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DECISION

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

FILE: B-170264 DATE: May 31, 1978

MATTER OF: Paul E. Laughlin - Standby duty at remote radar site

DIGEST: FAA employee assigned to 3-day workweek at remote radar site and required to remain at facility overnight for nonduty hours spanning workweek is not entitled to overtime compensation for standby duty for nonduty hours. Radar site was manned 24 hours per day by on-duty personnel and there is no showing that employees were required to hold themselves in readiness to perform work outside of duty hours or that they were required to remain at the facility for reasons other than practical considerations of the facility's geographic isolation and inaccessibility in terms of daily commuting.

This decision was initiated by Mr. Paul E. Laughlin's appeal from Settlement Certificate Z-2602719, December 14, 1977, denying his claim for overtime compensation. Subsequent to September 21, 1970, Mr. Laughlin, an employee of the Federal Aviation Administration (FAA), was assigned to duty at the Silver City Long Range Radar Facility, a remote radar site. He claims overtime compensation for standby duty performed at that radar facility from September 21, 1970, to July 6, 1975, after which date he was reassigned to a 4-day workweek, including 28 hours of regularly scheduled standby duty, for which he received 25 percent premium pay under 5 U.S.C. § 5545(c)(1).

During the period for which he claims overtime compensation, Mr. Laughlin was assigned a 40-hour workweek consisting of 3 consecutive days of 14, 12, and 14 hours each. He claims that as a condition of his employment he was required to remain at the facility overnight for the hours spanning his assigned workweek. The FAA has explained that because of the Silver City Facility's remote location, the agency provides furnished living quarters for its employees who remain on site during their off-duty hours. The agency has advised that prior to July 6, 1975, employees were not in fact required to remain at the facility after duty hours because of work requirements, but that they were free to leave the station during nonduty hours, inasmuch as the radar site was manned by on-duty personnel for 24 hours per day.

In support of his claim, Mr. Laughlin cites our holding in B-170264, December 21, 1973, and the allowance referred to therein of Mr. Olin Cross' claim for overtime compensation for time spent in a standby status at the FAA's Pleasants Peak Facility. In disallowing Mr. Laughlin's claim, our Claims Division distinguished the situation in the Cross case by reason of the fact that the radar site at Pleasants Peak had on-duty coverage for only 16 hours per day and that for the remaining 8 hours per day, needed coverage was provided by those employees who occupied on-site quarters overnight. The record otherwise established that, due to the lengthy commuting time to the worksite, needed coverage could not be provided by employees subject to call-back overtime from home and that Mr. Cross was required to remain on site in a standby status for the Government's benefit. In contrast, since 24-hour on-duty coverage was maintained at the Silver City Facility, there was no indication that employees were required to remain at the radar site for the Government's benefit, but that any requirement to remain on site was a result of the facility's isolated location.

Mr. Laughlin points out that the Settlement Certificate incorrectly states that his claim is for annual premium pay, whereas he in fact claims overtime compensation under 5 U.S.C. § 5542. He takes specific exception to the finding that employees stationed at the Silver City Facility were not required to remain on site throughout their assigned workweeks. In this regard he refers to statements in correspondence and other documents indicating that employees were "required" to remain at the radar site during nonduty hours. In further support of his assertion that employees were required to remain at the facility, he states that employees were not furnished Government transportation to and from the worksite other than at the beginning and end of the workweek or for approved absences and he points to the FAA's admission that employees who remained at the site during nonduty hours were sometimes called upon to perform overtime work on a call-back basis. In addition, he states that from June 1970 until May 1971 there was on-duty coverage at the facility for only 14 to 18 hours per day, with the balance of the day covered by standby duty.

We have reviewed the written record which, as Mr. Laughlin suggests, indicates that prior to July 6, 1975, employees were

required to remain throughout their assigned workweeks at the Silver City Facility. With respect to a vacancy at that facility, a 1970 vacancy announcement specifically states:

> "* * * site is approximately 20 miles west-northwest of sector headquarters and requires that watchstanders remain at the site three nights while on duty. * * *"

The record strongly suggests, however, that such requirement was the practical result of the relative remoteness and inaccessibility of the facility's location. The very language of the vacancy announcement quoted above suggests such a relationship between the requirement to remain on site and the facility's location, and this view is further supported by the FAA's statement that living accommodations were provided by FAA because of the facility's remoteness and that employees were free to leave the site by privately owned vehicle outside of duty hours.

Mr. Laughlin is of the view that under our holding in B-170264, December 21, 1973, an employee who remains throughout his workweek at a radar site is entitled to overtime compensation for hours outside his regular duty hours not spent eating or sleeping. The cited decision involved claims by three FAA employees for overtime compensation for time spent in a standby status at the FAA's Boise Cascade Facility under circumstances similar to those at the Silver City Facility, but distinguishable in that the Boise Cascade Facility did not have on-duty coverage for 24 hours per day. For those off-duty hours, radar coverage at the site was provided by employees required to remain on site. As in Mr. Cross' case, the record established that Boise Cascade employees were required to remain at the site for the Government's benefit to provide needed radar coverage, although geographic and other factors may also have influenced that requirement. While conceding that this was the case, the FAA declined to compensate the employees. It sought to distinguish the two situations by its determination that the Boise Cascade employees' time at the facility outside of duty hours was spent predominantly for their own and not the FAA's benefit. In holding that the employees were entitled to overtime compensation for standby duty, we explained that the test of whether an employee's time is spent predominantly for his own or the Government's benefit relates to standby duty performed at the

employee's home. It does not apply to defeat entitlement where the employee is required to remain in quarters provided by the agency which are other than the employee's regular living quarters and which are specifically provided for use of personnel required to stand by in readiness to perform actual work.

