

**DECISION**

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

**FILE:** B-213931

**DATE:** June 21, 1984.

**MATTER OF:** National Federation of Federal Employees,  
Local 387 -- Overtime Compensation for  
Firefighters

**DIGEST:**

Firefighters who work two 24-hour and one 12-hour shift in each administrative workweek and receive premium pay on an annual basis for regularly scheduled standby duty are precluded from receiving additional overtime pay for work, in excess of 8 hours a day that is part of their regularly scheduled administrative workweek. However, they may be entitled to receive compensation under the Fair Labor Standards Act, at a rate of not less than one and one-half times their regular rate for all hours in excess of 108 hours in a biweekly pay period.

This action is in response to a request from Mr. James M. Pierce, President, National Federation of Federal Employees, for a decision on whether Federal firefighters who are receiving premium pay as authorized by 5 U.S.C. § 5545(c)(1) for regularly scheduled standby duty, are entitled to additional overtime pay under 5 U.S.C. § 5542(a) for work scheduled in advance in excess of 8 hours a day. This matter has been presented under our procedures set forth at 4 C.F.R. Part 22 (1984) for decisions on appropriated fund expenditures which are of mutual concern to Federal agencies and labor organizations. In view of the applicable provisions of law, firefighters who receive premium pay on an annual basis for regularly scheduled standby duty are precluded from receiving additional overtime pay under section 5542(a) for work that is part of an employee's regularly scheduled administrative workweek.

The firefighters at the Veterans Administration Medical Center, Northport, New York, are regularly scheduled during an administrative workweek to work a tour of duty of 60 hours consisting of two 24-hour shifts and one

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12-hour shift. During each 24-hour shift the firefighters are in a work status for 8 hours, and in standby status, including a designated sleep period, for the remaining 16 hours. During the 12-hour shift, the firefighters are in a standby status for 4 hours. For this extended tour of duty the firefighters receive their basic rate of pay and premium pay of 12 1/2 percent of their basic rate as authorized by 5 U.S.C. § 5545(c)(1). See 55 Comp. Gen. 908, 910 (1976).

The Federation contends that the agency should compensate the firefighters for work performed during their regular shift, including standby time, in excess of 8 hours a day, at time and a half their regular rate under 5 U.S.C. § 5542(a), since such work is scheduled in advance and the firefighters hold themselves ready to perform duties as the need arises, during standby time. The Federation's argument is that such work is not compensated through premium pay on an annual basis because that pay is intended for the performance of duties that cannot be scheduled in advance.

The Federation's contention that the work in question is not compensated through premium pay is erroneous. Statutory law governing the payment of overtime compensation to Federal employees is contained in Title 5 of the United States Code. The specific provisions relating to compensation for standby duty are set forth at 5 U.S.C. § 5545(c)(1) as follows:

"(c) The head of an agency, with the approval of the Office of Personnel Management may provide that --

"(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium

pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 \* \* \*." (Underscoring added.)

As we discussed in Lewis E. Meyer, B-200639, April 5, 1981, the legislative history of 5 U.S.C. § 5545(c)(1) shows that the annual premium pay provision was enacted for the express purpose of allowing additional annual pay in lieu of overtime, night, and holiday pay for General Schedule employees who are required to remain at or within the confines of their stations during longer than ordinary periods of duty, but who spend a substantial part of their time on duty in a standby status rather than actually performing work. In Meyer we stated that additional compensation of 25 percent of basic pay is the maximum a General Schedule employee may receive, except for "irregular" or "unscheduled" overtime duty in excess of the regular tour of duty. However, in that decision we noted that if the employee's entitlement to "time-and-a half" overtime compensation for the hours of actual overtime work performed exceeds the amount of annual premium pay which would otherwise be payable for the performance of standby duties, the employee is to be paid that overtime compensation rather than standby premium pay. See 5 C.F.R. § 550.142 (1984).

The applicable regulation, 5 C.F.R. § 550.163(a) (1984), "Relationship to Other Payments" states that an employee receiving premium pay on an annual basis for regularly scheduled overtime, a substantial part of which consists of standby duty, may not receive premium pay for regular overtime work or night, holiday or Sunday work. By definition "regular overtime work" means overtime work that is part of an employee's "regularly scheduled administrative workweek." 5 C.F.R. § 550.103(g) (1984). A "regularly scheduled administrative workweek" for a full-time employee is the period within an administrative workweek, established in accordance with 5 C.F.R. § 610.111 within which the employee is regularly scheduled to work. 5 C.F.R. § 550.103(n) (1984). Under 5 C.F.R. § 610.111(c)(1) when an employee is paid additional pay under 5 U.S.C. § 5545(c)(1), his regularly scheduled administrative workweek is the total number of regularly

scheduled hours of duty a week. Under 5 C.F.R. § 610.111(c)(2) when an employee has a tour of duty which includes a period during which he remains at or within the confines of his station in a standby status rather than performing actual work, his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week, including time in a standby status except that allowed for sleep and meals by regulation of the agency.

Here the firefighters did not perform work in excess of their 60-hour regularly scheduled administrative workweek which included regular overtime work. Because the firefighters are receiving premium pay on an annual basis for regularly scheduled overtime, a substantial part of which consists of standby duty, they are precluded from receiving overtime pay for the same hours under 5 U.S.C. § 5542(c)(1). 5 C.F.R. § 550.163(a).

In this case there is no contention of "irregular" or "unscheduled" overtime work outside the regular tours of duty. However, we note that an employee in receipt of premium pay on an annual basis for regularly scheduled standby duty is compensated for "irregular" or "unscheduled" overtime work under 5 U.S.C. § 5542(a). See Federal Personnel Manual Letter 551-5, January 15, 1975, Attachment 3.

From the submission it appears that the Federation is contending that the firefighters are performing work other than standby duties during their scheduled standby duty hours. However, we bring to the Federation's attention a previously considered situation where a firefighter claimed overtime compensation for watchwork performed during periods he said were set aside for sleeping during his normal standby hours. In that case we stated that premium pay under 5 U.S.C. § 5545(c)(1) is in lieu of other compensation for overtime, night, holiday and Sunday work except irregular unscheduled overtime duty in excess of an employee's regularly scheduled weekly tour. Therefore, we held that there was no authority for allowance of additional compensation where the employee during his regularly scheduled tour of standby duty is required to perform certain duty which is regarded more in the nature of work than the normal standby duty. B-178613, July 6, 1973.

Although the issue was not raised in the submission, we point out that the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq., may also be applicable. Although the firefighters are precluded from being paid overtime under 5 U.S.C. § 5542(a) for any of the 120 regularly scheduled hours they work in a biweekly pay period, if the FLSA is applicable to the Northport, New York VA Medical Center firefighters, they are entitled to receive compensation under the FLSA for those hours they work in excess of 108 hours in a biweekly pay period. 29 U.S.C. § 207(k) (1982). The FLSA requires that firefighters be paid at a rate of not less than one and one-half times their regular rate for all hours in excess of 108 hours in a biweekly pay period. For a more detailed explanation of the applicability of the FLSA and the procedures to be followed in pursuing a FLSA claim see David L. Gipson, B-208831, April 5, 1983, and authorities cited therein.

In accordance with the foregoing discussion, Federal firefighters who receive premium pay under 5 U.S.C. § 5545(c)(1) on an annual basis for regularly scheduled standby duty are not entitled to additional overtime pay under 5 U.S.C. § 5542 for work that is part of the firefighters regularly scheduled administrative workweek.

*for Milton J. Arosan*  
Comptroller General  
of the United States