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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John B. Cleveland - Overtime Compensation - Travel-time to and from Duty Station

File: B-221088

Date: September 11, 1986

DIGEST

1. A former employee claims entitlement to overtime compensation for the period November 12, 1975, to November 12, 1982. The claim was received in the General Accounting Office (GAO) on December 1, 1982. Since 31 U.S.C. § 3702(b)(1) (1982) bars consideration of a claim presented to the GAO more than 6 years after the date the claim accrued, that portion of the claim arising before December 1, 1976, is barred and may not be considered on its merits.

2. A former employee claims entitlement to overtime compensation under title 5, U.S. Code for the period November 12, 1975, to November 12, 1982. The claim, which was received in the General Accounting Office on December 1, 1982, is not barred from consideration for the period after December 1, 1976. However, the earlier disallowance of the claim is sustained. Employee was allowed to commute in Government vehicle from the Public Works Compound, Naval Weapons Center, China Lake, California, to the Randsburg Wash Target Range, Naval Weapons Center, his duty station. Employee picked up Government vehicle at Public Works Compound at 5:15 a.m. in order to start work at Randsburg Wash at 6:00 a.m. His work day ended at 2:30 p.m. at which time he drove the Government vehicle back to the Public Works Compound, arriving at 3:15 p.m., traveling a distance of 28 miles. His claim for overtime compensation for the round trip travel is denied since such traveltime was a part of the normal travel between work and home and commuting time is noncompensable under 5 U.S.C. § 5544(a).

3. Naval Weapons Center former employee claimed overtime compensation under Fair Labor Standards Act (FLSA), and the Office of Personnel Management (OPM) issued a decision finding no overtime compensation to be due. Since OPM is authorized to administer the FLSA with respect to most Federal employees, great weight will be accorded to OPM's administrative determinations as to entitlements under the

Act. However, since OPM was not given authority to settle or adjudicate claims arising under the FLSA, the General Accounting Office retains jurisdiction to decide the propriety of payment on such claims.

4. Claims Group's disallowance of employee's claim for overtime compensation for time spent traveling between point he obtained Government vehicle and point he performed actual duties outside regular duty hours is sustained since travel did not meet requirements of FLSA. Since primary purpose of stopping at point where Government vehicle was made available was to obtain transportation, such travel cannot be regarded as incidental or inherent part of his work and thus is not compensable as overtime hours under FLSA. The day's work did not begin until employee reached the point he performed actual duties; the day's work ended before he commenced travel to return Government vehicle and no work was performed while traveling. Therefore, travel does not meet requirements of FLSA for payment of overtime compensation for time spent in travel status.

DECISION

This decision is in response to a letter from Mr. John B. Cleveland, appealing settlement Z-2850844, August 6, 1985, by our Claims Group, which disallowed his claim for overtime compensation under title 5, U.S. Code, for the period November 12, 1975, to November 12, 1982. That disallowance was based, in part, on the provisions of the Barring Act, 31 U.S.C. § 3702(b) (1982), and, in part, on the determination that Mr. Cleveland's travel outside of his regular duty hours was not ordered and approved and did not meet the conditions set forth in 5 U.S.C. § 5544(a) for overtime compensation. Further, although the Claims Group did not consider Mr. Cleveland's claim under the Fair Labor Standards Act (FLSA), it did note that the Office of Personnel Management (OPM) had previously done so. For the reasons stated below, we sustain the disallowance of Mr. Cleveland's claim.

SIX-YEAR BARRING ACT

Preliminarily, we concur with the Claims Group's finding that Mr. Cleveland's claim is divisible into two parts. The first part is for all overtime claimed to have been performed prior to December 1, 1976, and the second part is for all overtime claimed to have been performed on or after that date.

Under 31 U.S.C. § 3702(b)(1) (1982) a claim against the Government must be received here within 6 years of the date that claim first accrued. We have held that timely receipt of a claim here constitutes a condition precedent to a claimant's right to have that claim considered on its merits. Furthermore, the filing of such claim with any other Government agency does not satisfy the requirements imposed by this provision. Frederick C. Welch, 62 Comp. Gen. 80 (1982). We have also held that a backpay claim accrues on the date the services were rendered and on a daily basis for each day services are rendered thereafter. 29 Comp. Gen. 517 (1950); and Burke and Mole, 62 Comp. Gen. 275 (1983).

