

DECISION



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

FILE: B-185913

DATE: AUG 3 1976

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MATTER OF: William P. Barlow - Overtime compensation

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DIGEST:

Civilian guard employed by Department of Air Force may not be paid overtime for duty performed during 20-minute lunch period since lunches were eaten during his normal 8-hour shift for which he has been compensated.

This action concerns the request by Captain J. D. Driskill, Accounting and Finance Officer, Department of the Air Force, dated January 20, 1976, for our decision as to the propriety of certifying for payment the voucher of Mr. William P. Barlow for overtime compensation. Mr. Barlow claims overtime pay for duty which he performed from April 12, 1964, to December 3, 1973, as a guard during his 20-minute lunch period while on post time within his scheduled 8-hour tour of duty.

The record indicates that during the period for which overtime pay is claimed, Mr. Barlow was a civilian employee of the United States Air Force Civilian Guard Force at the Davis-Monthan Air Force Base, Arizona. The claimant was assigned to specific tours of duty which included an 8-hour on post tour and certain preshift or postshift periods of paid overtime for guard mount purposes. A 20-minute on-the-job lunch period was authorized as part of the 8-hour on post shift during the period of the claim pursuant to paragraph 7 Air Force Regulation (AFR) 40-523 (July 11, 1963, and November 1, 1965), paragraph 5 of AFR 40-523 (October 31, 1968), and paragraph 7 of AFR 40-610 (September 15, 1971). The cited regulations provided:

" \* \* \* Where more than one 8-hour shift is in operation during a 24-hour period and an overlapping of shifts to permit time off for lunch is not feasible, an on-the-job lunch period of 20 minutes or less may be authorized and included in the regularly scheduled hours of duty. Workers must spend their on-the-job lunch period time

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at or near their work station. Under these conditions, the time covered by the 20 minutes on-the-job lunch period is compensable."

Mr. Barlow predicates his claim upon the decision in Baylor v. United States, 198 Ct. Cl. 331 (1972) wherein the court held that where an employee regularly takes advantage of a lunch break away from his post, even though the break is not regularly scheduled, such time will offset an equal amount of otherwise compensable preshift or postshift overtime. The court also held that where the employee was officially on duty and in fact performed his regular duties while eating lunch, such an offset would not be appropriate.

As noted above the claimant was paid overtime compensation for preshift and postshift guard mount duties. Further, the employing agency does not contend that it may offset against such time the claimant's lunch period. Because the court in Baylor addressed only the issue of offsetting the lunch period against otherwise compensable overtime, and since the issue of offset is absent here, the decision in Baylor is not in point.

Section 6101 of title 5, United States Code, requires that an agency ordinarily assign an employee to a basic administrative workweek of 40 hours and a basic workday of 8 hours for a full-time employee. Since the 20-minute lunch period during which Mr. Barlow worked is actually a part of his official 8-hour on post work period, as required by statute and for which he has been paid, further compensation at overtime rates is not authorized by law. B-181317, December 17, 1974; B-182610, February 5, 1975. Accordingly, the voucher may not be certified for payment.

R. F. KELLER

Deputy | Comptroller General  
of the United States