

13044 PLM-22

DECISION



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

FILE: B-195645

DATE: March 6, 1980

MATTER OF: James Garcia-Standby duty at remote
radar site

DIGEST: FAA employee assigned to remote radar site at Farmington, New Mexico, has not established his entitlement to overtime compensation as standby duty for nonduty hours he remained at the worksite. Agency has determined that the radar site was manned 24 hours per day by on-duty personnel and none of the employees were ordered or required to be in a standby status. In view of agency willingness to reconsider overtime claim where employee furnishes evidence to substantiate claim, employee may submit evidence to FAA to establish that less than 24-hour on-duty coverage was provided at radar site and that he was required to remain at site in a standby status. DLG04034

By letter dated July 1, 1979, Mr. James Garcia, an employee of the Federal Aviation Administration (FAA), Southwest Region, appeals the Settlement Certificate of the Claims Division, dated January 31, 1979, which disallowed Mr. Garcia's claim for overtime compensation for the period August 1969, to June 1975. This claim is incident to Mr. Garcia's contention that he was required to remain in a standby duty status as a Radar Watchstander, GS-12, at the Farmington, New Mexico, Long Range Radar Site.

Mr. Garcia's claim was first received in the Claims Division on October 16, 1975. The Act of October 9, 1940, 54 Stat. 1061, as amended by section 801 of Public Law 93-604, approved January 2, 1975, 88 Stat. 1965, 31 U.S.C. 71a, provides that every claim or demand cognizable by the General Accounting Office (GAO) shall be forever barred unless received in this Office within 6 years after the date the claim first accrued. Our Office has held that the date of accrual of a claim for the purpose of the above-cited statute is to be regarded as the date the

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services were rendered and that the claim accrues on a daily basis. 29 Comp. Gen. 517 (1950). Thus, that portion of Mr. Garcia's claim which accrued prior to October 16, 1969, is barred from consideration.

The record shows that in a memorandum dated October 6, 1976, the Director of the agency's Southwest Regional Office, made a number of determinations concerning employees who had claimed overtime compensation incident to the time they allegedly spent in a standby status. The Director found that the long range radar sites at Farmington and Silver City, New Mexico, are remote from the employees' residences and the sector office and that because of this remoteness, employees assigned to those sites are furnished living quarters. He further stated that the employees assigned to these sites were assigned shifts which provided continuous, uninterrupted 24-hour coverage of the equipment at the sites so that employees were not required to standby for emergencies or ordered to work standby duty hours. In a memorandum dated December 19, 1978, the Chief, Accounting Division for the agency's Southwest Region, stated that claims for overtime compensation for standby duty, are not supportable as the Farmington Long Range Radar Site was manned by on-duty personnel 24 hours per day. On January 31, 1979, the Claims Division disallowed Mr. Garcia's claim on that basis.

In Paul E. Laughlin, 57 Comp. Gen. 496 (1978) we considered the claim of an FAA employee who was assigned to duty at the Silver City, New Mexico, Long Range Radar Facility who was 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. We held that as the radar facility was manned 24 hours a day by on-duty personnel and in the absence of a showing that employees were required to hold themselves in a state of readiness or alertness to perform work during nonduty hours, the employee was not entitled to compensation under either section 5542 or 5545(c) of title 5, United States Code, for nonduty hours he was at the worksite.

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Mr. Garcia now appeals the disallowance of his claim on the basis that while the Farmington Long Range Radar Site was in operation 24 hours per day, there was not a watchstander on duty for 24 hours during the period of his claim. He states that a time log which he had compiled for the period September 1970 to June 8, 1975, and had submitted represents time that he was alone at the facility on standby status and could not leave. He further states that four technicians at a 24-hour site can cover the day watches, but that the nights are "open" and covered by standby time.

While Mr. Garcia has stated that the Farmington Long Range Site was not manned by on duty personnel on a 24-hour basis so that he was required to serve in standby duty, he has not presented any suitable evidence such as documents or official records which would establish that fact. We note that a mere listing of the hours of standby duty he alleges to have performed is not of sufficient probative value so as to permit payment. See: Lawrence J. McCarren B-181632, February 12, 1975.

The FAA has stated that where an employee furnishes evidence to substantiate his claim for overtime compensation, the claim will be reconsidered by the agency. In view of the FAA's willingness to further consider the matter, we do not here disallow Mr. Garcia's claim for overtime compensation, but recommend that he submit evidence to the FAA to establish that less than 24-hour on-duty coverage was provided at the radar facility and that he was required to remain at the radar facility outside of duty hours in a state of readiness or alertness to perform work. His claim should be reviewed by the FAA in light of our holding in B-170264, December 21, 1973, as clarified by Laughlin, supra.

Milton J. Fowler

Acting Comptroller General
of the United States