Our file shows that the earliest correspondence received in this Office from Mr. Cleveland concerning his overtime pay claim was received here on December 1, 1982. Therefore, any claim which he had for unpaid overtime compensation which arose prior to December 1, 1976, is forever barred from consideration. The action of our Claims Group barring that part of the claim is sustained. However, Mr. Cleveland's overtime compensation claim for the period December 1, 1976, through November 12, 1982, is not barred, and may be considered on its merits.

BACKGROUND

Mr. Cleveland is a former wage board employee of the Department of the Navy, Naval Weapons Center, China Lake, California. From December 1, 1976, through November 12, 1982, the period during which Mr. Cleveland claims overtime compensation, his tour of duty was from 6:00 a.m. to 2:30 p.m., Monday through Friday. During this period of time Mr. Cleveland's official duty station was the Randsburg Wash Target Range, Naval Weapons Center. However, he was allowed to report to the Public Works Compound, Naval Weapons Center, whereupon he would drive a Government vehicle approximately 28 miles to Randsburg Wash in time to begin duty at 6:00 a.m. Mr. Cleveland worked at Randsburg Wash until 2:30 p.m., at which time he departed in the Government vehicle for the Public Works Compound where he dropped off the vehicle and then continued home by private means. The Public Works Compound is located approximately 28 miles closer to Mr. Cleveland's home than the Randsburg Wash duty station. It is this round trip to Randsburg Wash Target Range from the Public Works Compound parking lot (located at Michelson Laboratory), which occurred outside of regular duty hours, for which Mr. Cleveland claims overtime compensation.

In its report to us on the matter, the Department of the Navy states that the use of a Government vehicle between the Public Works Compound, Naval Weapons Center, and the Randsburg Wash Target Range, Naval Weapons Center, was not a requirement of Mr. Cleveland's position. Rather, this arrangement was for Mr. Cleveland's convenience. Mr. Cleveland's use of a Government vehicle was advantageous to him in that he did not have to pay for the commute from the Public Works Compound to Randsburg Wash. Further, we have no indication that Mr. Cleveland was ordered to perform any overtime by an official authorized to order or approve overtime. On this basis our Claims Group denied Mr. Cleveland's claim.

Mr. Cleveland has taken strong exception to the Navy's categorization of his use of a Government vehicle as being strictly for his convenience. To the contrary, Mr. Cleveland states that the operation of the Government vehicle by him was for the benefit of the Naval Weapons Center. In support of this statement, Mr. Cleveland states "that the activity was knowingly and willingly violating their own regulations and the federal regulations pertaining to the official use of government vehicles. I tried to show that NWC would not really do this for my convenience." In further rebuttal to the Navy contention that Government vehicles were made available as a convenience, Mr. Cleveland points to what he characterizes as a typical job announcement during the time period in question, wherein it is stated that Navy transportation is available to and from the Randsburg Wash worksite. Mr. Cleveland characterizes the making available of Navy transportation as stated in the job announcement as "showing that personnel was making the use of a government vehicle a condition of employment and not an option or convenience." Mr. Cleveland postulates that the Naval Weapons Center would not risk the violation of its own and Government-wide regulations which prohibit the use of Government vehicles for employee commuting purposes wholly as a convenience to the employee, but rather, he contends, the agency was motivated by the realization "that if Government transportation was not provided, the Naval Weapons Center would have great difficulty in finding people to work at the Randsburg Wash Testing Range."

In addition to his belief that for the above reasons the operation of the Government vehicle in the manner described was for the benefit of Naval Weapons Center, Mr. Cleveland bases his claim for overtime compensation on the following

reasons. He states that he operated the Government vehicle with the knowledge and direction of the Naval Weapons Center. Additionally, Mr. Cleveland points out that from at least 1950 until 1975, employees such as he who were assigned to the Randsburg Wash worksite were paid 80 minutes overtime per day for this travel. However, Mr. Cleveland points out that in 1975 an agency decision was made to change the Randsburg Wash designation from "work site" to "duty station" and along with the designation change, the 25-year old practice of paying employees overtime compensation for the 80 minutes per day traveltime was discontinued. Mr. Cleveland maintains that the conversion of the Randsburg worksite to a duty station was only a paper transaction without any substantive change in reality and that if legal, "it is certainly a manipulation of the system."

