

U.S. Office of Personnel Management  
Office of Merit Systems Oversight and Effectiveness  
Classification Appeals and FLSA Programs



Atlanta Oversight Division  
75 Spring Street, SW., Room 972  
Atlanta, Georgia 30303

**Fair Labor Standards Act Decision  
Under Section 4(f) of the Act as Amended**

**Claimant:** [3 claimants]

**Position:** Engineering Technician  
GS-802-11

**Organization:** [organization]  
Department of the Navy  
[location]

**Claim:** Exemption status. Due back pay for  
difference in overtime between time  
and a half and GS-10 step 1.

**OPM decision:** Nonexempt. Overtime payment due.  
**OPM decision number:** F-0802-11-01

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Kathy W. Day  
FLSA Claims Officer

November 12, 1997

Date

There is no right of further appeal from this decision. The Director of the U.S. Office of Personnel Management may at her discretion reopen and consider the case. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

**Decision sent to:**

[claimants' names and addresses]

[personnel officer's name]  
Director Human Resources Office  
Code 1110  
[shipyard]  
Portsmouth, VA 23709-5000

Mr. David Neerman  
Director for Classification, Staffing, and  
Compensation (OCPM Code C20)  
Office of Civilian Personnel Management  
Department of the Navy  
800 North Quincy Street  
Arlington, VA 22203-1998

Defense Civilian Personnel Management  
Service  
Field Advisory Services  
1400 Key Boulevard  
Arlington, VA 22209-5144

## **Introduction**

On January 17, 1996, 10 claimants who were employed in the [organization], Department of the Navy, [location], filed claims with the General Accounting Office (GAO) for overtime pay. Responsibility for determining pay claims based on entitlement for overtime compensation was transferred from GAO to the U.S. Office of Personnel Management (OPM). The Atlanta Oversight Division has jurisdiction and accepted the claim in February 1997. Required information from the agency was received June 16, 1997. Additional information from the claimants in response to the agency report was received September 29, 1997.

The claimants were all employed in one of two positions: Equipment Specialist, GS-1670-11, or Engineering Technician, GS-802-11. As a result, we have separated the claims and will issue two decisions. This decision covers the work performed by the 3 claimants in the position of Engineering Technician, GS-802-11, position numbers J1980 and 1982 (which are identical positions except for duty location). Because of a transfer of function, the claimants were transferred to another position in July 1996.

## **General issues**

The claimants base their claim on the fact that employees in like positions in the GS-802 series at the [shipyard] were awarded back pay for overtime under the Fair Labor Standards Act (FLSA) at the rate of 1½ times their hourly rate of basic pay as part of a settlement agreement with the Department of Navy. The agency determined that the claimants were exempt under FLSA, therefore, their overtime pay entitlement was computed under Part 550 of title 5, Code of Federal Regulations, which limits overtime pay to 1½ times the hourly rate of basic pay at the minimum rate for GS-10. The claimants are filing for the difference between the overtime pay they received under title 5 and what they believe they should have received under FLSA.

The settlement agreement applies only to those employees who filed a grievance prior to December 7, 1995. It is an agreement reached between the Department of Navy and the grievants and is not a determination of the status of GS-802 positions, either exempt or nonexempt, under FLSA regulations. Our decision will be made independently of the settlement agreement and will be based on our determination of the application of the FLSA regulations to the actual duties performed by the claimants while assigned to position number J1982 or J1980.

## **Evaluation**

During the claim period, the claimants spent 60 to 70 percent of their time performing end-to-end calibrations and repair of fleet support electrical, mechanical and electro-mechanical instrumentation and Test and Monitoring Systems (TAMS) in support of the Shipboard Instrumentation and Systems Calibration (SISCAL) program. They used approved procedures and techniques to ensure that all applicable performance specifications and operational parameter tolerances were adhered to. They tested systems onboard ships, at Shore Intermediate Maintenance Activities (SIMAs) which are repair facilities, and at other activities where equipment could not be removed. They participated in

Calibration Capability Evaluations (CCEs) at the SIMAs to ensure compliance with the latest instructions, as well as Certification and Quality Assurance audits of fleet personnel who perform system calibration and alignments. They also conducted on-the-job technical training for personnel as needed. In conducting the end-to-end system calibrations and the CCEs, the claimants applied very specific criteria, followed well-established procedures, performed prescribed tests and had very little opportunity, if any, to deviate. The equipment was certified to certain, specific frequencies which it either met or did not meet. The claimants did not modify or develop systems.

The claimants developed some local instructions based on Naval Sea Systems Command (NAVSEASYS COM) established guidelines and procedures, and they provided input to NAVSEASYS COM personnel in the development and validation of correct procedures. Technical manuals from the equipment manufacturer were available and included in the procedures developed and used by Navy.

We have carefully considered the information furnished by the claimants and the agency including the position description of record, the claimants' information concerning their duties and responsibilities, position information furnished by the supervisor during the claim period, and the agency analysis of the FLSA determination. To be exempt from coverage under FLSA, it must be established that the position in question meets one or more of the statutory exemption criteria, i.e. executive, administrative, or professional, found in title 5, Code of Federal Regulations (CFR), Part 551, Subpart B. The agency has determined that the position is exempt from coverage under FLSA using the administrative exemption criteria.

