

Date: May 28, 2003
Claimant: [name]
File Number: 03-0009
OPM Contact: Deborah Y. McKissick

The claimant is employed as a [position], with the Department of the Air Force in the Family Support Center (FSC), Osan Air Base, Korea. The claimant requests compensation for overtime worked during the period from January 5, 1997, to December 31, 2001. The Office of Personnel Management (OPM) received the compensation claim on November 14, 2002, and the agency administrative report on January 28, 2003. For the reasons discussed herein, the claim is denied.

The claimant is requesting compensation of \$33,922.31 for overtime worked from January 5, 1997 to July 28, 2001. The claimant states that, at a minimum, he has worked in the office on Saturdays from 10:00 a.m. to 4:00 p.m. The claimant explained that he ensures that the Air Force Aid Society (AFAS) provides 24-hours prompt response to eligible personnel. He explained that work performed after regular working hours usually occurs because eligible personnel need to return to the United States due to illness, death, or injury of a family member.

The agency administrative report referenced 5 CFR 550.111(a)(1) and 5 CFR 550.111(c) to substantiate its decision. The agency explained that overtime must be officially requested on an AF Form 428, Request for Overtime, Holiday Premium Pay, and Compensatory Time (AF Form 428), and approved by an authority higher than the FSC Director. However, in case of emergency, the AF Form 428 must be completed and approved the next duty day. The agency also explained that the 51st Fighter Wing Commander delegated the authority to order and approve overtime to Group Commanders and Deputy Group Commanders. Any overtime requested by he claimant from the FSC Director would require this higher level approval.

The claimant has the burden of proving that he actually worked overtime that was officially ordered or approved, or actively induced by an agency official with authority to order or approve overtime work. *Jim L. Hudson*, B-182180 (January 6, 1982). Under 5 U.S.C. §5542(a), overtime may be paid for work officially ordered or approved. The documents presented by the claimant do not show that the additional hours performed outside of the claimant's scheduled work hours were ordered and approved by authorized officials during the claim period. Mere knowledge that an employee is working beyond

his normal duty hours, without active inducement of the employee to perform the additional work, is not enough to support payment in the absence of an official order or approval for overtime work to be performed. *John W. Wright, supra.*; 68 Comp. Gen. 385 (1989); *Jim L. Hudson, supra.*; *Donald W. Plaskett, supra.*; *Garrett F. Masco, supra.* Indeed, it is not sufficient that an employing agency tacitly expected that overtime work be performed. *Jim L. Hudson, supra.* The agency stated that the claimant was not ordered to work overtime by his supervisor, nor was his overtime approved by the designated authority. The agency reported that the FSC is able to provide 24 hour service because the claimant, the civilian personnel officer and his deputy, carry pagers. The agency stated that the claimant never discussed with the FSC Director that he came in and stayed all day on Saturdays in anticipation that his services would be needed.

The agency noted that the claimant requested and was granted approval to work compensatory time on a very limited basis. The claimant was authorized to work compensatory time during pay periods 2 and 3 in January 2001. The agency stated that no other compensatory time was authorized or reflected in the payroll system.

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the government agency involved in the claim. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. Moreover, the burden of proof is on the claimant to prove the liability of the government and his or her right to payment. 5 CFR 178.105; *Matter of Jones and Short*, B-205282, June 15, 1982. Thus, where the written record presents an irreconcilable dispute of fact between a government agency and an individual claimant, the factual dispute is settled in favor of the agency, absent clear and convincing evidence to the contrary. 5 CFR 178.105; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982. OPM is required to settle claims only in accordance with the applicable laws and regulations, and we cannot waive or modify their provisions in individual cases. We conclude that the claimant has not established that the additional hours worked by the claimant during the claim period were ordered or approved consistent with the agency's regulations. Accordingly, we must uphold the decision of the agency to not compensate the claimant for the requested hours of overtime. Therefore, we concur with the agency's decision and this claim is denied.

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