

**Fair Labor Standards Act Decision**  
**Under section 4(f) of title 29, United States Code**

**Claimant:** [Name of claimant]

**Position:** Electronics Technician  
GS-856-11

**Organization:** [Claimant's organization/location]  
U.S. Geological Survey

**Claim:** Position should be nonexempt, thus  
due FLSA overtime pay

**OPM decision:** Nonexempt. Due the difference between  
FLSA and title 5 overtime pay

**OPM decision number:** F-0856-11-06

---

Jeffrey E. Sumberg  
Deputy Associate Director  
Center for Merit System Accountability

/signed/  
June 17, 2009

---

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 the U.S. Office of Personnel Management (OPM) administers the Fair Labor Standards Act (FLSA). 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 right of further administrative appeal. This decision is subject to discretionary review only under conditions and time limits specified in 5 CFR 551.708 (address provided in section 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

The agency is to compute the claimant's overtime pay in accordance with instructions in this decision and then pay the claimant the amount owed him. If the claimant believes the agency has incorrectly computed the amount owed him, he may file a new FLSA claim with this office.

**Decision sent to:**

[Claimant's name and mailing address]

[Address of claimant's servicing human resources office]  
U.S. Geological Survey

Director of Human Resources  
U.S. Department of the Interior  
Mail Stop 5221  
1849 C Street, NW  
Washington, DC 20240

## **Introduction**

On May 8, 2008, OPM received an FLSA claim from [name of claimant]. He believes his work should be FLSA nonexempt (i.e., covered by the minimum wage and overtime pay provisions of the FLSA) and that he is entitled to FLSA overtime pay for the past three years due to the agency's willful violation of the FLSA. The claimant's position is classified as Electronics Technician, GS-856-11, with the [claimant's organization/location], U.S. Geological Survey (USGS). We have accepted and decided this claim under section 4(f) of the FLSA as amended.

In reaching our FLSA decision, we have carefully considered all information furnished by the claimant and his agency, including the agency's administrative report which we received on January 23, 2009. To help decide this claim, we conducted a telephone interview with the claimant on March 31, 2009, and interviewed his first-level supervisor by phone on April 1, 2009.

## **Background**

The claimant was promoted to his current GS-856-11, position [position description number] on May 6, 2001. From that time to the present, the agency has designated his position as exempt (i.e., not covered) from the overtime pay provisions of the FLSA. Immediately prior to his promotion, the claimant occupied a GS-856-9 nonexempt position with the agency, and initially entered on duty (June 22, 1997) with USGS in a job graded as Materials Handler, WG 6907-5. Before his employment with USGS, the claimant worked for the Department of the Navy [location of previous position], in various jobs including Hazard/Solid Waste Handler, WG-6501-8; Toolroom Mechanic, WG-4840-9; Instrument Mechanic, WG-3359-10; Instrument Mechanic (Apprentice), WT-3359; and various clerical positions. The claimant holds a General Educational Development (GED) certificate but has no community college or university degree. In his current occupation with USGS, he has attended various short-term safety courses, and manufacturer-provided training on the use and operation of their electronic instruments and related software.

## **Position information**

The claimant provides electronics support for research programs in the areas of marine geology, geophysics, and geochemistry. Working under only general supervision, he repairs, tests, troubleshoots, maintains, and calibrates a variety of off-the-shelf electronic equipment and interrelated systems which support the research activities of USGS scientists studying underwater pacific coast geological patterns and phenomena. His tasks include checking for proper voltage, ohms, frequency, amps; adjusting resistors; replacing diodes, variable resistors, and cables; cleaning and replacing "O" rings and accessible equipment components; programming instruments for certain readings and times; configuring various instruments linked together; etc. He assembles systems components for various experiments, packages them for underwater use, sets up tests to measure all aspects of performance, assists in launching and recovery of electronic instruments from shipboard and aircraft, and inventories and maintains logs on the history, maintenance, and use of the electronic equipment.

