

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



**San Francisco Oversight Division
120 Howard Street, Room 760**



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

Claimant: [The claimant]

Position: Engineering Technician
GS-802-11

Organization: [The claimant's installation]
Department of the Navy

Claim: Exemption status. Due pay for standby worked. Due payment for travel.

OPM decision: Nonexempt. Not on standby. Due the difference between FLSA overtime payment and title 5 overtime payment received, if any, plus interest on back pay.

OPM decision number: F-0802-11-02

San Francisco, CA 94105

Carlos A. Torrico
FLSA Claims Officer

October 8, 1999 _____ Date

As provided in section 551.708 of title 5, Code of Federal Regulations (CFR), this decision is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for

which OPM administers the Act. The agency should identify all similarly situated current and, to the extent possible, former employees, and ensure that they are treated in a manner consistent with this decision. There is no further right of administrative appeal. This decision is subject to discretionary review only under conditions specified in 5 CFR 551.708 (address provided in 5 CFR 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision. However, he may do so only if he does not accept back pay. All back pay recipients must sign a waiver of suit when they receive payment.

The agency is to compute the claimant's overtime pay in accordance with instructions in this decision, then pay the claimant the amount owed him. The agency must also submit a Standard Form 50 showing that the claimant's exemption status has been changed to comply with this decision. The SF50 should be sent to this office within 15 workdays of receiving the decision. If the claimant believes that the agency has incorrectly computed the amount owed, he may file a new FLSA claim with this office.

Decision sent to:

[The claimant's address]

[The claimant's servicing personnel office]

Director, Plans, Programs, and Diversity
Office of the Deputy Assistant Secretary
of Navy, Civilian Personnel (CP/EEO)
Department of the Navy
800 North Quincy Street
Arlington, VA 22203-1998

Chief, Classification Branch
Field Advisory Services Division
Defense Civilian Personnel Management
Service
1400 Key Boulevard, Suite B-200
Arlington, VA 22209-5144

Introduction

On October 22, 1997, the San Francisco Oversight Division of the Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [the claimant]. He believes that his FLSA exemption status should be nonexempt and he should receive standby pay under the FLSA when deployed aboard ships. The claimant works in the [the claimant's installation]. We have accepted and decided his claim under section 4(f) of the FLSA as amended.

General issues

The claimant occupies an Engineering Technician, GS-802-11, position. He believes that he is in one of three groups of General Schedule employees who are FLSA nonexempt because they do not fit any of the exemption categories listed under section 551.202(e) of title 5, Code of Federal Regulations [5 CFR 551.202(e)]. Specifically, he compares himself to FLSA nonexempt nonsupervisory General Schedule employees in the Air Traffic Control Series, GS-2152, and the Aircraft Operations Series, GS-2181, who require highly specialized technical skills and knowledges that can be acquired only through prolonged job training and experience [5 CFR 551.202(e)(3)]. We do not find that his work is comparable to GS-2152 or GS-2181 work. The guidance found in 5 CFR 551.202(e)(2) is more applicable to the claimant. This nonexempt group of employees is nonsupervisory General Schedule employees performing technician work in positions properly classified below GS-9 and many, but not all, of those positions properly classified at GS-9 or above. The claimant's position is classified above GS-9 so the exemption criteria must be applied.

The claimant has filed a claim covering the period September 29, 1985 to the present. By law, the claim is retroactive for 2-years from the date the claim was received or 3-years for willful violation. There is no evidence of willful violation on the part of the agency so the claim is retroactive for 2-years.

In reaching our FLSA decision, we have carefully reviewed all information furnished by the claimant and his agency and obtained in interviews with: [various individuals]; and [the claimant].

Job information

The designation of an employee as FLSA exempt or nonexempt ultimately rests on the duties actually performed by the employee (5 CFR 551.202). Following is a description of the duties actually performed by the claimant based on our interviews with the claimant and his supervisor and other information provided by the claimant and his agency.