#### Administrative Exemption Criteria

Under the administrative exemption criteria, contained in 5 CFR Section 551.205, an administrative employee is an advisor, assistant, or representative of management, or a specialist in a management or general business function or supporting service who meets all of the following criteria:

- (a) The employee's primary duty consists of work that --
  - (1) Significantly affects the formulation or execution of management policies or programs; or
  - (2) Involves general management or business functions or supporting services of substantial importance to the organization serviced; or
  - (3) Involves substantial participation in the executive or administrative functions of a management official.
- (b) The employee performs office or other predominantly nonmanual work which is --
  - (1) Intellectual and varied in nature; or

- (2) Of a specialized or technical nature that requires considerable special training, experience, and knowledge.
- (c) The employee must frequently exercise discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.
- (d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS-5 or GS-6 (or the equivalent in other white collar systems) must spend 80 percent or more of the worktime in a representative workweek on administrative functions and work that is an essential part of those functions.

The claimants' position does not meet (a)(1).

Established OPM guidance concerning work that affects the formulation or execution of management programs and policies recognizes that management policies and programs range from broad national goals that are expressed in statutes or Executive Orders to specific objectives of a small field office. Employees may actually make policy decisions or participate indirectly, through developing proposals that are acted on by others. Employees who significantly affect the execution of management policies or programs typically are those whose work involves obtaining compliance with such policies by individuals or organizations, both within or outside the Federal government, or making significant determinations in furthering the operation of programs and accomplishing program objectives. Administrative employees engaged in such work typically perform one or more phases of program management, i.e., planning, developing, promoting, coordinating, controlling, or evaluating operating programs.

The claimants spent 60 to 70 percent of their time performing end-to-end calibrations and repair of electrical, mechanical, and electro-mechanical instrumentation and systems. The remainder of the time was spent conducting CCEs at SIMAs, conducting Certification and Quality Assurance audits, and providing on-the-job technical training. The systems calibrations and CCEs required the claimants to apply very specific criteria, follow standard procedures, and select from among prescribed solutions when they encountered problems. They were not engaged in formulation or execution of management policies or programs, e.g., evaluating operating programs of the organization. They were not obtaining compliance with program policies or determining the accomplishment of program objectives; rather, they were making technical determinations concerning the accuracy of shipboard instrumentation and systems.

The claimants' position does not meet (a)(2).

Work that involves general management, business, or supporting services includes a wide variety of specialists who provide support to line managers by providing expert advice in specialized fields, such as that provided by management consultants or systems analysts; by assuming facets of the overall management function, such as personnel management or financial management; by representing

management in business functions, such as negotiating contracts; or by providing support services, such as procurement and distribution of supplies. The claimants do not perform such services.

The claimants' position does not meet (a)(3).

Work involving participation in the functions of a management official includes employees, such as secretaries and administrative assistants, who participate in portions of the managerial or administrative functions of a supervisor whose scope of responsibility precludes personally attending to all aspects of the work. To support exemption, such assistants must have knowledge of the policies, plans, and views of the supervisor and must be delegated and exercise substantial authority to act for the supervisor. The claimants do not perform in this manner.

The claimants' position does not meet (b)(1).

Work of an intellectual nature requires general intellectual abilities, such as perceptiveness, analytical reasoning, perspective, and judgment applied to a variety of subject matter fields, or work involving mental processes which involve substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot rely on standardized procedures, or precedents, but must recognize and evaluate the effect of a continual variety of conditions or requirements in selecting, adapting or innovating techniques and procedures, interpreting findings, and selecting and recommending the best alternative from among a broad range of possible actions. The claimants applied an intensive, technical knowledge in the performance of their SISCAL and CCE duties. They were not concerned with a variety of subject matter fields. They used detailed procedures and technical manuals to determine if the systems and equipment were functioning as required, applying very specific certification criteria and performing prescribed tests. They had very little discretion within those prescribed procedures to adapt techniques or be innovative.

The claimants' position meets (b)(2).

OPM guidance indicates that work which is of a specialized or technical nature requiring considerable specialized training, experience, and knowledge means specialized knowledge of a complex subject matter and of the principles, techniques, practices and procedures associated with that subject matter field. These knowledges characteristically are acquired through considerable on-the-job training and experience in the specialized subject matter field.

The claimants were required to have an extensive knowledge of the complex field of electro-mechanical, mechanical, and/or electronic calibration in order to apply standards and procedures as they related to shipboard instrumentation and systems and calibration laboratories and equipment. The in-depth practical knowledge required to review instrumentation systems and calibration laboratories, provide technical assistance, and provide training would typically come from several years of on-the-job training and experience.

The claimants' position does not meet (c).

