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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Charles S. Price, et al. - Overtime While Traveling -
Emergency Detail
File: B-222163

Date: August 22, 1986

DIGEST

The Food and Drug Administration (FDA) declared a manpower emergency in its San Francisco District caused by shipments of contaminated watermelons and other foods. On July 10, 1985, FDA officially requested investigators from other FDA districts to travel to San Francisco "as soon as possible." Three investigators traveled that same evening in response to the request. Their claim for overtime pay for non-duty travel hours was denied by FDA on the basis that the travel could have been scheduled the following day. Under 5 U.S.C. § 5542(b)(2)(B)(iv) travel performed as a matter of immediate official necessity outside regular duty hours is compensable as overtime. In this case, since the event was administratively uncontrollable and the travel performed that evening was requested by FDA, the overtime claims are allowed.

DECISION

This decision is in response to a request from David R. Petak, Chief, Accounting Branch, Division of Financial Management, Food and Drug Administration (FDA). The matter involves the entitlement of three of its employees to receive overtime pay while in a travel status. For the reasons set forth below, we conclude that they are entitled to overtime pay.

BACKGROUND

In early July 1985, an emergency situation developed in the San Francisco District of the FDA. Pesticide residues (Aldicarb) in watermelon had caused a number of food poisoning incidents nationwide and many of the contaminated melons were traced to growers in California. During the same period, other events involving imminent public health hazards also arose in the San Francisco District. These included several Class I (imminent health hazards) recalls, and an outbreak of food poisoning and deaths associated with contaminated soft cheese imported from Mexico. Because of these events, the manpower needed to conduct investigations in the San Francisco District was far greater than the available manpower and outside assistance was required.

In the afternoon of July 10, 1985, the FDA Cincinnati District and other districts were informed by FDA headquarters of the emergency and the immediate need for investigators to travel to the San Francisco District, on an "as soon as possible" basis. Three investigators under the supervision of the Cincinnati District volunteered to travel on that basis. They were Charles S. Price, Harold A. Sanders III, and Thomas M. West. They were ordered by their Director of Investigation to travel that evening so that they would be available for work in San Francisco the following morning. Travel arrangements were made by their office and they departed for San Francisco after duty hours that same evening.

Following their return to their duty station, each made a claim for 6-1/2 hours of overtime pay incident to travel to San Francisco on the evening of July 10. By memorandum dated August 13, 1985, the Director of Investigations Branch, Cincinnati District, citing to our decision B-163654, April 19, 1968, disallowed their claims for the following reasons:

"The Aldicarb emergency was beyond the agency's control. Your travel, however, was an event that could be scheduled or controlled administratively. We have but to look at the results - 12 of 20 employees (a majority) actually traveled on the following day.

"While I can appreciate the interest and enthusiasm the three of you demonstrated, I would have to recognize that, if any of you had voiced reasons why you could not travel the evening of July 10, there would in all probability have been no objection on my part to your traveling the following day, July 11."

The three employees contend that the next day travel option was not presented to them, and expressed the belief that the emergency was of such a nature that all other employees would be traveling that evening as well. Additionally, they cite to our decision B-186005, August 13, 1976, as being more relevant to their situation and assert that this decision should be deemed controlling.

DECISION

Section 5542 of Title 5, United States Code, as amended by section 101(c) of Public Law 98-473, October 12, 1984, 98 Stat. 1874, provides in part:

"(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--

* * * * *

"(B) the travel * * * (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station."

The term "event" referred to in the above provisions is not the actual travel which is required. It has been construed by this Office to be anything which requires the employee to perform official travel away from his duty station. While the phrase "could not be scheduled or controlled administratively," is not susceptible to a precise definition, we have held that there must exist an immediate official necessity occasioned by the unscheduled and administratively uncontrollable event which requires the travel to be performed outside the employee's regular duty hours. B-163654, April 19, 1968. Thus, where the necessity for the travel is not so urgent as to preclude proper scheduling of travel, then overtime compensation may not be paid nor compensatory time granted for the after-hours travel time. See Hankins and Archie, B-210065, April 2, 1985, and decisions cited.

In decision B-163654, April 19, 1968, which was considered by FDA as controlling, we considered the appropriateness of payment of overtime compensation to certain National Transportation Safety Board employees who were required to perform on-site investigations of an aircraft accident. Although we recognized therein that where an initial response to an emergency situation may properly involve overtime pay for travel during non-duty hours, we stated that once the initial phase of an investigation has been completed, further non-duty hours traveled by other employees in connection with that investigation would not be compensable since such travel ordinarily would be subject to administrative scheduling and control during official duty hours.

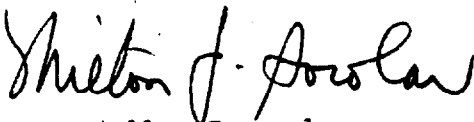
We do not consider the ruling in that case to be controlling here. The facts which gave rise to that ruling involved the need for immediate investigation and then follow-on investigation. In the present case, the facts describe a multifaceted national health hazard of potentially serious proportions involving shipments of contaminated packaged cheese and truck loads of contaminated watermelons from several western states and from Mexico. Clearly the contaminated foods had to be kept off the market, and yet, viewing the perishable nature of truck crops such as watermelons, every effort had to be made to reduce the period of whatever quarantine was necessarily imposed as rapidly as possible. Thus, it is

our view that FDA, San Francisco District, was still in the initial investigation/containment phase when the manpower emergency was declared on the afternoon of July 10, 1985.

In decision Gerald Rowell and Marvin Griffin, Jr., B-186005, August 13, 1976, cited by the three employees, we ruled, in part, that where the event which necessitated travel is uncontrollable and the need for personnel was on an "as soon as possible" basis, if the travel is performed after hours in specific compliance with an official request, travel during non-duty hours is compensable under 5 U.S.C. § 5542(b)(2)(B)(iv).

As previously noted, the nature of the declared emergency in the present case was such that the San Francisco District did not have sufficient manpower to contain the problem. The FDA's determination to seek assistance from other districts was made on July 10, 1985, with immediate calls made to other districts that same afternoon to obtain investigators to travel to the San Francisco District that evening for duty beginning the following morning. The three claimants volunteered and travel arrangements were made by the Cincinnati office for their travel that evening in response to the emergency. Since the record shows that the emergency was an event that could not be controlled administratively, that they complied with request on an "as soon as possible" basis, and that the agency set their departure time in response to that emergency, it is our view that the decision in Rowell and Griffin, Jr., above, controls their entitlement.

Accordingly, Messrs. Sanders, Price, and West, are entitled to overtime compensation for travel performed on the evening of July 10, 1985, to San Francisco, in response to that declaration of emergency.

for 
Comptroller General
of the United States