The equipment the claimant works on includes all types of continuous seismic, profiling, navigational, and signal systems which the agency has procured from scientific instrument vendors and manufacturers. All are proprietary to the manufacturer with no schematics provided, thus they cannot be significantly modified or repaired by the user. Instruments include the Aquatec Acoustic Backscatter System, Seabird Electronics profilers, RDI AD current profiler, Sequoia Instruments Laser In-Situ Scattering and Transmissometry particle laser measuring instrument, and the Falmouth Scientific Conductivity instrument. All of these measure specific aspects of underwater movement and geology such as flow of sea current, depth of sea water, particles and sediments in sea water, and temperature of sea water. Agency research scientists peruse the Internet to identify and assess off-the-shelf electronic equipment to meet their research needs offered by various manufacturers, then consult with a local geophysicist on staff for assistance in procuring the items.

Both the claimant and his supervisor (Supervisory Electronics Technician, GS-856-13) certified to the accuracy of the claimant's PD [number]. However, we find the PD is inaccurate because it describes electronics system equipment development and design duties "ranging from micro to large scale computing systems, including analog and digital data acquisition systems, magnetometers and underwater sound sources and measuring devices." The PD indicates the incumbent "Determines whether new systems are required or if need can be met by an off-the-shelf procurement or modification of existing equipment....Determines systems development feasibility considering environmental conditions, expected accuracies, sample times, operational range, depths, speeds, size limitations, power consumptions, cost, parts availabilities, and time available for development." The PD notes the incumbent must possess knowledge of electronic theory "sufficient to develop prototype instrumentation systems." Our fact-finding disclosed that aside from occasionally re-configuring a battery pack or attempting to modify a video camera, the claimant performs none of the above design and equipment development duties, and performs work tantamount to trades and crafts with off-the-shelf electronic equipment previously listed. Both the claimant and his supervisor indicated the former incumbent of the appellant's position performed system development and design, particularly developing a tattle-tale logger that logged analog voltages from instruments. However, such duties were discontinued in 2002 when agency research scientists began purchasing and using off-the-shelf instrumentation specifically selected to meet their precise research requirements. The tattle-tale logger is no longer used. Based on this information, the agency should correct the PD of record to reflect our findings, and ensure these duties are not described in any future PDs, unless actually assigned and performed.

### **Evaluation of FLSA coverage**

Sections 551.201 and 551.202 of 5 CFR require that an employing agency designate an employee FLSA exempt only when the agency correctly determines the employee's work meets one or more of the exemption criteria. In all exemption determinations, the agency must observe the following principles: (1) each employee is presumed to be FLSA nonexempt; (2) exemption criteria must be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption; (3) the burden of proof rests with the agency that asserts the exemption; and (4) if there is a reasonable doubt as to whether an employee meets the criteria for exemption, the employee should be designated FLSA nonexempt. The designation of a

position's FLSA status ultimately rests on the duties actually performed by the employee. There are three exemption categories applied to Federal employees: executive, administrative, and professional. Neither the claimant nor the agency asserts the claimant's work is covered by the executive or administrative exemptions; and, based on careful review of the record, we agree. Therefore, our analysis is limited to the professional exemption criteria in effect during the claim period. Because the claim period falls within time periods covered by both the former and current FLSA regulations, the latter taking effect on October 17, 2007, we have applied both to the claimant's work.

### Professional Exemption Criteria

#### *1997 Regulations*

Under the former professional exemption criteria in 5 CFR 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) *Primary duty test.* The primary duty test is met if the employee's work 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 a 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 system analysis, programming, and software engineering or other similar work in the computer software field. The work must consist of one or more of the following:

- (i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; or
- (ii) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or

- (iii) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
- (iv) A combination of the duties described in paragraphs (a)(3)(i), (a)(3)(ii), and (a)(3)(iii) of this section, the performance of which requires the same level of skills.

(b) *Intellectual and varied work test.* The employee's work is predominantly intellectual and varied in nature, requiring creative, analytical, evaluative, or interpretative thought processes for satisfactory performance.