[The claimant's unit] provides field engineering assistance and instruction to naval aviation activities in the installation, maintenance, repair, and operation of all types of aviation systems and equipment. [The claimant's unit] reports to Naval Air Systems Command (NAVAIR). No engineers are employed at [the claimant's unit]. Professional engineering expertise for the EA-6B aircraft resides with the EA-6B Fleet Support Team engineers stationed at the Navy Depot in Jacksonville, Florida.

The claimant is independently responsible for providing technical advice and assistance on the acceptance, installation, operation, and/or maintenance of airframe and hydraulic equipment and associated systems on EA-6B aircraft. The EA-6B aircraft is a carrier based aircraft. It is about 30 years old; however, new avionics systems have been added to the aircraft. For example, the wings were changed from aluminum to graphite to extend the life of the aircraft 5 years. The claimant gained his knowledge and experience of the aircraft during his 22 years in the Navy as an aircraft hydraulic systems mechanic working on the A-6 aircraft. The A-6 and EA-6B aircraft are the same, but with different missions.

The claimant spends the majority of his time providing technical guidance to the sailors who maintain and repair the EA-6B aircraft. The sailors are typically young, unseasoned aircraft mechanics. In providing technical advice and assistance, the claimant must refer to the approximately 500 publications detailing the assigned systems. He may not deviate from the authorized procedures found in the publications. The claimant may write technical reports or rapid engineering change reports when a change in procedure is necessary. The recommendation must be approved by the EA-6B Fleet Support Team engineers at the Navy Depot before the changes can be implemented. However, the claimant has not written a technical report or a rapid engineering change report during the claim period, October 1995 to the present. He may write technical publication deficiency reports when a publication is not clear or contains incorrect information. These are also subject to higher levels of review before a recommended change can be implemented.

An electronic mail (e-mail) message dated February 12, 1998 from [Navy Commander], Western Regional Officer, to the Officer-in-Charge (OIC) [claimant's installation] emphasizes the importance of following approved maintenance procedures. The commander states that three detachments are performing maintenance outside their area of authorized maintenance (depot) or teaching maintenance procedures that are not currently authorized by existing maintenance publications. The commander reminds the OIC that the new procedures must be reviewed by the Navy Depot Fleet Support Team engineers, who in turn must get NAVAIR concurrence, and the new procedures must be legitimized [i.e., Interim Rapid Action Change (IRAC), Technical Publication Deficiency Report (TPDR), or publication incorporation] before they can be performed or taught.

The claimant provides both formal and on-the-job training for sailors engaged in the operation, maintenance, and/or installation of the aforementioned equipment. He discusses problems encountered by the sailors and explains corrective action. He directs and monitors operation, maintenance, and installation techniques and procedures and he demonstrates procedures as necessary. The claimant also evaluates performance and determines need for future training. The claimant determines need for formal training if other sources of training are not available. He selects topics, prepares lesson plans, designs training aids, and conducts classes.

The claimant keeps abreast of current developments in the area of technical cognizance. Reviews related technical publications and manuals for information on new systems and equipment. Receives formal classroom training as required.

The position description, other information furnished by the claimant and his agency, and information gathered through interviews provide additional details about the claimant's actual duties.

Evaluation

Exemption Status

The agency finds that the claimant is exempt under the professional exemption criteria based primarily on two previous OPM decisions. In 1985 and 1990, OPM offices in Philadelphia and Atlanta, respectively, issued decisions that found employees in Engineering Technician GS-802-11 and Electronics Technician GS-856-11 positions at detachments in Norfolk and Virginia Beach, Virginia were exempt under the professional exemption criteria. These earlier decisions were based on the claimants' position descriptions. We have compared the job information described in these decisions with the claimant's position description and find that the position information is not identical. For example, in the earlier decisions, information cited from the claimants' position descriptions reflected a need to have a well-rounded, formal education in the theory and application of electronics, mechanics, electricity, or aviation engineering; to demonstrate the ability to apply advanced theory to existing equipment and integrated systems; and to possess a good working knowledge of higher mathematics, engineering principles, and physical sciences. These requirements are not found in the claimant's PD. In any event, the exemption determination rests on the actual duties performed by the employee, rather than the PD.