Established OPM guidance is that the exercise of discretion and independent judgment involves interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. The work must involve sufficient variables as to regularly require discretion and judgment; the employee must have the authority to make determinations or take action; and the decisions must be significant. Employees who perform work requiring primarily skill in applying standardized techniques or knowledge of established procedures, precedents or other guidelines which specifically govern their actions would not meet this element. In addition, deciding whether a situation does or does not conform to clearly applicable criteria would not be considered making significant decisions.

The claimants worked independently and spent 50 percent of the time at off-site locations. However, they did not have the opportunity to exercise independent judgment in terms of analyzing and interpreting the situation, considering a variety of possibilities, and then deciding what should be done. They used detailed procedures to determine if the shipboard systems and equipment were functioning as required, applying very specific certification criteria and performing prescribed tests. They had very little discretion within those prescribed procedures. For example, if a piece of equipment did not meet the required calibration and could not be calibrated correctly, the prescribed action was to repair or replace the equipment. If a technician did not know how to calibrate a piece of equipment, then the claimants trained that technician. The work performed by the claimants involved the use of skills and the application of known standards or established procedures, as distinguished from work requiring the exercise of discretion and independent judgment.

Criterion (d) is not applicable to the claimants' position.

Since the claimants' position meets only (b)(2) of the administrative criteria, their position cannot be considered exempt using that criteria.

The agency did not find the executive exemption criteria or the professional exemption criteria applicable to the claimants' position, and we agree.

#### Professional Exemption Criteria

Under the professional exemption criteria, contained in 5 CFR Section 551.206, a professional employee is an employee who meets all of the following criteria, or any teacher who is engaged in the imparting of knowledge or in the administration of an academic program in a school system or educational establishment.

- (a) The employee's primary duty consists of --
  - (1) Work that requires knowledge in a field of science or learning customarily and characteristically acquired through education or training that meets the requirements

for a bachelor's or higher degree, with major study in or pertinent to the specialized field as distinguished from general education; or is performing work, comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field; or

- (2) Work in a recognized field of artistic endeavor that is original or creative in nature (as distinguished from work which can be produced by a person endowed with general manual or intellectual ability and training) and the result of which depends on the invention, imagination, or talent of the employee.
- (b) The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought process for satisfactory performance.
- (c) The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.
- (d) In addition to the primary duty criterion that applies to all employees, General Schedule employees classified at GS-5 or GS-6 (or the equivalent in other systems), must spend 80 percent or more of the worktime in a representative workweek in professional functions and work that is an essential part of those functions.

The claimants' position does not meet (a)(1).

To meet (a)(1), the claimants must perform work comparable to that performed by professional employees, on the basis of specialized education or training and experience which has provided both theoretical and practical knowledge of the specialty, including knowledge of related disciplines and of new developments in the field. There is no evidence that the claimants apply theoretical knowledge, rather they apply an in-depth practical knowledge of the requirements and techniques of metrology and calibration of equipment. This is supported by the classification standard for the Engineering Technician Series, GS-802, determined by the agency to be correct for classification of the position, which states that positions in this series do not require professional knowledges and abilities for full performance. The GS-802 series includes technical positions that require primarily application of practical knowledge.

The claimants' position does not meet (a)(2).

The claimants' work is not in a field of artistic endeavor.

The claimants' position does not meet (b).

Refer to the discussion under Administration Exemption (b)(1).



The claimants' position does not meet (c).

Refer to the discussion under Administrative Exemption (c).

Criterion (d) is not applicable to the claimants' position.

Since the claimants' position does not meet any of the professional criteria, their position cannot be considered exempt using that criteria.

#### Executive Exemption Criteria

Under the executive exemption criteria, contained in 5 CFR Section 551.204, an "executive" is a supervisor, foreman, or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and regularly and customarily directs the work of at least three subordinate employees (excluding support employees).

The claimants' position does not meet the definition of "executive" since it did not involve management or supervision of employees; therefore, it does not meet the executive exemption criteria and there is no need to examine the additional criteria in this section.

#### **Decision**

Based on the above analysis, the claimants' position does not meet the criteria for executive, administrative, or professional exemption and is, therefore, properly covered by the overtime provisions of the FLSA. The claimants are due compensation for the difference between the overtime payment they received under title 5 and the overtime payment due under FLSA.

#### **Compliance instructions**

The claimants can receive pay for their claim only for two years back from the date it was recorded with GAO which was January 17, 1996. Therefore, they can receive pay for the claim back from January 17, 1994.

Although sunsetted, the guidance found in FPM Letter 551-24 for computing pay when FLSA overtime is due is still relevant. The claimants' overtime pay must be calculated on a workweek basis; therefore, for each workweek in the claim period, the agency is to compute each claimants' pay entitlement using the guidance in the FPM Letter. Each claimant is due this amount minus whatever he has already been paid for the week.

Five CFR 550.806 and FPM Letter 550-78, also sunsetted but still relevant, show that each claimant is also owed interest on the back pay discussed above. The agency is to compute that interest as described in the regulation and the FPM Letter.

The agency should pay each claimant the total amount owed him. If any claimant believes that the agency has computed the amount incorrectly, he may file a new FLSA claim with this office.