DIGEST - 2 - CU

DECISION

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

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FILE: B-184795 DATE: AUG 5 1976

MATTER OF: - Overtime Compensation

DIGEST:

Employee whose claim for 400 hours overtime was disallowed by GAO on written record requested in-depth investigation. Disallowance is sustained since GAO settles claims on basis of written record (evidence submitted by claimant and agency), when there is dispute as to facts GAO accepts agency report in absence of preponderant evidence to contrary and disallows doubtful claims leaving claimants to their remedy in court where facts may be judicially determined under sworn testimony and evidence, and written record does not indicate overtime was ordered or approved as required by law.

By a letter dated August 5, 1975, appealed the certificate of settlement issued by our Transportation and Claims Division (now Claims Division) disallowing his claim for 400 hours overtime compensation during the period June 9, 1973, through April 1, 1974, while he was employed with the Defense Attache Office (DAO), Air Force Division.

The certificate of settlement reads, in pertinent part, as follows:

"The record indicates that Defense Attache Office Directive 690-17, dated August 10, 1973 and November 29, 1973, provided for the Defense Attache Office to staff for 44 operating hours per week, during which time offices were to be manned sufficiently to perform routine functions. The Directive did not require the presence of all personnel for 44 hours per week, nor did it order overtime work to be performed. Defense

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> Attache Office Disposition, dated July 6, 1973, stated, ' * * * All overtime for employees GS-14 and above will be approved only by the DATT, Deputy for O & P, the Deputy for L & A, or Director of Special Staff.' The time and attendance records indicate that the 24 hours of overtime per pay period which you claim were not authorized by appropriate officials. This situation is particularly notable in light of the fact that certain hours of overtime were specifically authorized and compensated.
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> "The basic authority for payment of overtime compensation is the Federal Employees Pay Act, as amended, 5 U.S.C. section 911, now 5 U.S.C. section 5542(a). That Act provides that all hours of work officially ordered or approved in excess of 40 hours in any administrative work week will be considered to be overtime work. The record shows that no one vested with the authority to authorize or approve overtime ever ordered the overtime worked. Also, the record does not contain data to show that an official who could have authorized or approved the overtime either induced or ratified the work after it had been done. Since such authorization or ratification never occurred, no legal basis exists for payment of your claim."

contends that the Claims Division erred in accepting statements and information submitted by DAO while disregarding information submitted by him and requested that we conduct an in-depth investigation of his claim.

We have no direct knowledge of the facts and circumstances giving rise to the many claims received in this Office. We must, therefore, base our claim settlements solely on the written record

consisting of evidence furnished by the claimants and reports obtained from the various administrative agencies. 4 Code of Federal Regulations 31.7 (1976). Also, 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 the claimant's right to receive payment. 4 C.F.R. § 31.7 (1976); B-180638, August 30, 1974; B-180880, April 18, 1974.

Where the record is in conflict as to the facts, as in the instant case, we do not possess the authority of the courts to summon witnesses, administer oaths, and conduct oral examination and cross-examination to facilitate the resolution of such conflicts. It has, therefore, been the long established rule of this Office to accept the statement of facts furnished by administrative agencies in the absence of a preponderance of evidence to the contrary and to disallow doubtful claims. See B-178654, April 8, 1974, and cases cited therein; B-174345, October 3, 1973; and B-160508, June 3, 1968. By so doing, controversial matters are reserved for scrutiny in the courts where the facts may be judicially determined under sworn testimony and competent evidence. See B-175895, April 30, 1974; B-174345, October 3, 1973. See also _____ v. United States, 17 Ct. Cl. 288, 291 (1881); _____ v. United States, 19 Ct. Cl. 316, 319 (1884).

In accord with the foregoing statement of law, we have carefully examined the entire record and find no basis to disagree with the conclusion in the settlement that Directive 690-17 did not require overtime work to be performed. Moreover, we note that Annex A to Directive 690-17 states that schedules were to be devised so as to preclude or minimize the necessity of overtime hours. Also, there is no indication in the record that the 400 hours of overtime claimed by were ordered or approved by competent authority. As stated in the settlement certificate, this situation is particularly notable in light of the fact that certain hours of overtime were specifically approved and compensated.

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Accordingly, since the record shows that the overtime performed was not ordered or approved as required by law, we must sustain the disallowance of claim.

R.F.KELLER

Deputy Comptroller General of the United States