Since the OPM decisions were issued, a number of court decisions governing the application of the exemption criteria have been issued and the regulations affecting exemptions were revised in December 1997. The following application of the professional and administrative exemption criteria to the claimant's duties is consistent with those court decisions and the principles found in 5 CFR 551.202.

Professional Exemption Criteria

Under the professional exemption criteria contained in 5 CFR Section 551.207, 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; or
 - (3) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering or other similar work in the computer software field. The work must consist of one or more of the items listed under 5 CFR 551.207(a)(3).
- (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 claimant does not meet (a)(1).

To meet (a)(1), the claimant 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.

The claimant's supervisor indicated that the claimant received a knowledge of the principles of the systems (i.e., flight control, landing gear, arresting gear, hydraulic power, pneumatic, aircraft fuel, wing fold, environmental control, and canopy systems) when he was initially trained on the systems while in the military. The claimant must also apply a basic knowledge of hydraulic, pneumatic, electrical, aeronautic, and mechanical principles.

There are no engineers in the [claimant's unit]; therefore, we interviewed the Fleet Support Team (FST) engineers for the EA-6B aircraft who are stationed at the Naval Depot in Jacksonville, Florida. The FST engineers interviewed did not recall receiving any reports from the claimant or any other

contact with him during the claim period. However, in general, our interviews with the EA-6B FST engineers reflected that the [claimant's unit] engineering technicians would not need to have a level of knowledge comparable to that gained through a bachelor's degree in an engineering program to perform their assigned duties. One FST engineer believed that, by management design, only the FST engineers were authorized to apply theoretical engineering knowledge. Another indicated that the FST engineers must review the solutions recommended by engineering technicians because the technicians would not be able to, for example, calculate the structural stress that the implementation of a proposed solution might cause. The engineers characterized the knowledge required by the technicians as practical, field, or application knowledge of the EA-6B systems. The engineers indicated that most of the technicians had gained their practical knowledge as aircraft mechanics in the military. The claimant indicated that he has not submitted any technical reports to the FST's during the claim period and he gained his knowledge during his 22 years as an aircraft hydraulics mechanic while in the Navy.

There is no evidence that the claimant applies theoretical knowledge comparable to that gained through a bachelor's degree in engineering. The claimant applies basic principles and an in-depth practical knowledge to advise and instruct on the acceptance, installation, operation, and/or maintenance of airframe and hydraulic equipment and associated systems on EA-6B aircraft.

The claimant does not meet (a)(2).

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

The claimant does not meet (a)(3).

The claimant's work is not in the computer software field.

The claimants' position does not meet (b).

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.

In providing technical assistance, the claimant assists the sailors to diagnose and isolate malfunctions by applying standardized procedures. To advise and provide on-the-job training, the claimant must be able to read and understand the technical publications, manufacturers specifications, blueprints, etc. and know accepted repair and maintenance procedures. The claimant uses standard procedures

and technical publications to determine if systems and equipment are functioning as required. The claimant does not adapt or innovate techniques and procedures.

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 claimant works independently. However, he does 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. He uses and teaches approved maintenance procedures. He has very little discretion within those approved procedures. The work performed by the claimant involves 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.

Conclusion

Since the claimant does not meet any of the professional exemption criteria, he cannot be considered exempt using that criteria.

Administrative Exemption Criteria

Under the administrative exemption criteria, contained in 5 CFR Section 551.206, 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 claimant does not meet (a)(1).

OPM defines the formulation or execution of management programs and policies as work that involves management programs and policies which range from broad national goals expressed in statutes or Executive Orders to specific objectives of a small field office. Employees make policy decisions or participate indirectly, through developing proposals that are acted on by others. Employees significantly affect the execution of management policies or programs typically when the work involves obtaining compliance with such policies by individuals or organizations, 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 claimant is not engaged in formulation or execution of management policies or programs, e.g., evaluating operating programs of the organization. He is not obtaining compliance with program policies or determining the accomplishment of program objectives. In contrast, he provides field engineering and technical advice, assistance, and instruction on the acceptance, installation, operation, and/or maintenance of airframe and hydraulic equipment and associated systems on EA-6B aircraft.

The claimant 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 claimant does not perform such services.

The claimant 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 claimant does not perform in this manner.

