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Parker  
Civ. Serv.

**DECISION**



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

**FILE: B-191156**

**DATE: June 5, 1978**

**MATTER OF: Erwin M. Hein, Jr. - Overtime Compensation**

**DIGEST:** Employee of Air National Guard who is permitted to wear his uniform to and from work, may not receive overtime compensation for reporting to work early and staying later after work for the purpose of changing into and out of his uniform.

By letter dated December 19, 1977, Mr. Erwin M. Hein, Jr., has appealed the action of our Claims Division taken in Settlement Certificate of December 7, 1977, which disallowed his claim for overtime compensation allegedly due him for time spent changing into and out of his uniform, before and after his scheduled hours of work, as a civilian Air Technician, New York Air National Guard.

Mr. Hein based his original claim on the holding of Baylor v. United States, 198 Ct. Cl. 331 (1972), wherein certain General Services Administration uniformed guards were granted overtime compensation for time spent changing into and out of their uniforms, before and after their work shifts. While in both the Baylor case, and the instant case, the employees were required to report for duty on time, in the required work uniform, in Baylor, supra, the plaintiff guards were prohibited from wearing their uniforms to and from work. Our Claims Division disallowed the claim of Mr. Hein because he had the option of wearing his uniform to and from work, thus negating the claim that he was required to report for work early in order to change into his uniform and to stay after work in order to change out of his uniform.

The Settlement Certificate stated:

"It was stated in the Baylor case, at pages 346-7 that:

'All members of the guard force were furnished with uniforms, caps, badges, and certain other necessary equipment, all of which items were Government property. Although the language of the regulations covering the wearing of uniforms contained in the 1952 and 1963 issues of the Handbook for Guards

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differs, it is undisputed that the effect of both versions was to require all guards to report to their assigned posts in the prescribed uniform, wear the same during all duty hours, and to generally prohibit them from wearing their uniforms to and from work, or outside the limits of the official duty area, except in the performance of duties considered official in nature. No item of issue could be worn or carried away from the duty area. This prohibition of the guards wearing their uniforms outside the duty area continued in effect until the end of the claim period, when a new rule was instituted permitting the guards to wear their uniforms (without the badge and cap insignia) to and from work. The natural consequence of the uniform requirements in effect during the claim period was that the guards had to change into their uniforms before the beginning of their officially scheduled shifts and to remove them at the end of each shift before leaving the duty area.'

"In the instant case, however, Office of Technician Personnel Deputy Chief Bernard W. Hurlock stated in his letter dated June 4, 1975 that:

' \* \* \* National Guard Bureau regulations make wearing a uniform mandatory for technicians. It is, and always has been, presumed that it will be worn to and from work. If, because of personnel preference, a technician wears civilian clothes and changes on arriving at his duty station and before departing at the end of the day, there is no basis for determining that overtime has been ordered, authorized, or approved.'

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"The option to wear uniforms to and from work was confirmed by Lieutenant Colonel Clifford D. Holland, Station Detachment Commander, New York Air National Guard, in his letter of June 22, 1976, which stated:

'3. There is not, nor has there ever been any requirement for an individual to travel to and from home in uniform, however, it has always been "Authorized" should the individual choose to do so.'

"Since you were not required to change into and out of your uniform at your duty station and outside your hours of duty, the holding in the Baylor case is not for application. The situation in your case is covered by Comptroller General Decision B-156407, dated April 25, 1977, copy enclosed, in which it was determined that the claim of a civilian employee for overtime compensation for reporting early to change into uniform could not be allowed because the record indicated that the employee had the option to wear his uniform to work."

In his letter of appeal, Mr. Hein raises several points which he feels supports his claim. He says that just as in Baylor, supra, the uniform which he wore was Government property. He also argues that, based upon regulations prohibiting the wearing of a uniform in certain situations, it is, or should be, unlawful to permit the wearing of a uniform to and from work. His letter states:

"Additionally, Air Force regulations until recently prohibited anyone wearing the utility (work) uniform from stopping for any reason while enroute to or from work or domicile. Furthermore, TPP 904, para. 1-5a, and MNTF Technician Topic (Enc. 1, Atch. 4), prohibits the wearing of the uniform in official travel status; therefore, the same criteria should be applied towards travel to and from my domicile.

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"An important fact to my case is that I am a civilian wearing a military uniform in conjunction with my employment. Outside of my employment, I have no legal right to wear a military uniform with federally recognized grade and decorations. I believe this to be an equally important fact since if I were detained by civil authorities, the military authorities would be contacted and thus further compound a situation of undeterminable confusion."

In Bruton v. Schnipke, 404 F.Supp. 1032 (1975), the court held that the decision whether to require civilian technicians to wear a uniform was a matter for military determination. It further held that a regulation so governing would not be invalidated unless made without a rational basis. Under this theory, regulations which permit a technician to wear his uniform to and from work are properly a subject for the military. Therefore, we would not question the requirement that Mr. Hein wear a uniform in certain situations and not in others.

It is apparent from the above that although the regulations may have restricted the wearing of uniforms in certain other situations, Mr. Hein was permitted to wear his uniform to and from work. The cases are clear that the operative factor as to whether an employee has performed compensable overtime work in such a case is whether he had to change on the employer's premises or whether he could wear his uniform to and from work. Bantom v. United States, 165 Ct. Cl. 312 (1964), cert. denied 379 U.S. 890 (1964). Ownership of the uniform is an irrelevant factor.

Accordingly, since Mr. Hein is permitted to wear his uniform to and from work, and therefore is not in any way required to report early, or stay late, for the purpose of changing into or out of his uniform, he is not entitled to overtime compensation. Bantom, supra.

  
Acting Comptroller General  
of the United States