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DECISION



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

FILE: B-195466

DATE: June 17, 1980

MATTER OF: Eleanor G. Atkins - Overtime
Compensation Claim

DIGEST: Employee of Department of the Army claims overtime compensation from October 1, 1972, through September 30, 1976, incident to her employment as a secretary. Claim may not be allowed where claimant has presented a summary of total hours of weekly overtime she alleges to have worked during certain periods of employment and a general and indefinite statement by immediate supervisor as to her hours of work. There is an absence of sufficient evidence upon which a reasonable determination of the number of hours worked could be based.

By letters dated June 4, 1979, and August 16, 1979, Mrs. Eleanor G. Atkins, a civilian employee of the Department of the Army, U.S. Army Engineer Division, Europe, has appealed the action of the Claims Division, which by Certificate of Settlement dated May 14, 1979, disallowed her claim for overtime compensation for the period from October 1, 1972, through September 30, 1976, incident to her employment as a secretary.

Section 71a of title 31, United States Code (1976), requires that all claims cognizable by the General Accounting Office be received in this Office within 6 years after the date such claim first accrued or be forever barred. Mrs. Atkins' claim, addressed to our Claims Division, was received by our Office on January 2, 1979. Thus, that portion of her claim for overtime compensation prior to January 2, 1973, may not be considered.

The record shows that during the period in question, Mrs. Atkins was employed as a Secretary (Stenographer-Interpreter) in the Executive Office, U.S. Army Engineer

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Division, Europe. Her primary duty was to serve as secretary to Mr. William E. Cambler, the Assistant Division Engineer for Intergovernmental Affairs. During at least the period January 1, 1975, through January 31, 1976, she also served as the secretary to the Division Value Engineer. The record indicates that throughout the period of her claim, Mrs. Atkins also provided secretarial support for other Division officials.

Mrs. Atkins alleges that she worked the following amounts of overtime per biweekly pay period: 10 hours through June 30, 1974, 16 hours through June 30, 1976, and 12 hours through September 30, 1976. Except for the period from July 1, 1974, to December 31, 1974, during which she claims to have worked 6 hours overtime per pay period for Mr. Cambler, Mrs. Atkins claims to have worked 4 hours of overtime per pay period for him. The remainder of her claim is for hours worked for other division officials as well as in performing "public affairs" duties. She states that she did not receive any compensation or compensatory time off for the overtime hours of work she performed.

The Department of the Army disallowed Mrs. Atkins' claim for overtime compensation, in part, on the basis that overtime work had not been duly ordered or approved. The Claims Division denied Mrs. Atkins' claim on the basis that she had not presented evidence to show that the alleged overtime work was affirmatively induced by an official who had properly delegated authority to order or approve overtime.

In support of her request for reconsideration of our Claims Division's determination, Mrs. Atkins has submitted Justifications for Outstanding Performance Ratings for the periods from October 1, 1972, to September 30, 1973, and from January 1, 1975, to January 31, 1976. Both are signed by Mr. Cambler and indicate that she was able to keep up with an increased workload and provide secretarial support for other offices within the Division by "voluntarily and consistently" working after normal duty hours with no

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request for compensation or time off. Mrs. Atkins was given a quality step increase for the earlier period and an outstanding performance rating for the later period. The official commendation issued in connection with each action refers to Mrs. Atkins' performance of voluntary overtime.

In addition, Mrs. Atkins has furnished a statement dated April 25, 1978, executed by Mr. Cambler. He states that to the best of his recollection during the period October 1, 1972, to June 30, 1974, Mrs. Atkins normally worked a half hour or an hour while he was present after regular working hours, or an average of 2 hours overtime per week. He adds that during the period from July 1, 1974, to September 30, 1976, the same situation prevailed, but because of additional workload she worked more overtime during his presence, "possibly an average of 3 hours per week." He further states that because Mrs. Atkins had indicated to him that she expected no compensation for overtime but would take some compensatory time off during his absence, he did not maintain a record of her overtime, and she, in turn, did not provide him with such a record. Lastly, he states that Mrs. Atkins occasionally took time off without charge to leave for personal matters and that he, in fact, always encouraged her to take time off during his absences.

Section 5542 of title 5, United States Code, (1976), provides in pertinent part as follows:

"(a)* * * 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 and shall be paid for * * *."

Additionally, the applicable regulation, 5 C.F.R. 550.111(c) (1976), in effect throughout the period covered by Mrs. Atkins' claim, provides that:

"(c) Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom the authority has been specifically delegated."

The present record does not establish whether Mr. Camblor was specifically delegated to order or approve overtime work performed by Mrs. Atkins.

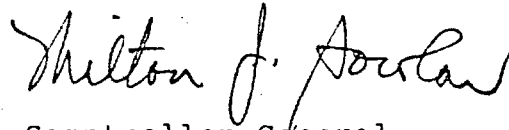
However, we need not decide whether Mrs. Atkins was affirmatively induced by proper authority to work overtime within the meaning of Baylor v. United States, 198 Ct. Cl. 331 (1972), because she has not provided sufficient evidence upon which a reasonable estimate of the actual number of hours worked could be based. Section 71 of title 31, United States Code (1976) provides that all claims by and against the Government shall be settled by the General Accounting Office. The statute leaves to the discretion of this Office, the amount of evidence that is required in support of such claims, and we do not sanction the payment of claims of doubtful validity due to the lack of official records or suitable evidence from which the amount of overtime pay may be reasonably reconstructed.

Mrs. Atkins does not claim overtime for any specific hours worked but on the basis of a general statement that she worked various amounts of overtime per week during different periods covered by her claim. She may have continued to work after her scheduled hours of duty on a usual basis but she did not record the hours and days on which such work was performed. After the period had passed she decided to claim overtime pay. Her claim is predicated on her belief that she did work certain amounts of overtime per week. Such a vague claim is not sufficient to support allowance by us. See 55 Comp. Gen. 402 (1975); see Lawrence J. McCarren, B-181632, February 12, 1975.

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Further, the statement by Mr. Cambler as to Mrs. Atkins' hours of work is too vague with regard to the hours she worked after normal work hours and pertains only to those times that he was present in the Office. He has not set forth the hours of work performed by Mrs. Atkins during his absences except to state that he always encouraged her to take time off during such absences. Thus, Mr. Cambler's statement is not sufficiently specific or definite so as to constitute suitable evidence upon which the amount of overtime worked may reasonably be reconstructed.

For the foregoing reasons, the disallowance of Mrs. Atkins' claim by the Claims Division is sustained.



Acting Comptroller General
of the United States