(c) *Discretion and independent judgment test.* The employee frequently exercises discretion and independent judgment, under only general supervision, in performing the normal day-to-day work.

(d) *80-percent test.* In addition to the primary duty test that applies to all employees, General Schedule employees in positions properly classified at GS-5 or GS-6 (or the equivalent level in other comparable white-collar pay systems), must spend 80 percent or more of the work time in a representative workweek on professional functions and work that is an essential part of those functions to meet the 80-percent test.

The primary duty test is not met.

The claimant does not meet (a)(1) because he does not hold a bachelor's or higher degree in the specialized field of electronics engineering, or any other field of professional engineering. Moreover, he is not performing work comparable to that performed by professional electronics engineers, based on specialized education or training and experience which provided both theoretical and practical knowledge of the electronics engineering field, as well as related disciplines and new developments in that area. As previously discussed, he repairs, tests, troubleshoots, maintains, and calibrates a variety of off-the-shelf electronic equipment and interrelated systems in support of USGS research activities. This work is typical of that performed in trades and crafts occupations of the Federal Wage System (FWS). In the electronics field, FWS employees repair systems, diagnose malfunctions, replace parts or components, align, calibrate, and test repaired equipment, perform corrective and preventive maintenance, install equipment, fabricate mountings, and make measurements to diagnose malfunctions. In the claimant's case, the work is typical of jobs coded to the 2602, Electronic Measurement Equipment Mechanic, or 2604, Electronics Mechanic, occupations.

Unlike technical work in the electronics field, the claimant does not develop and design test equipment, develop maintenance standards and procedures, design and analyze circuits, or develop new or modified electronic systems. The claimant's duties are not comparable to those performed by Electronics Technicians, GS-856, who apply a practical knowledge of the techniques and theories characteristic of electronics, of electronics equipment installation, operation, capabilities, maintenance, and the functions of a variety of the types and models of electronic equipment and systems, but not a full professional knowledge of electronic engineering. The work performed by the claimant is considered GS-856 in nature only if it is

performed in conjunction with and ancillary to design, testing or development work of this series.

In contrast to the work the claimant performs, Electronics Engineers, GS-855, apply knowledge of the theories, principles, and processes related to the science of electronics engineering. In doing so, they research, develop, test, evaluate, and operate electronic devices used in a variety of technologies covering a broad range of products such as computer systems, navigational systems, programmable logic controls, sensors, magnetic imaging devices, etc. Electronics engineers analyze and study performance requirements against an array of considerations including safety, functionality, reliability, quality assurance, maintainability, cost, and impact on the environment.

As opposed to the claimant's work, GS-11 level electronics engineers apply knowledge typical of Level 1-7 (JFS for Professional Work in the Engineering and Architecture Group, GS-0800) encompassing advanced theories, concepts, and principles practiced in the science of electronics engineering sufficient to evaluate test results, and analyze operational failures and deficiencies of electronics systems and equipment, and recommend solutions; plan and design electronic circuitry, power distribution, electronic data collection, and transmission for instrumentation and test facilities; prepare technical specifications, design and cost estimates, particularly for the fabrication of prototype instruments; and provide technical electronics engineering advice on a wide variety of electronic issues.

In addition to not performing work comparable to that performed by professional engineers, the claimant does not possess the specialized education, training, and experience that would provide both the theoretical and practical knowledge of the professional electronics engineering specialty. As previously referenced, his technical electronics work experience and training stems primarily from training and employment in trades and crafts jobs of the FWS with the Department of the Navy. Such trades experience is not comparable to the specialized education and training needed to perform quasi-professional electronics technician work, particularly applying theoretical knowledge of the field and related disciplines and new developments.

The claimant's work does not meet criteria (a) (2) or (3) of the primary duty test as he neither works in a recognized field of artistic endeavor, nor does his work require theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, or similar work in the computer software field.

