

11184 PLEAS 1

DECISION



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

FILE: B-194297

DATE: August 22, 1979

MATTER OF: Artis Holcomb - *[Request for]* Overtime Compensation *]*

- DIGEST:**
1. IRS employee traveled away from her official duty station during last hour of her 8-hour workday and claimed overtime compensation for that hour. Although that hour is a compensable hour of employment it is not compensable at overtime rates under 5 U.S.C. § 5542 because it is not in excess of 8 hours a day or 40 hours a week.
 2. IRS employees who were allowed to travel to a shopping mall during their last regular duty hour, 3:45 p.m. to 4:45 p.m., and who waited there from 4:45 p.m. until the start of an overtime work assignment at 6:30 p.m., may not be paid overtime compensation for claimed waiting time. Compensable waiting time referred to in Federal Personnel Manual Supplement 990-2, Book 550, subchapter S1-3b(2)(c)(iii), means time spent during periods of travel waiting to make connections, such as at an airport, and not time spent awaiting the start of work at a place of temporary duty. Additionally, employees were not required to wait at mall until start of period of overtime work and the waiting time was not for agency's benefit.
 3. Time spent by IRS employees traveling outside their duty station to a mall to perform 3 hours of overtime work, and the return trip, is noncompensable. The traveltime did not fall within the employees' regularly scheduled administrative workweek and there is no evidence that the travel met one of the four conditions set out at 5 U.S.C. § 5542(b)(2)(B).

Mr. A. W. D'Amato, Director, Personnel Division, Internal Revenue Service (IRS), has requested our decision on the overtime compensation claim of Ms. Artis Holcomb, an IRS employee. Ms. Holcomb's claim is representative of others filed by similarly situated IRS employees.

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Ms. Holcomb originally filed a grievance on the matter, along with the National Treasury Employees Union (NTEU) who filed on behalf of the other employees. This grievance was denied and Mr. D'Amato states that in lieu of arbitration it was decided that this Office would be asked for a decision. CNG 00058

FACTS

The facts in the case are as follows. On Friday, February 14, 1975, Ms. Holcomb, together with a number of other employees of the IRS Cleveland District Office, volunteered to provide tax-payer assistance at the suburban Richmond Mall Shopping Center between the hours of 6:30 p.m. and 9:30 p.m. Ms. Holcomb's regular tour of duty was from 8 a.m. to 4:45 p.m., Monday through Friday. Ms. Holcomb was allowed to leave her office at 3:45 p.m. in order to travel to the mall, but with the approval of her supervisors, she went home instead. DLG 02613

Ms. Holcomb was paid overtime compensation for work performed from 6:30 p.m. to 9:30 p.m. She is also claiming overtime compensation for (1) 3:45 p.m. to 4:45 p.m., (2) 4:45 p.m. to 6:30 p.m., with the exception of 45 minutes for dinner, and (3) 9:30 p.m. to the time she arrived back home.

OPINION

The law applicable to Ms. Holcomb's claim is 5 U.S.C. § 5542 (1970), as amended by Pub. L. 92-194, December 15, 1971, which reads in pertinent part:

"Overtime rates; computation.

"(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 and shall be paid for, except as otherwise provided by this subchapter * * *.

* * * *

"(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."

With regard to the period from 3:45 to 4:45 p.m., the union argues that the travel performed during that time is compensable under 5 U.S.C. § 5542(b)(2)(A) because that hour occurred during the regularly scheduled administrative workweek.

Traveltime away from an employee's official duty station within the hours of the regularly scheduled administrative workweek is compensable hours of employment. Such traveltime, however, is not compensable at overtime rates under 5 U.S.C. § 5542 unless it is in excess of 8 hours a day or 40 hours a week. The hour of travel here involved was within Ms. Holcomb's regularly scheduled 8-hour workday. It is evident, therefore, that although the law describes such time as hours of work, the time is only compensable at the regular hourly rate since that time is not overtime hours of employment.

It is also argued that the period from 4:45 p.m., the end of the normal workday, to 6:30 p.m., the beginning of the overtime assignment, should also be compensated at overtime rates with

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an appropriate deduction for a 45-minute dinner. As to those employees who traveled to the mall during 3:45 p.m. to 4:45 p.m., it is claimed that the period from 4:45 p.m. to 6:30 p.m. is compensable waiting time pursuant to Federal Personnel Manual Supplement 990-2, Book 550, subchapter S1-3b(2)(c)(iii), which states in part:

"* * * In determining the amount of time in a travel status which would be included as hours of employment, an employee is considered to be in a travel status only for those hours actually spent traveling between his official duty station and his point of destination, or between two temporary duty points, and for usual waiting time which interrupts the travel."

The waiting time spent by the employees at the mall is evidently not what is contemplated by the above provision. Compensable waiting time under that provision is that time spent during periods of travel waiting to make connections, such as at an airport, and is not time spent awaiting the start of work at a place of duty after the travel has been completed. 50 Comp. Gen. 519 (1971).

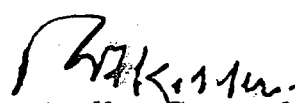
In addition, it appears that the employees were not required to travel to the mall at 3:45 p.m. nor were they required to wait at the mall until the start of the period of overtime work. Rather, they were allowed the option of traveling to the mall or their homes during their regular work shifts. We find that the time spent by those employees waiting at the mall because they chose to go there directly is not time spent for their employer's benefit. Such time is not compensable overtime. Cf. B-170264, December 21, 1973.

As to those employees, such as Ms. Holcomb, who did not travel to the mall between 3:45 p.m. and 4:45 p.m., the period from 4:45 p.m. to 6:30 p.m. is claimed to be compensable traveltime. This time spent by the employees traveling to the mall, however, did not fall within their regularly scheduled administrative workweek and there is no evidence that it met one of the four conditions set out at 5 U.S.C. § 5542(b)(2)(B). Therefore, such time cannot be considered as compensable overtime work. See Matter of Earl Matchett, B-193623,

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July 23, 1979. Traveltime from 9:30 p.m. until such time as Ms. Holcomb and the other employees returned home is likewise uncompensable traveltime. Mere travel to and from work, even though it may be for the purpose of going to and coming from a place of duty at which overtime work is performed, is not compensable traveltime unless the conditions in 5 U.S.C. § 5542 are met.

Ms. Holcomb's claim is denied.


Deputy Comptroller General
of the United States