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**Office of the General Counsel**

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November 17, 1986

Ms. Marita A. Llaverias  
Employee Relations Specialist  
Department of the Navy  
David W. Taylor Naval Ship Research and  
Development Center  
Bethesda, Maryland 20084-5000

Dear Ms. Llaverias:

This is in response to your letter of June 25, 1986, requesting advisory opinions on questions concerning overtime compensation for employees in a travel status. While we generally do not render opinions on hypothetical questions, we are providing the following information which will give you some general guidance on the issues you have raised.

Your first question concerns the proper interpretation of the Federal Personnel Manual Supplement (FPM Supp.) 990-2, Book 550, section S1-3(2)(c)(ii) (Inst. 70 September 26, 1983). You ask whether this section permits an employee's supervisor to authorize overtime compensation for traveltime that is not considered as hours of employment, that is, traveltime which has not met any of the four conditions stated immediately above the section in question. The four conditions to which you refer have their origin in 5 U.S.C. § 5542(b)(2)(B) (Supp. III 1985), and are merely repeated in the FPM Supp. section you have quoted.

The authority for paying the overtime compensation at issue here is 5 U.S.C. § 5542, which provides, in part, that:

"(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or \* \* \* in excess of 8 hours in a day, performed by an employee are overtime work \* \* \*.

\* \* \* \* \*

"(b) For the purpose of this subchapter--

\* \* \* \* \*

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--

"(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

"(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station."

As can be seen from the above-quoted section, the primary requirement for payment of overtime compensation is that the "hours of work" be "officially ordered or approved." The four conditions are the definitions of when time in a travel status will be considered to be "hours of work." Thus, if the time spent in a travel status is merely ordered or approved, and does not meet one of the four conditions, overtime is not payable. For the payment of overtime under 5 U.S.C. § 5542 for time spent in a travel status, the hours worked must be officially ordered or approved, and must meet one of the four conditions.

Your next three questions all concern the determination of when travel is performed under "arduous conditions." We are unable to give a categorical answer of what would constitute arduous conditions that would apply in every case. Whether an employee's travel is performed under arduous conditions must be determined by the facts in each individual case.  
41 Comp. Gen. 82 (1961); B-163654, June 22, 1971.

For general guidance about whether lengthy flights would constitute travel under arduous conditions, we refer you to FPM Supp. 990.2, Book 550, section S1-3(2)(c)(iv) that states in part:

" \* \* \* the time of travel (whether to be performed during day or night) or distance traveled, is not ordinarily considered in determining whether the travel is performed under arduous conditions." (Emphasis added.)

We have previously determined that 30 hours of travel, 16 of which were actual flying hours, did not constitute travel under arduous conditions. See B-168119, May 25, 1971; B-179003, August 24, 1973.

Your fifth question is whether an employee's physical handicap would affect the meaning of "arduous travel." We have not considered the combination an employee's handicap and arduous travel, and, as stated earlier, we do not answer hypothetical questions. Therefore, we can only reiterate that whether or not travel is arduous must be determined on all of the facts of each individual case.

Unlike your first five questions, question six seeks an interpretation of the Fair Labor Standards Act (FLSA) as explained by the attachment to FPM Letter 551-10, April 30, 1976, subsection E(1). In responding here, we are assuming that the employees involved are non-exempt under FLSA, since, if they were exempt, there would be no FLSA entitlement. Specifically, you ask whether note 1 to subsection E(1) applies to employees who do not actually perform work while traveling even if traveling for over 24 hours.

Note 1 provides for the deduction of bona fide meal and sleeping periods from hours worked by employees traveling at least 24 hours. Since subsection E(1) only speaks to travel by employees who actually perform work while traveling, it does not appear that note 1 would apply to employees who do not actually perform work while traveling, even if they traveled for 24 hours.

The circumstances under which an employee would be entitled to compensation for FLSA overtime for hours during which he is not working are very limited. Rather than analyzing the question to see what hours may be deducted for sleeping and eating, the proper method is to see what hours are hours of work and, thus, compensable under the FLSA.

Paragraph E2 of FPM Letter 551-10 states that all time spent in traveling as a passenger on a 1-day temporary duty assignment is compensable. See Steven A. Kauter, et al., B-163654, April 13, 1977. Paragraph E3 deals with temporary duty assignments that last more than 1 day. In those cases travel

as a passenger on a nonworkday that takes place during the hours that constitute an employee's normal tour of duty is compensable under FLSA, but travel as a passenger outside of those hours is not compensable. Lynch and Drozd, 61 Comp. Gen. 115 (1981); Gary Van Hine, et al., R-211007, September 25, 1984.

It appears from your letter that your questions are also of interest to labor organizations. If there are particular individuals with specific claims, please be reminded of the procedures for requesting decisions which are of mutual concern to agencies and labor organizations. These procedures can be found in Title 4, part 22, Code of Federal Regulations.

Copies of the decisions cited above are enclosed for your convenience.

Sincerely yours,

*Robert L. Higgins*  
Robert L. Higgins  
Assistant General Counsel

Enclosures