The claimant does not meet (b)(1).

Refer to the discussion under Professional Exemption (b).

The claimant 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 claimant is required to have experience in the maintenance of, and instruction on, the various stabilizers and actuators, hydraulic components, and support equipment on the EA-6 series aircraft. This requires application of the principles of hydraulics, pneumatics, electricity, aeronautics, and mechanics. The in-depth practical knowledge required to provide technical assistance and instruction would typically come from several years of on-the-job training and experience.

The claimant does not meet (c).

Refer to the discussion under Professional Exemption (c).

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

Conclusion

Since the claimant meets only (b)(2) of the administrative criteria, he cannot be considered exempt using that criteria.

Executive Exemption Criteria

Under the executive exemption criteria, contained in 5 CFR Section 551.205, an “executive” is a supervisor, or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and customarily and regularly directs the work of subordinate employees.

Conclusion

The claimant’s position does not meet the definition of “executive” since it does 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 on the Claimant’s FLSA Exemption Status

The claimant does not meet the professional, administrative, or executive exemption criteria; therefore, the claimant is nonexempt, i.e., covered by the provisions of the Fair Labor Standards Act.

Travel

The claimant said that he is not compensated for travel on his nonworkdays. The travel may be within a *nonexempt area* such as travel within the United States or it might be travel between a *nonexempt area* and an *exempt area*, such as travel between his official duty station in Washington and Japan or Bahrain.

Five CFR 551.422 defines when time spent traveling is hours of work under the FLSA. In particular, paragraph (a)(4) provides that travel is hours of work when an employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee’s regular working hours.

However, the FLSA minimum wage, overtime, and child labor provisions do not apply to any employee who spends all hours of work in a given workweek in an exempt area. *Exempt area* and *nonexempt area* are defined in 5 CFR 551.104. All locations not included under the definition of *nonexempt area* are considered *exempt*. The regulations pertaining to *foreign exemption* can be found under 5 CFR 551.209.

Decision on Travel Claim

The time the claimant spent traveling on and after October 22, 1995 should be reviewed to determine the amount, if any, he is entitled to under the FLSA.

Time at sea

The claimant believes that while he was deployed aboard U.S. Navy ships that he was not paid for standby worked. The claimant has not been to sea since late 1997. However, between 1995 and then, he was at sea seven or eight times.

The claimant was deployed at sea for training evolutions. During a training evolution, the ship's crew trains to reach operation readiness before actual deployment. There are numerous aircraft take-offs and landings while at sea. The claimant provides advice and assistance to the sailors repairing malfunctions and performing maintenance on the aircraft. The claimant indicates that he typically worked 12-hour days, 7-days per week, for 5 to 6 weeks at a time. He indicates that during the 12-hours while he was on-duty his meal periods were rarely interrupted. However, he was frequently interrupted during his off-duty time. He would answer a sailor who awakened him verbally if possible, but he also returned to work with the sailor when the problem was more complex. If he was brought back to work for several hours during his off-duty time, he would subsequently be given several hours off to catch up on his sleep. The supervisor indicated that the claimant was scheduled to work a 12-hour shift, but that he would work 15 to 16 hours per day, although the hours worked were not necessarily in sequence.

Five CFR 551.431 provides the following criteria:

- (a) An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:
 - (1) The employee is restricted to an agency's premises, or so close thereto that the claimant cannot use the time effectively for his or her own purposes; or
 - (2) The employee, although not restricted to the agency's premises:
 - (i) Is restricted to his or her living quarters or designated post of duty;
 - (ii) Has his or her activities substantially limited; and
 - (iii) Is required to remain in a state of readiness to perform work.
- (b) An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:
 - (1) The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or
 - (2) The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

The claimant's situation does not meet (a)

The claimant is not restricted when he is off-duty, that is, he is able to leave the work site when he is off-duty and engage in the activities available onboard the ship, such as going to his bunk, the mess, the ship's library, or to smoke on deck. The claimant may not be able to engage in the same activities that he would engage in if he were at home, but he is able to pursue the available activities while he is off-duty. Since he is not restricted when he is off-duty, the claimant's situation does not meet the standby criteria.

