

**DECISION**

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

**FILE:** B-217874**DATE:** October 7, 1985**MATTER OF:** Don Edgar Burris

- DIGEST:**
1. An administrative law judge may not be allowed overtime compensation where delays in concluding field hearings or in obtaining transportation caused return travel to be performed beyond normal duty hours. To be compensable, return travel must meet one of the conditions set forth in 5 U.S.C. § 5542(b)(2).
  2. An administrative law judge who complained that he was permitted only a 30-minute lunch period while some other employees were allowed 45 minutes each day is not entitled to overtime compensation for the difference of 15 minutes. Because there is no indication that the employee worked more than 8 hours a day, he is not entitled to overtime compensation under 5 U.S.C. § 5542(a).
  3. The General Accounting Office will not consider appeal from agency denial of grievance regarding determination that administrative law judge was absent without leave. The General Accounting Office will not review allegations of irregularities in agency grievance procedures.

Don Edgar Burris, an administrative law judge employed by the Department of Health and Human Services, Social Security Administration, presented three separate matters to the General Accounting Office. He has raised issues concerning his entitlement to a longer lunch break, his agency's determination that he was away without leave, and his entitlement to overtime compensation in connection with his conduct of and return from field hearings.

Since the Claims Group issued a settlement certificate in 1980 denying the overtime claim, it has been submitted to the Comptroller General as an appeal. We sustain their settlement denying Judge Burris' claim for overtime compensation in connection with his conduct of and return from

033397

hearings and deny his newly presented claim for additional compensation for an additional lunch period that he was not granted. We decline to render a decision on the other matters Judge Burris has presented because his bases for appeal are alleged improprieties in the agency's grievance procedure--matters that we do not review.

OVERTIME CLAIM

Judge Burris filed a grievance with the Department of Health, Education, and Welfare (now Health and Human Services), Social Security Administration, on February 11, 1977, in which he contended that he was entitled to overtime pay or compensatory time for 17 hours of nontravel and 161 hours of travel overtime performed on several dates from October 10, 1975, through October 31, 1976, in the course of conducting field hearings. The times listed by the grievant as overtime, generally, ran from 4:30 p.m., the end of his normal workday, until the time he arrived home. He pointed to delays in concluding hearings and transportation delays as the causes of the overtime accumulated incident to returning to his official duty station.

The examiner's recommendation that overtime compensation and compensatory time be denied was based on findings of the first and second stage grievance officials. They found no evidence that Judge Burris requested or obtained approval of overtime, and specifically found that he had control over the scheduling and conduct of hearings.

Under 5 U.S.C. § 5542(b)(2)(B) time spent in a travel status constitutes hours of employment, if it results from an event which could not be scheduled or controlled administratively or meets one of four other conditions not in issue here. Under similar circumstances involving the conduct of field hearings we held that travel performed after regular duty hours by examiners of the National Labor Relations Board to return to their official duty stations did not satisfy the statutory requirement of administrative uncontrollability. Janice C. Hankins and Annie Archie, B-210065, April 2, 1984. As in Judge Burris' case, there was no immediate official necessity for the examiners' return and we noted that delays in concluding hearings or in obtaining return transportation, even though difficult to anticipate, are not the events that required the travel

after regular hours. Since there was no administratively uncontrollable event necessitating Judge Burris' return travel, he is not entitled to overtime pay or compensatory time off for return travel performed after normal duty hours. In addition we find no evidence that he requested or received advance approval for non-travel overtime and therefore he is not entitled to overtime compensation for the non-travel hours claimed.

#### ADDITIONAL LUNCH PERIOD

In a memorandum of July 16, 1984, addressed to his agency, Judge Burris claimed that he was entitled to pay for 15 minutes per day over a period of several years during which he took only 30 minutes for lunch. He claimed that during this period certain other employees were allowed to take a 45-minute lunch period and he also requested that the agency formally establish a 45-minute lunch period. The agency declined to consider Judge Burris' complaint under its grievance procedures because he had failed to identify with sufficient specificity the matter being grieved. Rather than provide the information necessary to pursue his grievance, Judge Burris raised the matter with this Office.

Because the determination of work schedules is a matter solely within agency discretion, this Office does not have authority to address Judge Burris' request to establish a 45-minute lunch period. His claim for overtime is governed by 5 U.S.C. § 5542(a). That statute authorizes overtime compensation for work actually performed in excess of 8 hours on any one workday. Judge Burris does not claim that he has not been paid at regular rates for the 15 minutes he worked each day and he does not claim that he worked in excess of 8 hours on any of those days. For this reason his claim for overtime compensation for 15 minutes a day may not be paid.

#### AWAY WITHOUT LEAVE

On May 24, 1984, Judge Burris filed a grievance with his agency claiming pay for the week of April 30, 1984. He alleged that when he took a week's leave he relied on 9-year informal agency procedures which did not require the leave to be approved in advance. The agency withheld a week's pay on grounds that the grievant was away without

B-217874

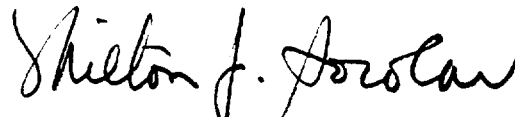
leave because he did not obtain the advance approval required by agency regulations. The grievance proceedings resulted in a denial of the relief sought, accompanied by the recommendation that the pay could be restored and the leave record altered if he would submit an application for retroactive approval and an explanation of why the leave was taken without obtaining advance approval.

The thrust of Judge Burris' appeal from the agency determination is criticism of the agency's grievance procedure, which includes allegations of fraud and corruption.

We do not consider claims that are based on alleged violations of an agency's grievance procedure. Donald J. Tate, B-203622, January 19, 1982; Samuel H. Stern, B-202098, April 22, 1982. Accordingly, we decline to consider Judge Burris' allegations regarding the disposition of his complaint concerning his agency's determination that he was absent without leave.

CONCLUSION

For the reasons stated above, the relief Judge Burris has requested may not be granted.

*for*   
Comptroller General  
of the United States