The intellectual and varied work test is not met

5 CFR 551.104 defines "work of an intellectual nature" as work requiring general intellectual abilities, such as perceptiveness, analytical reasoning, perspective, and judgment applied to a variety of subject-matter fields, or work requiring mental processes which involve substantial judgment based on considering, selecting, adapting, and applying principles to numerous variables. The employee cannot rely on standardized application of established procedures or precedents; but he 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.

We do not find the claimant's work is intellectual and varied to the degree described in the above criterion. Although he applies logic in troubleshooting inoperable or faulty electronic equipment to isolate causes and determine the appropriate repair, that effort is limited to only one subject-matter area (i.e., geophysical electronic instrumentation) rather than a variety of subject-matter fields. In addition, due to the proprietary nature of the equipment he works on, repair and maintenance choices are straightforward and limited because of the lack of schematics and information furnished by the manufacturer. Therefore, there is no need to apply substantial judgment to select, adapt, or apply principles to numerous variables encompassing a broad range of possible actions. Unlike this criterion, in carrying out his duties he completely relies on operation and maintenance manuals provided by the manufacturer which specify standard procedures to resolve equipment failures, thus significant selection, adaptation, and innovation are unnecessary.

#### The discretion and independent judgment test is not met

The claimant does not exercise the level of discretion and independent judgment to meet that test. As defined in section 551.104, *discretion and independent judgment* means work that involves comparing and evaluating possible courses of conduct, interpreting results or implications, and independently taking action or making a decision after considering the various possibilities. However, firm commitments or final decisions are not necessary to support exemption. The "decisions" made as the result of independent judgment may consist of *recommendations for action* rather than the actual taking of action. The fact that an employee's decisions are subject to review, and that on occasion the decisions are revised or reversed after review, does not mean that the employee is not exercising discretion and independent judgment of the level required for exemption. Work reflective of discretion and independent judgment must meet the three following criteria:

- (1) The work must be sufficiently complex and varied so as to customarily and regularly require discretion and independent judgment in determining the approaches and techniques to be used, and in evaluating results. This precludes exempting an employee who performs work primarily requiring skill in applying standardized techniques or knowledge of established procedures, precedents, or other guidelines which specifically govern the employee's action.
- (2) The employee must have the authority to make such determinations during the course of assignments. This precludes exempting trainees who are in a line of work which requires discretion but who have not been given authority to decide discretionary matters independently.
- (3) The decisions made independently must be significant. The term "significant" is not so restrictive as to include only the kinds of decisions made by employees who formulate policies or exercise broad commitment authority. However, the term does not extend to the kinds of decisions that affect only the procedural details of the employee's own work, or to such matters as deciding whether a situation does or does not conform to clearly applicable criteria.



Although the claimant works independently in performing his daily activities, including operating, maintaining, repairing, setting up, configuring, and installing electronic equipment, he does not exercise the degree of discretion and independent judgment characteristic of this test. While he must logically isolate the causes of equipment failures, his work is performed within the context of standardized operation and maintenance manuals and instructions provided by the manufacturer which specifically govern his actions. These documents outline the step-by-step procedures to be used given a particular equipment problem (e.g., no power, low voltage, no signal in or out, laser out of alignment), but if the claimant is unable to resolve the issue he contacts the manufacturer for assistance. The decisions he makes are not significant within the meaning of the regulation in that they affect the procedural details of his work (e.g., limited maintenance and repair, installation, operation), and primarily focus on determining how best to install, fix, maintain or program a given instrument based on specific criteria and instructions issued by the manufacturer.

#### The 80-percent test is not applicable

Because the claimant's position is classified above the GS-5 or GS-6 grade level, this criterion does not apply to the claimant's work.

Therefore, we find the claimant's work failed to meet the professional exemption criteria under the 1997 regulations.

#### *Current regulations*

Under the current FLSA regulations (effective October 17, 2007), 5 CFR 551.207 states that to qualify for the professional exemption, an employee's primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. Learned professionals, creative professionals, and computer employees are described in 5 CFR 551.208, 551.209, and 551.210, respectively.

