



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-217490

December 19, 1986

Mr. Charles Shaheed, President
American Federation of Government
Employees, Local 2263
610 Truman N.E.
Albuquerque, New Mexico 87110

Dear Mr. Shaheed:

This is in response to your request for reconsideration of our decision dated October 4, 1985, in which we denied the claim of Gary R. Clarke, et al., for premium pay for the periods certain employees were on call for "SEV" (Stockpile Emergency Verification) duty.

We have carefully reviewed your letters dated March 21 and June 5, 1986, the supporting documents, and the entire record in this case. We find nothing which contradicts the essential facts or law upon which our decision of October 4, 1985, was based. It is clear from letters from Local 2263, from employee statements, and communications from management forwarded by Local 2263, that employees on call for SEV duty are required to be available by telephone at their home or by a pager which has a 12-15 mile radius. It is also clear from the employees' statements that the employees have been informed that they have the option of calling someone else to perform this duty if they will be unavailable. There is nothing in your request for reconsideration or in your previous submissions which suggests that employees on call for SEV duty are not free to eat, sleep, read, go to the store, or otherwise use the time for personal pursuits.

In these circumstances premium pay for standby duty is not authorized because employees' activities are not considered to be "substantially restricted" within the meaning of 5 C.F.R. § 550.143 (1986).

In your request for reconsideration you argue that compensation for this time should be paid because:

- employees have not been given written guidelines on SEV duty,

- employees have not been given a list of alternate people to call if they will be unavailable and have not otherwise been advised of what procedures should be used to obtain a replacement,
- on-call duty for SEV has not been included in employees' job descriptions,
- on-call duty for SEV has not been described to new employees,
- on-call duty for SEV is therefore not a condition of employment, and
- on-call duty for SEV is highly stressful.

These allegations all appear to relate to employee objections over the manner in which on-call status for SEV duty has been implemented by management. The GAO has no jurisdiction to remedy such perceived inequities, and even assuming all the above allegations are correct, they do not create an entitlement to standby premium pay.

We note that most of these issues have been raised in the grievance filed by Local 2263 referred to in your letter of June 5, 1986, and it appears that these issues can be more appropriately pursued pursuant to the procedures authorized by the Federal Service Labor Management Relations Statute, 5 U.S.C. Chapter 71.

In view of the above, we will not undertake a formal reconsideration of our decision of October 4, 1985.

Sincerely yours,

Henry R. Wray

Henry R. Wray
Associate General Counsel

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