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**DECISION**



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

**FILE:** B-207795

**DATE:** December 2, 1982

**MATTER OF:** Thomas G. Hickey - Claim for  
Overtime Compensation

**DIGEST:** An FLSA exempt employee requests overtime compensation for travel during what would normally be his nonworking hours. Employee bases his claim on 5 U.S.C. 5542(b)(2)(B)(111) which allows such compensation when travel is under "arduous conditions." Since long hours of travel on a commercial flight are not considered "arduous conditions," the claim must be denied.

This action is in response to a request from Mr. R. G. Bordley, Chief of the Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency (DLA), for an advance decision concerning whether or not an employee may be paid overtime for travel outside his regular duty hours for an extended period of travel.

Mr. Thomas G. Hickey, an FLSA exempt employee, was assigned temporary duty (TDY) in Oslo, Norway, and Copenhagen, Denmark. Pursuant to his travel orders, the DLA Transportation Services Officer scheduled Mr. Hickey's flight departing the afternoon of September 13, from Washington, D.C., to London, England. There, Mr. Hickey changed flights and proceeded to his final destination, Oslo, Norway, where he arrived at 11:30 a.m. local time, on September 14, after approximately 13-1/2 hours of travel. On the return flight Mr. Hickey departed from Copenhagen at 5:30 p.m. local time and, after a stop in New York, arrived home in Washington at 11 p.m. the same day. Traveltime was approximately 10-1/2 hours.

The agency appears to have acted in accordance with the travel orders and applicable regulations. The official orders authorized flights in categories B, Y, or Z. Mr. Hickey's flights were category Z American carrier discount flights. Additionally, the flight from the United States to Oslo, Norway, was scheduled to coincide with the beginning of Mr. Hickey's TDY status.

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Mr. Hickey filed a claim in his expense voucher to the DLA for overtime compensation for hours spent traveling. He claimed 24 hours overtime for travel. The agency disallowed the claim, and will not pay it except pursuant to allowance of the claim by this Office.

At the outset, we note that Mr. Hickey has indicated his disagreement with the principles set forth in 56 Comp. Gen. 629 (B-138492, May 19, 1977) concerning the requirement to use U.S. air carrier service to and from the United States that requires boarding or leaving the carrier between midnight and 6 a.m. or travel spanning those hours. He points out that but for this decision his return travel could have been scheduled during daylight hours aboard a foreign air carrier. The cited decision clarifies an earlier holding of the Comptroller General concerning the use of American carriers under the "Fly America Act," 49 U.S.C. 1517. The issues of concern there are not relevant to the decision in this case of Mr. Hickey's claim for overtime compensation.

Mr. Hickey states that the DLA scheduled travel during nonworking hours in a manner which significantly inconvenienced him. He points out that because of the afternoon departure from Copenhagen, he was awake for nearly 22 hours before he arrived home. He states that such scheduling is harmful to the health and well-being of employees.

The statutory authority for payment of overtime compensation for time spent in travel status is 5 U.S.C. 5542(b)(2). Compensation is not permitted unless the conditions of the statute are met. Clause (B) prescribes the four circumstances in which overtime compensation is authorized.

For purposes of the statute, time spent in travel status will be compensated as hours of employment when: (i) work is performed while traveling, (ii) travel is incident to travel that involves the performance of work while traveling, (iii) travel is carried out under arduous conditions, or (iv) travel results from an event which could not be scheduled or controlled administratively.

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Mr. Hickey argues that his travel falls within 5 U.S.C. 5542(b)(2)(B)(i). He believes that due to the length of time he spent traveling, he should be compensated for travel under arduous conditions.

The first issue to be addressed is what type of conditions qualify as "arduous." The instructions issued pursuant to 5 U.S.C. 5542(b)(2)(B) are found in the Federal Personnel Manual Supplement 990-2, Book 550, subchapter S1-3. At subparagraph S1-3b(2)(c)(iv) arduous conditions are defined as:

"\* \* \* travel over unusually adverse terrain, during severe weather conditions, or to remote, barely accessible facilities by foot, horseback, or truck \* \* \*. In addition, the time of travel (whether to be performed during the day or night) or distance traveled, is ordinarily not considered in determining whether travel is performed under arduous conditions."

In accordance with the applicable statute and regulations, this Office has held that travel extended over a long period does not make it "arduous." We have held that 30 hours of continuous travel is not arduous. See B-168119, May 25, 1971, and B-179003, August 24, 1973. Otherwise nonarduous travel does not become arduous because the aggregate amount of time outside of regular working hours spent traveling is substantial over a period of time. See 40 Comp. Gen. 439 (1961) and Matter of Mills, B-198771, December 10, 1980. Travel of an employee as a passenger on a commercial airline under non-emergency conditions in connection with temporary duty does not in itself constitute performance of work or travel under arduous conditions for purposes of overtime compensation. See B-160928, April 16, 1970.

As stated above, arduous conditions have been defined specifically. Adverse terrain and severe weather are examples of conditions which qualify travel as "carried out under arduous conditions." See 41 Comp. Gen. 82 (1961).

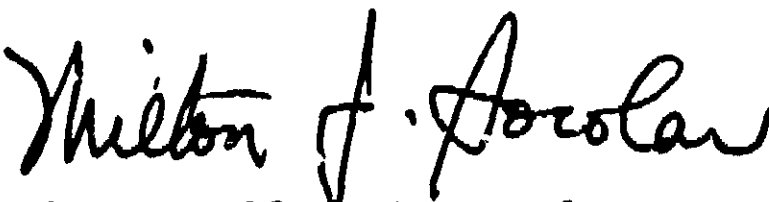
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Mr. Hickey has presented no evidence that arduous conditions existed during his travel. While it may be inconvenient, lengthy traveltime is insufficient to qualify as "arduous."

Although not relevant to Mr. Hickey's claim before us, we note Mr. Hickey's complaint that travel for long periods of time, and at times being required to report for duty without proper rest may be harmful to an employee's well-being or health. We would point out that travel between the United States and points outside the United States often requires that employees remain in a travel status during hours normally allocated to sleep, or forgoing sleep in order to accommodate to local time. In many cases the inconvenience of international travel spanning several time zones can be lessened by provision for a rest stop en route. Where a rest stop cannot be scheduled agencies may exercise discretion in granting administrative leave for "acclimatization rest." See 56 Comp. Gen. 629 (1977); 55 Comp. Gen. 510 (1975).

Based upon the record before us, and the principles stated above, it is apparent that the time Mr. Hickey spent traveling does not meet the conditions set forth in 5 U.S.C. 5542(b)(2)(B)(iii) which allow overtime compensation. Accordingly, his claim must be denied.

The record reflects that a similar claim, dated May 6, 1982, has been filed with the DLA by Mr. Hickey. Although we cannot address the claim, which is not properly before this Office, we reiterate that a claim for overtime compensation for travel during nonworking hours may not be allowed unless the criteria established in 5 U.S.C. 5542(b)(2)(B) and the implementing regulations are met. Action by the DLA should be consistent with the principles set forth above.

for   
Comptroller General  
of the United States