The final major contention asserted by Mr. Cleveland is one of discrimination in that other employees whose work profiles were like Mr. Cleveland's in all fundamental respects were, during the time in question, being paid overtime for the travel in question while Mr. Cleveland was not. Specifically, Mr. Cleveland notes that during the time of his claim there were 12-16 per diem (wage board) employees working at the Randsburg site. Some of these per diem employees were machinists while the others, such as Mr. Cleveland, were public works employees. Both the machinists and the public works employees picked up Government vehicles from the same parking lot at the Public Works Compound and drove to the same building at Randsburg Wash. Both groups worked the same duty hours. Mr. Cleveland reports that both groups at times carried tools or materials in the Government vehicles, but that neither group received instructions prior to travel. The only difference, which Mr. Cleveland views as discriminatory, is that the machinists allegedly were paid for the time they drove from the parking lot to the Randsburg Wash Target Range 80 minutes each day while the public works employees were not paid for the identical travel.

DECISION OF THE OFFICE OF PERSONNEL MANAGEMENT UNDER FLSA

On July 14, 1983, the San Francisco Region of the Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) complaint from Mr. Cleveland claiming entitlement to overtime compensation for the travel described above. The Regional Office of OPM accepted Mr. Cleveland's complaint and adjudicated it under the authority of section 4(f) of the

FLSA, as amended, 29 U.S.C. § 204(f) (1982), which resulted in the issuance of a decision dated April 11, 1984. In the first part of its decision, the OPM made a determination that Mr. Cleveland was nonexempt from coverage under FLSA.[1/]

On the merits of Mr. Cleveland's complaint for overtime compensation, the OPM found that the traveltime claimed was not authorized travel under FLSA, and that, therefore, no compensation was due under FLSA. The OPM explained its decision as follows:

> "Certain kinds of travel are considered hours of work under FLSA if the travel is authorized. Authorized travel is defined as travel which is performed:
>
> "-- Under the direction or control of a responsible official of the employing agency, and
>
> "-- for the benefit of the employing agency.
>
> "We find that the travel was performed under the control of the agency since they provided the government vehicle to the complainant. However, the travel was not performed for the benefit of the agency. There is no evidence that the time spent traveling was directly associated with the performance of a given job assignment. There is no indication that the complainant was to stop at the Public Works compound to receive instructions, pick up tools, or that he was directed to drive a government vehicle to transport passengers.

1/ In a letter to Mr. Cleveland dated July 6, 1984, the OPM noted that, subsequent to the issuance of its decision, it had received correspondence from Mr. Cleveland stating that the job description provided by the agency and upon which the OPM based its exemption determination was not accurate during the period of his complaint. Therefore, the OPM stated that Mr. Cleveland's exemption status during the period of the complaint is in question. However, OPM noted that, since no payment was involved, it did not pursue the matter with the agency thereby allowing its exemption decision of April 11, 1984, to stand. Although the Navy has taken the position that Mr. Cleveland is exempt from FLSA coverage, we will not review OPM determinations on whether employees are exempt or nonexempt from coverage under FLSA. 61 Comp. Gen. 191 (1982).

> The vehicle was provided to the complainant for his convenience. Whether or not the agency was properly or improperly authorizing the use of the government vehicles does not come within the purview of the FLSA. The travel between the compound and Randsburg Wash before and after regular working hours is not hours of work under FLSA."

In view of our authority to settle claims by or against the Government and our authority to render decisions on matters involving the expenditure of appropriated funds, we have held that OPM does not have final authority to adjudicate claims or settle accounts under the FLSA. See 31 U.S.C. §§ 3526, 3529 and 3702 (1982) and Lee R. McClure, 63 Comp. Gen. 546 (1984). Nevertheless, in view of the authority of OPM to administer the FLSA, we have held that we will accord great weight to OPM determinations and will not overrule such determinations unless they are clearly erroneous or contrary to law or regulation. McClure, cited above. The party questioning OPM's determination has the burden to show that the determination was clearly erroneous or contrary to law or regulation. Paul Spurr, 60 Comp. Gen. 354 (1981).

