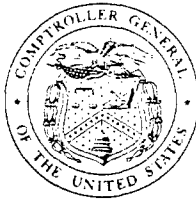


DECISION



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

9655

FILE: B-193352

DATE: March 27, 1979

MATTER OF: Council and Washburn - [Entitlement to
Overtime Pay]

DIGEST: Army hospital has two work shifts:
0500-1330 and 1100-1930. Employees on
1100-1930 shift, who periodically work
regular shift 1 day and 0500-1330 shift
next day, claim overtime compensation
for work in excess of 8 hours. Defini-
tion of "day" for purposes of overtime
compensation is not limited to calendar
day but may be any 24-hour period. See
42 Comp. Gen. 195 (1962). Thus, since
Army agreed through negotiated agreement
to treat workday as 24-hour period from
start of shift, employees who work more
than 8 hours during 24-hour period but
not on same calendar day are entitled to
overtime compensation.

*sugg. - work shifts
flexible work schedules*

This action is in response to a request for an advance decision from Lieutenant Colonel D. I. Walter, Finance and Accounting Officer, Headquarters XVIII Airborne Corps and Fort Bragg, Department of the Army, Fort Bragg, North Carolina, concerning a number of backpay claims for overtime submitted by both Wage Board and General Schedule employees (and former employees) of the Food Service Division, Womack Army Hospital, MEDDAC, Fort Bragg, North Carolina. The issue presented for decision is the entitlement to overtime pay of these employees who frequently worked two 8-hour shifts within a 24-hour period but not within the same calendar day.

*DLG
01391*

The report from the Army states that over a period of several years the Food Service Division scheduled its employees to an "early/late" tour of duty involving two overlapping shifts, 0500 to 1330 and 1100 to 1930 daily. The report states further that approximately four times per pay period, employees who worked the 1100 to 1930 shift one day would work the 0500 to 1330 shift the following day. The Army forwarded to our Office two claims which are apparently representative of other claims it has received. The claim of Richard Council has been computed by the Army for the period from 1971 to 1976 at an average of 25 hours of overtime per pay period, while the claim of Betty L. Washburn has been computed for the period from 1971 to 1976 at generally between 20 and 25 hours of overtime per pay period.

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The overtime claims of the employees are based upon a provision in the contract agreements between Headquarters XVIII Airborne Corps and Fort Bragg and AFGE Local 1770 which have been in effect without material change since 1971 and which provide, in pertinent part, as follows:

"No employee in the unit shall be required to work more than eight (8) hours in his basic workday without compensating such at the existing compensatory time off rate or overtime rate of pay for all hours worked in excess of eight (8) hours. For purposes of this section, the basic work day is considered to be elapsed 24 hours from the starting time of his shift; however, this does not apply to 24-hour shift employees who voluntarily and mutually exchange or split shifts with approval of their supervisor."
(Emphasis added.)

The report from the Army states that applying the above-quoted language literally would result in 6 hours overtime entitlement for a Food Service Division employee on the second day, but the Army questions the validity of these back pay claims in view of regulations contained in the Federal Personnel Manual and our decision in 42 Comp. Gen. 195 (1962). The report concludes by posing two questions: (1) is there any overtime entitlement when an agency follows a 5 workday, Sunday to Saturday, midnight to midnight scheduling and an employee does not work more than 8 hours in a day or 40 hours in a week; and (2) does our decision in 42 id. 195, supra, or any law or regulation concerning the use of a calendar day or a Sunday through Saturday workweek override a locally negotiated contract provision which appears to the contrary.

With regard to overtime entitlement, 5 U.S.C. § 5542(a) (1976) provides, in pertinent part, as follows:

"For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or * * * in excess of 8 hours in a day, performed by an employee are overtime work * * *."

The above-quoted section is applicable to General Schedule employees, and Wage Board employees are covered under a substantially similar provision contained in 5 U.S.C. § 5544 (1976). The law concerning the scheduling of hours of work and basic workweeks is contained in 5 U.S.C. § 6101 (1976), which provides, in pertinent part, as follows:

"(a)(2) The head of each Executive agency, military department, and of the government of the District of Columbia shall -

"(A) establish a basic administrative workweek of 40 hours for each full-time employee in his organization; and

"(B) require that the hours of work within that workweek be performed within a period of not more than 6 of any 7 consecutive days.

"(a)(3) Except when the head of an Executive agency, a military department, or of the government of the District of Columbia determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide, with respect to each employee in his organization, that -

"(A) assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

"(B) the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

"(C) the working hours in each day in the basic workweek are the same;

"(D) the basic nonovertime workday may not exceed 8 hours;

"(E) the occurrence of holidays may not affect the designation of the basic workweek; and

"(F) breaks in working hours of more than 1 hour may not be scheduled in a basic workday."

In our decision in 42 Comp. Gen. 195, supra, we considered the question of whether the 8-hour day and the 40-hour week are defined as a calendar day (midnight to midnight) and a calendar week (Sunday through Saturday). We held that, since there may be problems involving employees with uncommon tours of duty which create the need for


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flexibility, any 24-hour period may be treated as a "day" and any consecutive 7 day period may be treated as a "week" although when administratively feasible the Sunday through Saturday week and the midnight to midnight day should be used. 42 id. 195, at 200. Subsequently, we held in 57 Comp. Gen. 101 (1977) that our Office would have no objection to the Department of Agriculture adopting a 24-hour period other than midnight to midnight as a "day" where the administrative workweek involved two shifts within the same calendar day.

In the present case we believe that where the agency has adopted the definition of a "day" as set forth in the negotiated agreement cited above, employees who work more than 8 hours in a "day" are entitled to overtime compensation even though not more than 8 hours of work are performed in any 1 calendar day. See 57 Comp. Gen. 101, supra; and 42 id. 195, supra.

The Army has also asked whether there is any law or regulation concerning the definition of a "day" or "workweek" which would override the negotiated agreement provision cited above. We have reviewed the applicable laws and regulations and we find nothing which would preclude the Army from adopting the definition of a "day" as set forth above. Furthermore, under the provisions of sections 6101 and 5542(a) of title 5, United States Code, the agency has the authority to establish work schedules and order approve overtime. Through the negotiated agreement, it appears that the agency exercised its statutory authority by defining a workday as the 24-hour period beginning with the employee's shift and, in effect, authorizing overtime work where the employee worked more than 8 hours during a 24-hour period. See, for example, 55 Comp. Gen. 405 (1975).

Accordingly, we conclude that the Food Service Division employees are entitled to overtime compensation for work in excess of 8 hours during a "day" as defined in the negotiated agreement.


Deputy Comptroller General
of the United States