However, the agency must credit hours of work each time the employee is required to return to duty. Not less than 2 hours of work may be credited for call-back to irregular or occasional overtime work, as required by 5 CFR 551.401(e). If an employee is required to discuss work or provide technical advice, but is not called back to the work site, 5 CFR 551.521 provides that a quarter of an hour is the largest fraction of an hour that may be used for crediting irregular or occasional overtime work, and odd minutes must be rounded up or down to the nearest full fraction of an hour.

The claimant's situation does not meet (b)

The claimant was not in an on-call status as described in criterion (b) as he did not carry an electronic device, he could not leave a telephone number, and he could not arrange to have someone else respond to any work that arose.

Was the claimant *suffered or permitted* to work overtime?

Although the claimant's situation does not meet the criteria for standby, the claimant should be compensated for all hours of work he was *suffered or permitted* to perform. Under the FLSA, *suffered or permitted* work means any work performed by an employee for the benefit of the agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed. When the claimant has no written records and the agency's records are incomplete, it is appropriate to interview the claimant, supervisor, and co-workers to corroborate the claim. The *suffered or permitted* test must be applied. When it is difficult to arrive at an exact number of hours worked, it is appropriate to derive an appropriate number of hours using reasonable inferences. Once an employee who is nonexempt from (covered by) the FLSA has established the fact that he or she performed work for which he or she was improperly compensated under the FLSA, the employee must produce sufficient evidence to show the amount and extent of that work as a matter of reasonable inference. The burden then shifts to the employer to come forward either with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference drawn from the employee's evidence. See Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946); Munsower v. Callicott, 526 F.2d 1187 (8th Cir. 1975).

The claimant said that the actual hours he worked were not recorded by the agency and he did not keep personal records of the hours he worked. The claimant and his supervisor could give only rough estimates of the hours worked by the claimant. In estimating the number of hours worked, the claimant included uninterrupted *bona fide* meal periods as hours worked, which should not be considered hours of work under 5 CFR 551.411. The claimant could not estimate the number of times he was called back to work, the number of hours worked, or the number of hours he was placed in an off-duty status to replace sleep time lost due to the extra hours worked. He also could not recall or estimate the number of times he was awakened for advice, but was not required to return to the work site, or the duration of these disturbances. Based on our interviews with the claimant and his supervisor, we cannot be sure that the claimant was improperly compensated under the FLSA. If he had established the fact that he was improperly compensated, we cannot reasonably infer the amount or extent of the hours worked by the claimant. This is not to say that the claimant did or did not work uncompensated hours as claimed, just that he did not establish as fact that he worked such uncompensated overtime and that, if he had, he did not provide sufficient evidence to show the amount or extent of the hours as a matter of reasonable inference.

Decision on time at sea

The claimant's situation does not meet the criteria for standby; therefore, the time spent off-duty is not considered hours of work under the FLSA. Although not on standby, the claimant should be compensated for all time he is required to be on duty and for all time which he is *suffered or permitted* to work. We could not establish that the claimant worked uncompensated overtime, or, if he had, reasonably infer the amount or extent of those hours based on the claimant's or his supervisor's evidence. In the future, the agency is required to record the actual hours worked by the claimant, including *suffered or permitted* time, and to compensate him appropriately under the FLSA.

Decision

- Based on the above analysis, the claimant's position does not meet the criteria for executive, administrative, or professional exemption and is, therefore, nonexempt from (covered by) the provisions of the FLSA.
- Time spent traveling which meets applicable FLSA provisions is compensable as hours of work under the FLSA.
- In the future, the agency is required to record all hours the claimant is required to work and *suffered or permitted* to work and to properly compensate him for that work under the FLSA.
- The claimant is due compensation for the difference between the overtime payment he received under title 5 and the overtime payment due under FLSA, if any. He is also entitled to interest on this back pay under 5 USC 5596 and subpart H, section 550 of title 5, Code of Federal Regulations.

Compliance instructions

The claimant can receive pay for his claim only for two years back from the date it was recorded with OPM which was October 22, 1997. Therefore, he can receive pay for the claim back to October 22, 1995.

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