5 CFR 551.208 (Learned professionals) states that (a) To qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. The work must include the following three elements:

- (1) The employee must perform work requiring advanced knowledge. Work requiring advanced knowledge is predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level;

- (2) The advanced knowledge must be in a field of science or learning which includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy, and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.; and
- (3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction which restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word “customarily” means that the exemption is appropriate for employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. For example, the learned professional exemption is appropriate in unusual cases where a lawyer has not gone to law school, or a chemist does not possess a degree in chemistry. However, the learned professional exemption is not applicable to occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical, or physical processes. The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced specialized intellectual instruction. The position of Engineering Technician is an example of such an occupation where the employee collects, observes, tests and records factual scientific data within the oversight of professional engineers, and performs work using knowledge acquired through on-the-job and classroom training rather than by acquiring the knowledge through prolonged academic study.

5 CFR 551.208(f) (*Engineering*) indicates engineers generally meet the duties requirements for the learned professional exemption. Professional engineering work typically involves the application of a knowledge of such engineering fundamentals as the strength and strain analysis of engineering materials and structures, the physical and chemical characteristics of engineering materials such as elastic limits, maximum units stresses, coefficients of expansion, workability, hardness, tendency to fatigue, resistance to corrosion, engineering adaptability, and engineering methods of construction and processing. Exempt professional engineering work includes equivalent work performed in any of the specialized branches of engineering (e.g., electrical, mechanical, or materials engineering). On unusual occasions, engineering technicians performing work comparable to that performed by professional engineers on the basis of advanced knowledge may also be exempt. In such instances, the employee actually is performing the work of an occupation that generally requires a specialized academic degree and is performing substantially the same work as the degreed employee, but has gained the same advanced knowledge through a combination of work experience and intellectual instruction 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 does not meet the professional exemption criteria (5 CFR 551.207), including “Learned professionals” as defined in 5 CFR 551.208. Unlike the criteria in section 551.207, his

primary duties do not encompass performance of work requiring knowledge of an advanced type in a field of science or learning (i.e., engineering) customarily acquired by a lengthy course of specialized intellectual instruction. In contrast to the “learned professionals” criteria discussed in section 551.208(a), his work does not meet the three elements outlined under that section. His work does not meet the first element which describes application of advanced knowledge, because it is not predominantly intellectual in character requiring the consistent exercise of discretion and judgment, as distinguished from performing routine mental, manual, mechanical or physical work. The claimant repairs, tests, troubleshoots, maintains, and calibrates a variety of off-the-shelf electronic equipment and interrelated systems in support of the agency’s research activities. In doing so he applies routine mental and manual skills, and is guided by highly specific manufacturers’ instructions and operating manuals. Because the equipment is proprietary to the manufacturer with no schematics provided, the degree of analysis and repair is limited to performing basic and well-accepted electronics tests (e.g., voltage, amperage, resistance) and carrying out standard repairs such as changing a resistor, replacing a cable, re-configuring a battery pack, etc. Such tasks do not require the exercise of discretion and judgment which would be needed, for example, to overhaul or extensively modify or change a major electronic component or operating system. Unlike “learned professionals” who apply advanced knowledge, his duties do not require that he analyze, interpret or make deductions from a variety of facts or circumstances.