Because of the particular fact circumstances involved, the decision in B-170264, supra, begins with the premise that the employees were required to hold themselves in readiness to perform work outside their regular tours of duty, based on administrative reports indicating that there was on-duty coverage at the Boise Cascade Facility for less than 24 hours per day with needed coverage provided by employees required to remain on site during nonduty hours. That decision includes the following statement on which Mr. Laughlin relies as a basis for his claim:

> "* * * While an employee who is 'on call' at home may in fact be found to have spent his time predominantly for his own benefit, Congress has made the determination, reflected by enactment of 5 U.S.C. 5542 and 5545, that where, as in the instant cases, a Federal employee is required to remain at his duty station and away from his home h[illegible]e is necessarily spent for the benefit of his e[illegible]er."

That language is not intended to authorize overtime pay under 5 U.S.C. § 5542 or premium compensation under 5 U.S.C. § 5545(c)(1) except in circumstances where the employee is required to hold himself in a state of readiness to perform work. It does not stand for the proposition that the mere restriction of an employee to his worksite outside of duty hours entitles him to overtime compensation therefor.

It should be recognized that an employee may be required to remain at a worksite during nonduty hours without compensation where his presence is not a result of work or a standby requirement but is due to geographic factors. In Mossbauer v. United States, 541 F.2d 823 (1976), the U.S. Court of Appeals considered the claim of a Navy employee for overtime compensation for travel between his Government-furnished quarters at one end of a Navy controlled island facility and his job site at the other end of the island. Once a week the employee was flown at Government

expense to the island where he was required to remain until he was provided return transportation at the end of his workweek. In the interim he slept in quarters furnished by the Navy. In discussing the employee's entitlement to overtime compensation generally, the Court stated:

> "Mossbauer is required to live on the island during the workweek in order to facilitate his presence at the jobsite. However, that fact does not itself render his required off hours presence and daily journeys compensable."

The Mossbauer case was one in which the requirement that the employee remain on site during nonduty hours was a result of the facility's geographic isolation and commuting impracticalities. The Court's statement that the mere requirement that the employee remain on site does not entitle him to overtime compensation is consistent with the language of the Civil Service Commission's regulation at 5 C.F.R. § 550.143(a)(1). That subparagraph provides that annual premium compensation for regularly scheduled standby duty is not payable where the employee's remaining at his station is:

> "* * * merely voluntary, desirable or a result of geographic isolation, or solely because the employee lives on the grounds."

While the language of that regulation is specifically addressed to annual premium pay entitlement under 5 U.S.C. § 5545(c)(1), as noted in B-170264, supra, the definition of standby duty under that provision is equally applicable in determining entitlement to overtime compensation for standby duty under 5 U.S.C. § 5545(a).

One situation in which an employee is required to remain at his duty site, as a practical matter of geographic isolation, is while assigned to duty aboard a vessel underway. In 52 Comp. Gen. 794 (1973) we held, notwithstanding the necessity that he remain on board the vessel outside of duty hours while on a trial trip, that the claimant was not entitled to overtime compensation for any time aboard ship during which he did not perform actual work inasmuch as his assignment did not require that he hold himself in readiness to perform work.

With respect to that portion of Mr. Laughlin's claim subsequent to May 1971, the record establishes no more than that FAA employees, including the claimant, assigned to the Silver City Facility were required to remain at the radar site during nonduty hours as a result of the facility's remote location and practical problems related to daily commuting. The radar facility was manned 24 hours a day by on-duty personnel and, unlike in the cases discussed above involving the FAA's facilities at Pleasants Peak and Boise Cascade, there has been no showing that employees were required to hold themselves in a state of readiness or alertness to perform work during nonduty hours. The fact that, on occasion, employees may have been required to perform compensated overtime work on a call-back basis does not of itself demonstrate that they were required to remain in a standby status.

Accordingly, we find no basis to overturn the Settlement Certificate determination disallowing Mr. Laughlin's claim for overtime compensation for the period subsequent to May 1971.

While the FAA has advised that 24-hour on-duty coverage has been maintained at the Silver City Facility for the past 8 to 10 years, Mr. Laughlin claims that from June 1970 until May 1971 there was on-duty coverage for only 14 to 18 hours per day. A review of the records submitted by the employee and the FAA does not resolve this dispute of fact. However, the FAA has indicated that where an employee can provide substantiating documentation, his claim for overtime compensation will be considered by the agency. In view of the FAA's willingness to further consider the matter, we do not here disallow Mr. Laughlin's claim for the period from June 1970 through May 1971 for his failure to establish his entitlement, but recommend that he submit evidence to the FAA to establish that less than 24 hours on-duty coverage was provided for that period. His claim should be reviewed by the FAA in light of our holding in B-170264, December 21, 1973, as clarified herein. In particular, we direct the FAA's attention to the discussion in B-170264, supra, of the Court of Claims' holding in Baylor, et al. v. United States, 198 Ct. Cl. 331 (1975), as to the standards to be applied in determining whether overtime work, including standby duty, has been authorized or approved.

Deputy Comptroller General
of the United States