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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-216756

DATE: February 19, 1985

MATTER OF: William Kohler - Overtime Compensation

DIGEST:

1. A former employee of the Coast Guard whose tour of duty was changed from a Monday through Friday schedule to a Sunday through Wednesday and Saturday schedule, with Thursday and Friday off, is not entitled to overtime compensation for the Sunday he worked at the time of the schedule change. Since the Coast Guard administrative workweek extended from 0000 hours Sunday morning through 2400 hours Saturday night, he did not work more than 5 days or 40 hours in any one administrative workweek.
2. Although the employee contends otherwise, there is no statutory or regulatory provision which requires scheduling of an employee's two consecutive days off at the end of his tour of duty.

Representative Robert G. Torricelli has forwarded a letter from Mr. William Kohler, a retired Coast Guard employee. Mr. Kohler is appealing our Claims Group's determination of July 26, 1984, (Z-2854181), denying his claim for overtime compensation. We hereby affirm that determination.

Mr. Kohler's claim arose when his tour of duty at the Coast Guard Support Center, Governor's Island, New York, was changed from a Monday through Friday work schedule to a Sunday through Wednesday and Saturday work schedule, with Thursday and Friday off. The Coast Guard states that the tours of duty in each of the shops performing Public Works functions were changed to include weekend coverage after it was determined that it would be more effective and economical to eliminate the emergency service team and have the individual shops handle emergencies. The Coast Guard states that the local union was consulted and the impact and implementation of the management decision was negotiated as required.

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Mr. Kohler claims that he is entitled to overtime for the first Sunday he was required to work after his schedule was changed because that was his normal day off and, therefore, he worked 6 days in 1 week. He also contends that his changed schedule violated overtime regulations requiring that an employee must be granted 2 consecutive days off at the end of his tour of duty.

It appears that Mr. Kohler was covered by the overtime provisions of the Fair Labor Standards Act (FLSA) as well as the overtime provisions of Title 5 of the United States Code. In such situations an employee is entitled to receive compensation under whichever law provides him with the greater benefit. 54 Comp. Gen. 371 (1974). Mr. Kohler, however, is not entitled to compensation under either law.

Under the FLSA overtime compensation is provided for as follows:

"* * * no employer shall employ any of his employees * * * for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."
29 U.S.C. § 207(a)(1) (1982).

Under 5 U.S.C. § 5542, overtime rates of pay are prescribed for "hours of work officially ordered or approved in excess of 40 hours in an administrative workweek. * * *"

The head of each agency is directed by 5 U.S.C. § 6101(a) to fix workweeks and work schedules and 5 U.S.C. § 6101(c) authorizes the Office of Personnel Management (OPM) to prescribe regulations necessary for the administration of that provision. At section 610.102(a) of title 5, Code of Federal Regulations (CFR) the term, administrative workweek, is defined as "a period of 7 consecutive calendar days designated in advance by the head of an agency under section 6101 of title 5, United States Code." Section 5 C.F.R. § 551.501(b) of OPM's regulations concerning pay administration under the FLSA defines a workweek, for purposes of FLSA overtime, as

"* * * a fixed and recurring period of 168 hours--seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of a day. For employees subject to Part 610 of this chapter, the workweek shall be the same as the administrative workweek defined in § 610.102 of this Chapter."

Thus, the workweek used for the purpose of determining Mr. Kohler's entitlement is the same under the FLSA and title 5. The record shows that the Coast Guard had an administrative workweek of 0000 hours Sunday morning through 2400 hours Saturday night. Overtime would be payable to Mr. Kohler only if he worked more than 5 days in any one administrative workweek. Mr. Kohler alleged that he worked 6 days in the first week of his pay period since he worked Monday through Friday, had Saturday off, and commenced work again on Sunday. However, that is not the week which must be used to determine his entitlement to overtime. Since, as we have stated, the Coast Guard's administrative workweek extends from Sunday through Saturday, Mr. Kohler worked only 5 days in each workweek and is not entitled to overtime compensation.

Mr. Kohler has stated that our Claims Group did not receive and consider the Coast Guard's administrative report and that its determination was not in accord with the applicable laws and regulations. The Coast Guard report was a part of the record upon which our Claims Group based its determination. Mr. Kohler does not state the specific provisions of law which he believes have been violated but we do not find any errors in the way the Claims Group applied the law governing these types of situations.

It appears that Mr. Kohler misinterpreted the regulations concerning the definition of a workweek. In the regulations found at 5 C.F.R. § 610.102 there are three definitions of workweek. In addition to the definition of administrative workweek which we have quoted previously, "regularly scheduled administrative workweek" and "basic workweek" are defined as follows:

"(a) 'Administrative workweek' means a period of 7 consecutive calendar days

designated in advance by the head of an agency under section 6101 of title 5, United States Code.

"(b) 'Regularly scheduled administrative workweek,' for a full-time employee, means the period within an administrative workweek, established in accordance with § 610.111, within which the employee is regularly scheduled to work. * * *.

"(c) 'Basic workweek,' for full-time employees, means the 40-hour workweek established in accordance with § 610.111."

Mr. Kohler makes the argument that his administrative workweek was disrupted by the change in his schedule. There was no change in the Coast Guard's administrative workweek. The workweek which was changed was Mr. Kohler's "basic workweek" defined in section 610.102(c).

Agency heads are given the authority at section 610.111 to establish the basic 40-hour workweek within the administrative workweek of 7 days. Section 610.121 provides that except when the head of the agency determines that the agency would be seriously handicapped in carrying out its functions, or that costs would be substantially increased, the basic workweek should be scheduled on 5 days, Monday through Friday if possible, and that the 2 days outside the basic workweek should be consecutive. There is no provision in these regulations or in the FLSA or its regulations which provides, as Mr. Kohler contends, that the 2 consecutive days must occur at the end of a tour of duty. This matter is entirely discretionary with the head of the agency. Professional Air Traffic Controllers Organization, B-193384, B-193544, B-194035, June 18, 1979; Acuna v. United States, 202 Ct. Cl. 206 (1973), cert. denied, 416 U.S. 905 (1974).

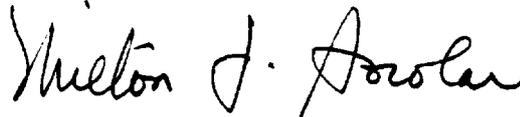
Mr. Kohler also contends that since the schedules of only three shops were changed, the employees of those shops are being discriminated against. He further argues that the change was made to avoid the payment of overtime. There is no evidence that the Coast Guard intended to avoid paying overtime. And a reading of subchapter S1-4 "Establishment of Work Schedules" Book 610, Federal Personnel Manual Supplement 990-2 makes it clear that the

head of an agency, or the person to whom he has delegated authority in accord with 5 U.S.C. § 6101 has the authority to change the tour of duty of each employee each administrative workweek. Indeed, paragraph S1-4(b) requires that:

"(1) The head of an agency shall schedule the work of his or her employees to accomplish the mission of the agency. The head of an agency shall schedule an employee's regularly scheduled administrative workweek so that it corresponds with the employee's actual work requirements.

"(2) When the head of an agency knows in advance of an administrative workweek that the specific days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, he or she shall reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. The head of the agency shall inform the employee of the change, and he or she shall record the change on the employee's time card or other agency document for recording work."

For the reasons we have explained above, we hereby affirm our Claims Group's determination to disallow Mr. Kohler's claim for overtime compensation.

for 
Comptroller General
of the United States