

**DECISION**

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

PLM2  
30284

**FILE:** B-215887  
B-215888

**DATE:** January 24, 1985

**MATTER OF:** Rose J. Reiter and Rayford Guinn

**DIGEST:** Claimants employed as operating room nursing assistants at a Veterans Administration hospital and compensated under the General Schedule are not entitled to annual premium pay for on-call duty since Veterans Administration has not designated their residences as their duty stations and their activities are not severely restricted.

This action is taken upon the appeal by Rose J. Reiter and Rayford Guinn of our Claims Group's denial of their claims for annual premium pay for standby ("on-call") duty.<sup>1/</sup> Since they both claim similar entitlements for the same period of time, and are employed at the same hospital, their claims have been consolidated for purposes of our decision in this matter. The settlements of their claims by the Claims Group are sustained.

Mrs. Reiter and Mr. Guinn are employed as operating room nursing assistants, grade GS-6, at the Veterans Administration Medical Center in Portland, Oregon. They claim annual premium pay for 700 hours per year from 1974. According to their job description, they are periodically required to perform "on-call duty" at times outside their regularly scheduled work hours. While they are scheduled for on-call duty, they are to keep the professional nurse in charge informed as to their location and "to respond to all calls within 30 minutes."

This claim was first filed in this Office on July 14, 1981. Under the provisions of 31 U.S.C. § 3702, all claims cognizable by the General Accounting Office that are not filed here within 6 years after the claim first accrued are barred from consideration. Accordingly, those parts of these claims covering the

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<sup>1/</sup> The appeals were presented by the attorney for Mrs. Reiter and Mr. Guinn, James S. Coon, Esq., of Portland, Oregon.

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period from 1974 through July 14, 1975, are barred and may not be considered. See 62 Comp. Gen. 275 (1983).

As General Schedule employees, the entitlement of Mrs. Reiter and Mr. Guinn to premium pay for standby duty is governed by the provisions of 5 U.S.C. § 5545(c)(1). That provision 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." Concerning when an employee's "on-call" duty at his residence constitutes time spent "at or within the confines of his station" so as to entitle him to premium pay, regulations implementing the authorizing statute, 5 C.F.R. § 550.143(b), provide:

"(b) The words 'at, or within the confines, of his station,' in § 550.141 mean one of the following:

\* \* \* \* \*

"(3) In an employee's living quarters, when designated by the agency as his duty station and when his whereabouts is narrowly limited and his activities are substantially restricted. This condition exists only during periods when an employee is required to remain at his quarters and is required to hold himself in a state of readiness to answer calls for his services. This limitation on an employee's whereabouts and activities is

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distinguished from the limitation placed on an employee who is subject to call outside his tour of duty but may leave his quarters provided he arranges for someone else to respond to calls or leaves a telephone number by which he can be reached should his services be required."

Under that regulation an employee is not entitled to premium pay for on-call duty if he is not required to remain at home but may leave his living quarters, provided that he can be contacted by telephone. The regulation specifically excludes this type of on-call duty as entitling the employee to premium pay.

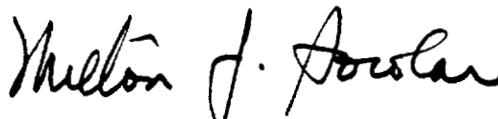
The job descriptions for the positions held by Mrs. Reiter and Mr. Guinn do not require that they remain at home while on call, but require that they keep the hospital informed as to their whereabouts; moreover, they are allowed 30 minutes within which to respond to calls. Since their personal activities are not so restricted that they are required to remain at home, and since there is no indication of record that their homes have been designated by the agency as their duty station while they are on call, these employees are not entitled to annual premium pay for on-call duty at home. Charles F. Callis, and Others, B-205118, March 8, 1982.

The claimants contend, however, that because Veterans Administration hospital nurses are paid for the same kind of on-call duty that they themselves perform, it is unfair that they should not receive pay as well. As noted in the agency's prior explanations of this issue, the pay of Veterans Administration hospital

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nurses is governed by the provisions of 38 U.S.C. § 4107, whereas the pay of Veterans Administration hospital operating room nursing assistants is governed by title 5 of the United States Code. Under 38 U.S.C. § 4107(e)(8), nurses are entitled to pay for on-call duty. There is no provision which authorizes pay for the type of on-call duty required to be performed by Mrs. Reiter and Mr. Guinn. George W. Lovill, B-196465, April 16, 1980; John T. Teske, B-190369, February 23, 1978.

Therefore, the Claims Group's settlement disallowing these claims is sustained.

*for*   
Comptroller General  
of the United States