After reviewing the contentions and materials furnished our Office by Mr. Cleveland, we do not believe that he has met his burden in contesting the substance of the OPM determination. It is undisputed that the day's work began and ended at building 70004 at Randsburg Wash Target Range. Accordingly, the time outside of the regular workday spent traveling to and from the parking lot at Michelson Laboratory is not compensable as overtime. Therefore, we decline to overrule the OPM decision disallowing the claim for overtime compensation under FLSA.

OVERTIME COMPENSATION UNDER
5 U.S.C. § 5544(a)

The compensation of wage board employees for overtime is provided for at 5 U.S.C. § 5544(a) (1982), which reads in pertinent part, as follows:

> "* * * Time spent in a travel status away from the official duty station of an employee subject to this subsection is not hours of work unless 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."

A similar provision concerning General Schedule employees, 5 U.S.C. § 5542(b)(2) (1982), has been construed by this Office to mean that normal commuting time between an employee's residence and his duty station is not "time spent in a travel status away from the official duty station" and is thus not compensable traveltime. 41 Comp. Gen. 82 (1961) cited in Porter C. Murphy, 55 Comp. Gen. 1009 (1976). The essential facts of Murphy, cited above, are analogous to the facts forming the basis of Mr. Cleveland's claim. Mr. Murphy, a wage board employee, was employed at Camp Bullis, Texas, with a tour of duty from 7:30 a.m. to 4:00 p.m. Mr. Murphy was allowed to report for duty at Fort Sam Houston whereupon he would drive a Government vehicle to Camp Bullis, his official duty station. We found no basis upon which to allow the payment of overtime compensation to Mr. Murphy under 5 U.S.C. § 5544(a) as explained below:

"Even though Mr. Murphy did drive a Government vehicle after work hours from Camp Bullis to Fort Sam Houston, and this travel did benefit the Government, Mr. Murphy was in essence performing the major part of his work-to-home commute at Government expense. He performed no work on arriving at Fort Sam Houston but rather continued home by private means. Accordingly, * * * we [illegible] that since Mr. Murphy was actually commuting to [illegible] work he is not entitled to overtime compensation [illegible] travel in question." 55 Comp. Gen. 1009, 1011.

We have noted that when employees are required to report first to headquarters prior to travel to the actual duty location merely for the purpose of facilitating their use of Government transportation, the time in such travel to headquarters (or from headquarters to return the vehicle) may not be regarded as hours of work. 52 Comp. Gen. 446, at 450 (1973).

It is clear from the record in this case that the traveltime at issue is not compensable as overtime under title 5 of the United States Code. Travel outside of regular duty hours which has no purpose other than to transport employees to and from the place where they are to perform actual work is not compensable unless the traveltime meets one of the conditions set forth in 5 U.S.C. § 5544(a). That is, it: "(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." The traveltime at issue in this case does not meet any of those standards. We have also held that where employees as a matter of choice or convenience report to their duty station and use Government transportation to their worksite, there can be no overtime compensation for the time spent traveling. B-181843, November 19, 1974, and B-178241, May 25, 1973, and Court of Claims cases cited therein. This is the rule even when Government-owned transportation is the only way to get to the worksite. 51 Comp. Gen. 7 (1971). Therefore, there is no basis for the allowance of Mr. Cleveland's claim under 5 U.S.C. § 5544(a) (1982).

As to Mr. Cleveland's statement that the machinists who were also wage board employees performing the identical travel before and after duty hours were allegedly paid overtime for their hours of travel while he and other public works employees were not, we have no information concerning the machinists or how or why their treatment allegedly may have been different. It is sufficient to state, however, that rights or benefits which may have been granted to one group of employees cannot be the basis for granting additional rights or benefits which have no basis in law or regulation to another group of employees.

for Milton J. Socolar
Comptroller General
of the United States