services Administration (GSA) guards for overtime compensation for duty performed prior to July 1, 1966.

The facts in this case are fully set forth in our previous decisions on these claims (cited above) and will not be repeated except where necessary. Our prior decisions held that the guards had not presented sufficient evidence to establish (1) that the overtime was officially ordered or approved, (2) that the 30-minute lunch period was not duty-free and therefore could not be offset against overtime claimed, and (3) that the time necessary for these preshift and postshift duties was more than de minimus.

On appeal the guards argue that pursuant to a memorandum of understanding between the Atomic Energy Commission (AEC) and GSA, AEC was given the authority to order or approve overtime. In addition, the guards have furnished statements from two former AEC officials, Messrs. Ralph Fitz and W.C. Roussel, to the effect that the guards were "induced" to perform overtime by these officials who were authorized to order and approve overtime.

The memorandum of understanding provides, in pertinent part, as follows:

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3. Overtime. In the event of an emergency, and when deemed essential to the conduct of regular activities under this Agreement, the Commission may order overtime as required. Such overtime will be confirmed by appropriate approval on the suitable GSA form by the designated ALOO representative. Authority for overtime in connection with the conduct of all other activities shall be submitted in advance of the actual work to the Buildings Manager, Public Buildings Service, Albuquerque, New Mexico. Certification of the performance of such overtime will be made on the suitable GSA form by the designated ALOO representative."

The evidence submitted by the guards was forwarded to GSA for comment, and GSA's report states, in pertinent part, as follows:

"The disallowance of these claims should be sustained because the agreement between GSA and the Atomic Energy Commission provides that authority for overtime, in other than emergency situations, must be submitted in advance of the actual work to the appropriate GSA Buildings Manager who supervised the activities of GSA guards now claiming overtime compensation. The statements of Messrs. Roussel and Fitz [the AEC officials] clearly indicate they did not authorize or approve overtime for the performance of pre-shift and post shift duties by GSA guards prior to July 1, 1966. Absent such an authorization, GSA could not order these guards to perform overtime."

Our decisions are based on the factual information furnished by the claimants and on reports obtained from various administrative agencies. The submission of a claim to this Office for settlement does not, in and of itself, create a presumption of the claimant's entitlement to the amount so claimed. On the contrary, one who asserts a claim has the burden of furnishing substantial evidence to clearly establish liability on the part of the Government and

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the claimant's right to receive payment. See 4 C.F.R. § 31.7 (1977). Moreover, when disputed questions of fact arise between a claimant and administrative agencies of the Government, it is the long established rule of this Office to accept the statements of fact furnished by administrative agencies in the absence of a preponderance of evidence to the contrary. See Irene T. Baer, B-180638, August 30, 1974, and decisions cited therein.

In the present case, we have reviewed the evidence submitted by the guards with respect to whether the overtime was officially ordered or approved, and we are unable to agree with their contention that, pursuant to the memorandum of understanding between AEC and GSA, AEC officials were authorized to order and approve overtime in other than emergency situations. Furthermore, as we have stated in our prior decision, there is no evidence that GSA ever ordered or approved overtime for the performance of preshift and postshift duties during the period in question.

With regard to the questions of whether to offset a duty-free lunch and whether the overtime was more than de minimus, the guards have submitted additional evidence on both matters. However, we need not reach those questions at this time since the guards have not met their burden of proof regarding the question of whether the overtime was "ordered or approved."

Accordingly, we must sustain the prior denials of these claims.

R. K. K. K.
Deputy Comptroller General
of the United States