

Date: July 9, 2004
Matter of: [name]
File Number: 03-0027
OPM Contact: Robert D. Hendler

The claimant is employed as a permanent, subject-to-furlough, [position]. The claimant is employed with the United States Department of the Interior, National Park Service, at [field unit]. The claimant requests back pay for 38 ¾ hours of overtime worked in 2000. The Office of Personnel Management (OPM) received the claim on December 18, 2002, the agency administrative report on June 13, 2003, and the claimant's response to the report on July 29, 2003. For the reasons discussed herein, the claim is denied.

The claimant stated that the 2000 season ended for him on November 5, 2000, when he came off the [field unit]. On January 5, 2001, he informed his supervisor that he had reported all the overtime hours that he worked in 2000 because he had planned to donate the overtime. However, he changed his mind and verbally requested payment for the overtime. His supervisor denied the request. The claimant stated that he submitted an official request for overtime on January 11, 2001, and the request was denied. The record does not include official documentation showing that the overtime performed in this claim was ordered and approved by authorized officials.

The agency reported that overtime worked on August 8, 2000 was approved on September 9, 2002 and overtime worked on August 22, 2000 was approved on December 18, 2002, "based upon information [the claimant] provided in the October 1, 2002 meeting with the Superintendent." The agency stated that the claimant "did not seek advance verbal or written approval and has not provided any documentation to [Superintendent] to substantiate the remainder of his claims."

The agency's decision to deny the claim was based on the National Park Service Overtime Policy, Personnel Management Letter No. 92-20, January 28, 1993. The agency reports that according to its policy on overtime management, overtime or compensatory time must be requested and approved in writing by authorized officials in advance. Supervisors may approve verbal requests for overtime during an emergency. Supervisors may not grant authorization for overtime for official work at home unless the residence is identified as the official duty station for all purposes.

The agency reports that the claimant was exempt from the FLSA during the claim period. The claimant is eligible for title 5 overtime pay as an FLSA exempt employee. 5 U.S.C. § 5541(a). Therefore, he is entitled to compensation only when overtime is officially ordered or approved.

Section 5542(a) of title 5, United States Code prescribes that overtime must be ordered or approved by an authorized office to be entitled to overtime pay or compensatory time. The OPM regulations at 5 CFR 550.111(a) tracks 5 U.S.C. § 5542(a). *United States Information Agency – Compensatory Time*, B-251636 (June 11, 1993); *Richard R. Bourbeau*, B-238987 (September 7, 1990), *affirmed*, 71 Comp. Gen. 432 (1992); 68 Comp. Gen. 385 (1989); *John W. Wright*, B-236750 (November 7, 1989); *Jim L. Hudson*, B-182180 (January 6, 1982); *Donald W. Plaskett*, B-183916 (March 8, 1976); *Garrett F. Masco*, B-179908 (December 20, 1973).

According to 5 CFR 178.105, claims are settled on the written record and the claimant has the burden of proving that he or she actually worked overtime that was officially ordered or approved, or actively induced, by an agency official with authority to order or approve overtime work. *Matter of Jim L. Hudson, supra*. OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. *See Frank A. Barone*, B-229439, May 25, 1988. Where the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. *See, e.g. Jimmie D. Brewer*, B-205452, Mar. 15, 1982, as cited in *Philip M. Brey, supra*. We are required to settle claims only in accordance with the applicable laws and regulations, and we cannot waiver or modify their provisions in individual cases. The record does not include any documentation that the additional hours worked by the claimant were officially ordered or approved, or actively induced, by agency officials with authority to order or approve overtime. Accordingly, the claim is denied.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.