

**Fair Labor Standards Act Decision**  
**Under section 204(f) of title 29, United States Code**

**Claimant:** [name]

**Agency classification:** Contract Specialist  
FV-1102-I

**Organization:** Federal Aviation Administration  
Department of Transportation  
Washington, D.C.

**Claim:** Compensation for Overtime and  
Compensatory Time

**OPM decision:** Denied; Barred by Res Judicata

**OPM decision number:** F-1102-I-01

/s/

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Center for Merit System Accountability

August 29, 2007

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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, 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. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

**Decision sent to:**

[name and address]  
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## Introduction

On March 7, 2006, the Center for Merit System Accountability, U.S. Office of Personnel Management, received an FLSA claim from [name]. She was employed by the Federal Aviation Administration (FAA) in a Contract Specialist, FV-1102-I, position equivalent to the GS-13 grade level during the period of her claim and separated from the FAA on April 29, 2000. She is requesting compensation for 300 hours of overtime and 250 hours of compensatory time she claims to have worked during the period of May 1996 to December 1999. We received the claim on March 7, 2006, the initial claim administrative report on June 19, 2006, and additional documentation from the agency on April 24, 2007. We have accepted and decided this claim under section 4(f) of the FLSA as amended and OPM's implementing regulations under subpart G, part 551, of title 5, Code of Federal Regulations (CFR).

## Background

In support of her request for back pay for FLSA overtime and compensatory time, the claimant states:

The specific issues or incidents giving rise to this claim is [sic] not being compensated for overtime and compensatory time as agreed under the Early Resolution System (ERS) and Equal Employment Opportunity Commission (EEOC) Final Order. Additionally, Mr. Timothy O'Hara removing [sic] my original time and attendance records from the FAA that was [sic] subsequently lost, never to be found.

In her initial claim, the claimant also stated she had verbally discussed "mounting Time and Attendance (T&A) issues" with her first- ([name]) and second- ([name]) level supervisors in 1996; filed a formal grievance on these issues on December 9, 1998, and spoke with her third-level supervisor who recommended she proceed using the Early Resolution System (ERS); and filed an Equal Employment Opportunity (EEO) complaint on February 23, 1999, because of a "hostile work environment" that included the same time and attendance issues. The claimant further stated:

The EEOC Judge Order states I should be compensated for a minimum of 99-100 hours of overtime and compensatory time for which Mr. O'Hara admitted during the hearing...and made a negative inference against the Agency for losing my T&A records. To date the FAA has not responded or paid the overtime.

On January 23, 2005, I wrote a letter to the FAA Administrator Marion Blakey. As a result of the letter, In [sic] July 2005, the FAA forwarded 72 hours of sick leave to my current agency. In August 2005, the FAA processed my CA-7 to buy-back leave; however, the Department of Labor has not responded. The FAA has still not responded to Overtime/Compensatory Time Payment.

In her January 21, 1999, ERS the claimant states the underlying basis of her claim:

[name] and [name] have willfully violated the provisions of the Fair Labor Standards Act of 1938, as amended (FLSA) for unpaid compensation for overtime and compensatory hours worked.

## **Evaluation**

### *Timeliness*

The FLSA claims process in part 551 of title 5, CFR, includes the adjudication and settlement of claims for unpaid overtime. Any FLSA claim filed by a Federal employee on or after June 30, 1994, is subject to a two-year statute of limitations (three years for willful violations) contained in the Portal-to-Portal Act of 1947, as amended (section 255a of title 29, United States Code). In order to preserve the claim period, a claimant or a claimant's designated representative must submit a written claim either to the agency employing the claimant during the claim period or to OPM. The date the agency or OPM receives the claim is the date that determines the period of possible entitlement to back pay. The claimant is responsible for proving when the claim was received by the agency or OPM.

The claim in this case accrued on December 9, 1998, when the claimant filed a written grievance on this matter. Assuming willful violation attached, any claim for the FLSA overtime pay in question in this case would expire no later than three years after the claim accrued, i.e., December 9, 1995. Because the maximum three-year statutory limitation period for filing the claim had not yet run on December 9, 1998, the claim is not barred from our consideration.

### *Evaluation of the Overtime Claim*

The claimant submitted a decision issued by the EEOC deciding the matter she wishes OPM to adjudicate. This decision was issued in response to an EEO complaint filed by the claimant wherein she alleged that the agency willfully violated the provisions of the FLSA by not compensating her for overtime and compensatory hours worked and requested as remedy "lump sum payment for 300 hours of overtime worked at my current salary level" and "250 compensatory hours placed onto my T&A in one lump sum." The EEOC administrative judge wrote in his decision that "the agency is obligated, regardless of my finding of no discrimination, to pay Complainant for a minimum of 90-100 hours of overtime and compensatory time for which [name] [claimant's supervisor] admitted during the hearing that Complainant was not compensated."

As discussed in *Stearn v. Department of the Navy*, 280 F.3d 1376 (Fed. Cir 2002):

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2423 (1981) . . . The doctrine serves to "relieve parties of the cost and vexation of multiple law suits, conserve judicial resources, and . . .

encourage reliance on adjudication.” *Allen v. McCurry*, 449 U.S. 90, 94, 66 L.Ed. 2d308, 101 S.Ct. 411 (1980).

Since EEOC rendered a judgment on the merits of the overtime and compensatory time issue in the present case, the claim before us is barred by res judicata, which precludes relitigation of issues that have already been decided by an administrative body of competent jurisdiction. Therefore, we may not decide this claim.

Although we have no claims settlement jurisdiction in this case, we note that the claimant occupied a position identified as FLSA-exempt during the claim period. She does not dispute her FLSA exemption status and has not provided any evidence or indication that she was performing anything other than the higher-graded administrative work which served as the basis for this exemption during the claim period. An employee whose position is identified as FLSA-exempt is not covered by the overtime provisions of the Act and has no entitlement to compensation for overtime worked under its provisions.

For purposes of this claim, we must assume EEOC assumed jurisdiction and rendered its judgment on the merits of the issue at hand under its authority to adjudicate Federal sector EEO complaints under part 1614 of 29 CFR and directed its corrective action under that authority. Enforcement of that judgment falls under EEOC’s jurisdiction and OPM may not and will not intervene in this matter.

We note that, as an FLSA exempt employee, OPM’s jurisdiction over the issues of overtime and compensatory time raised in this case would have fallen under OPM’s authority to settle Federal civilian employee compensation and leave in 31 U.S.C. § 3702(a)(2) and its implementing regulations in part 178 of 5 CFR, and not under the FLSA.

### **Decision**

The claim is denied since it is barred by res judicata. This settlement for lack of jurisdiction is also final for purposes of 31 U.S.C. § 3702(a)(2). No further administrative review is available within OPM. Nothing in this settlement limits the employee’s right to bring an action in an appropriate United States court.