The claimant’s work does not meet the second element described under the “learned professionals” criteria. In addition to not requiring advanced knowledge, he is not working in a traditional field of science or learning (i.e., engineering) which has a recognized professional status as discussed previously. Instead, he is applying knowledge of a fairly advanced type of a skilled trade, which the regulation states is not construed as being in a field of science or learning

The claimant’s work does not meet the third element of the “learned professionals” criteria under 5 CFR 551.208(a) because he has not acquired his knowledge through attendance in a prolonged course of specialized academic training as a standard prerequisite for entrance into a traditional profession (thus possessing an appropriate academic degree). The claimant’s work does not meet the criteria discussed in 5 CFR 551.208(f) *Engineering* because he is not operating at substantially the same knowledge level and performing substantially the same work as a degreed professional employee, having acquired both theoretical and practical knowledge through a combination of work experience and intellectual instruction. The record shows the claimant performs routine mental, manual, and mechanical work not remotely comparable to that performed by professional electronics engineers, GS-855. The knowledge to perform his work is solely based on that acquired through an instrument mechanic apprenticeship program and practical classroom training in routine electronics technician support tasks. Moreover, he learned his skill through on-the-job experience rather than by advanced specialized academic study and intellectual instruction in theoretical and practical knowledge of the electronics engineering field.

5 CFR 551.209 and 551.210, respectively, describe application of the professional exemption to creative professionals and computer employees. Neither one applies to the claimant’s work. He is not considered a creative professional because his primary duty is not the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical, or physical work. Additionally, he

is not a computer employee because he does not function as a computer analyst, programmer, software engineer, or other similarly skilled worker in the computer field.

Therefore, we find the claimant's work failed to meet the professional exemption criteria under the current regulations.

### Conclusion

The claimant's work does not meet the executive, administrative, or professional exemption criteria. Therefore, it is nonexempt; and the claimant is properly covered by the overtime provisions of the FLSA. The claimant is owed compensation for the difference in overtime payment due under the FLSA and any overtime pay received under title 5.

### **Claim Period**

5 CFR 551.702 provides that all FLSA pay claims filed after June 30, 1994, are subject to a two-year statute of limitations (and three years for willful violations). A claimant must submit a written claim to either the employing agency or OPM in order to preserve the claim period. The date the agency or OPM receives the claim is the date establishing the period of possible back pay entitlement. The appropriate date for preserving the claim period is May 8, 2008, when OPM received the claimant's request. Thus the claim's time period began on May 8, 2006.

However, the claimant contends the agency willfully violated the FLSA, so he believes he is entitled to an additional year in establishing the period of possible back pay. Therefore, we must determine if the claim period should be extended to three years based on whether the agency's actions met willful violation criteria defined in 5 CFR 551.104. "Willful violation" is defined as follows:

Willful violation means a violation in circumstances where the agency knew that its conduct was prohibited by the Act or showed reckless disregard of the requirements of the Act. All of the facts and circumstances surrounding the violation are taken into account in determining whether a violation was willful.

Clearly not all violations of the FLSA are willful as this term is defined in the regulations. There is no question that USGS erred in the claimant's exempt status determination. However, to prove willful violation, there must be evidence that USGS showed reckless disregard of the Act's requirements. Instead, we find the agency erred in making the exemption determination by relying on a PD we found to be inaccurate (but that agency line management certified as accurate) which described work comparable to professional electronics engineering, thus requiring application of advanced knowledge and the consistent exercise of discretion and judgment. In carrying out the work, the agency believed the claimant had attained the advanced knowledge through a combination of work experience and intellectual instruction which had equipped him to perform quasi-professional engineering work. As addressed in our preceding discussion, this is not the case. The above information causes us to conclude the agency's actions were not deliberate and do not meet the criteria for willful violation as defined in 5 CFR 551.104.

**Decision**

The claimant's work is nonexempt (i.e., covered by FLSA overtime provisions), and he is entitled to compensation for all overtime hours worked at the FLSA overtime rate. The claim was received by OPM on May 8, 2008, and the claimant can receive back pay only for two years prior to that date and continuing forward from that date. We find no indication of willful violation by the agency. As stated in 5 CFR 550.806, the claimant is also owed interest on the back pay. The agency must follow the compliance requirements on page ii of this decision.

The agency provided information with the claim on the number of overtime hours worked. The agency should pay the back pay for the difference between the FLSA overtime rate and any title 5 overtime paid. If the claimant believes the agency incorrectly computes the amount, he may file a new FLSA claim with this office.