

19148 53 *Spillard*

DECISION



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

FILE: B-196571

DATE: August 17, 1981

MATTER OF: Nancy C. Jones - [Overtime Compensation for
Food Inspector] - Fair Labor Standards Act

DIGEST: Food inspector claimed overtime compensation under Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq. (1976), for performing various duties outside of her regular working hours. Agency denied claim because of lack of documentation. Office of Personnel Management, which is authorized to administer FLSA, found that the inspector spent an estimated 46-3/4 hours on uncompensated working time. We shall not disturb OPM's factual findings as they are not clearly erroneous. Inspector is entitled to FLSA overtime pay for the 46-3/4 hours.

Mr. C. E. Carroll, an authorized certifying officer with the Department of Agriculture's Food Safety and Quality Service (FSQS), has requested a decision as to whether Ms. Nancy C. Jones, an FSQS food inspector, is entitled to 46-3/4 hours of overtime compensation under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq. (1976). We received comments on the matter from the Office of Personnel Management and the American Federation of Government Employees.

Ms. Jones is a food inspector assigned to non-processing (i.e., cattle, hogs, and poultry slaughter) establishments in the state of Washington. She filed an FLSA complaint alleging that, during the period February 15, 1976, through August 12, 1978, she spent 51-1/4 hours of her own time performing duties required by her job for which she was not paid. Ms. Jones states that these duties included clothes-changing, cleaning equipment, and filling out forms.

The Seattle Regional Office, Office of Personnel Management (OPM), after an investigation into the matter, informed FSQS that Ms. Jones was entitled to 46-3/4 hours of overtime compensation and issued the following findings in a letter of August 7, 1979:

~~018107~~ 116129

B-196571

"Through interviews with Food Inspectors who have worked at the various plants included in Ms. Jones' complaint, we have verified the fact that Ms. Jones spent time outside her regular working hours performing assigned duties such as sharpening knives, filling out T&A reports and travel vouchers, etc. While it was difficult to confirm the specific minutes claimed, we are allowing compensation for the 46-3/4 hours, based on the estimates made by the Inspectors of required work Ms. Jones (and other Inspectors) performed on non-work time. In each interview, the estimates either matched or far exceeded the overtime claimed in this case."

The certifying officer states that, although he does not disagree that time spent completing required paperwork is compensable, the time involved here is minimal and there is sufficient time during the course of Ms. Jones' workday for her to complete all required paperwork. Further, he states that the clothes-changing and cleanup activities are not compensable under FLSA because they are not closely related activities which are indispensable to the performance of the employee's principal activity within the meaning of the Portal-to-Portal Act, 29 U.S.C. §§ 251 et seq. He also states that neither Ms. Jones nor OPM have provided documentation regarding hours worked or what portion of the time was spent on each activity. Accordingly, since the certifying officer has doubts as to whether clothes-changing and cleanup activities are compensable and since he is dissatisfied with the documentation of the time spent in the other compensable activities, he has submitted this matter for an advance decision.

Under 29 U.S.C. § 204(f), OPM is authorized to administer the provisions of the FLSA. In our recent decision Department of Agriculture Meat Inspectors, B-195921, July 31, 1981, we upheld OPM's determination that certain Department of Agriculture red meat slaughter inspectors who are required to wear protective clothing and equipment, are involved in an integral and

B-196571

indispensable part of their principal activity when they engaged in clothes-changing and cleanup activities at their worksites. Accordingly, since Ms. Jones' duties are reported by OPM to be essentially the same as those of the red meat inspectors in that decision, the time spent by her in clothes-changing and cleanup activities is hours of work under FLSA.

As to the actual documentation of Ms. Jones' claim, we have noted the particular requirements of the FLSA in regard to the documentation of claims as follows:

"The FLSA requires employers to 'make, keep and preserve such records of persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him.' See 29 U.S.C. § 211(c). The courts have consistently applied a special standard of proof for FLSA cases in which the employer has failed to meet his statutory duty to keep accurate records. Under such circumstances, it is sufficient for the employee to prove that he has in fact performed overtime work for which he was not compensated and to produce sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate. Anderson v. Mt. Clemens Pottery Co., 323 U.S. 680, 687-688 (1946), and Hodgson v. Humphries, 454 F.2d 1279, 1283 (1972)." B-199673, June 15, 1981, 60 Comp. Gen. _____ .

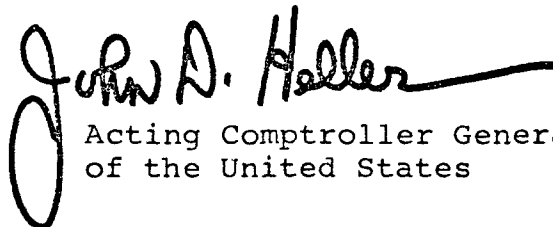
In its report to us on Ms. Jones' claim, OPM states that Ms. Jones kept detailed records of her working time which showed how much overtime she had worked each day. While OPM could not specifically confirm her records, OPM

B-196571

allowed 46-3/4 hours as the most reasonable estimate of Ms. Jones' uncompensated working time. In arriving at this estimate, the Seattle Region of OPM found that because of the nature and location of the work, free time such as downtime and company breaks were not sufficient to allow the various tasks to be performed. In most instances, OPM found that break-time was spent cleaning equipment or walking to and from the Government office located at each plant, leaving insufficient time for necessary paperwork and other work required of the employee.

We have held that given OPM's procedures for processing FLSA complaints, including an opportunity for on-site investigations and a review of all pertinent evidence, we would not disturb OPM's factual findings unless clearly erroneous and the burden of proof is on the party challenging those findings. Paul Spurr, B-199474, April 2, 1981, 60 Comp. Gen. _____; Department of Agriculture Meat Inspectors, B-195921, July 31, 1981. In light of the facts presented we cannot say that OPM's finding that Ms. Jones had performed 46-3/4 hours of work was clearly erroneous.

Therefore, since the time spent by Ms. Jones in clothes-changing, cleanup activities, and completing paperwork is compensable hours of work under FLSA, Ms. Jones is entitled to overtime compensation in accordance with the findings of the Seattle Region of OPM.

A handwritten signature in cursive script that reads "John D. Heller". The signature is written in black ink and is positioned above the typed name and title.

Acting Comptroller General
of the United States