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

IN REPLY REFER TO: B-196164 (VBG)

December 11, 1979

The Honorable John J. Cavanaugh
House of Representatives

Dear Mr. Cavanaugh:

This refers to your letters of October 17 and September 20, 1979, in which you ask for our report on correspondence sent to you by Mr. Robert E. Shere of 5029 South 56th, Omaha, Nebraska 68117. Mr. Shere, an employee of the Department of Agriculture, has certain objections to the rules which determine what compensable hours of work are under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq. (1976).

Mr. Shere states that meat graders are compensated under the FLSA for time spent traveling with grading equipment whereas other employees who are not meat graders, such as himself, do not receive compensation when they travel with their tools and equipment. He believes this result to be inequitable. Mr. Shere also objects to certain rules which determine whether an employee is in a compensable-hours-of-work status while traveling to a temporary duty post beyond his official station.

The Civil Service Commission (CSC) (now Office of Personnel Management (OPM)) is authorized by law to administer the FLSA as to most Federal employees. 29 U.S.C. § 204 (1976). Pursuant to this authority CSC has issued instructions to Federal agencies which state various rules for determining when an employee is in an "hours of work" status for the purpose of compensation under the FLSA. The Commission's instructions have relied heavily on the hours-of-work rules developed over many years by the Department of Labor, which administers the FLSA for the non-Federal sector, and on the decisions of the Federal courts which interpret what the term "hours of work" means.

With respect to Mr. Shere's first complaint, the Comptroller General has upheld CSC's view that meat graders who transported some 90 pounds of equipment between their homes and work sites were performing compensable work under the FLSA. B-163450.12, September 20, 1978. We mentioned in that decision, however, that time spent carrying personal hand tools to and from work is non-compensable under the FLSA. We noted that the CSC held that the carrying of 10 to 20 pounds of tools by graders would not qualify

[MEAT GRADERS and Compensable Work Hours]

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as compensable hours of work. While the documentation submitted by Mr. Shere suggests that he may have transported uniforms as well as a few hand tools it may be that his travel is regarded as falling within the latter situation. If, however, Mr. Shere still considers that the transportation of these items qualifies his time in a travel status as hours of work he may contact the regional OPM office in his area for guidance. If the matter is not resolved to his satisfaction he may file a claim with our Claims Division at the above address.

Likewise, with regard to Mr. Shere's second point, CSC has ruled that authorized traveltime outside of regular working hours is work under FLSA if an employee (1) performs work while traveling (this includes being a driver of a vehicle), (2) travels as a passenger to a temporary duty station and returns the same day, or (3) travels as a passenger on nonwork days during hours which correspond to his regular working hours. Federal Personnel Manual (FPM) Letter 551-10, April 30, 1976. This ruling follows precedents established by the Department of Labor for the private sector. Even though Mr. Shere may have his reasons for disagreeing with the above rules, the CSC's guidance is in accordance with the law.

Lastly, Mr. Shere points out that in determining an employee's entitlement to overtime compensation, his agency makes a computation under 5 U.S.C. § 5542 (1976), which is the basic overtime provision applicable to General Schedule employees, and another computation is made under the FLSA. The employee is paid under whichever law gives him the greater benefit. That a benefit is granted under one law, however, does not mean that the benefit must be granted under the other. Thus, as Mr. Shere points out, employees on paid leave are considered to be in a duty status for the period of leave in computing overtime under 5 U.S.C. § 5542 but under the FLSA an employee who takes paid leave may not count such time as hours of work in computing his overtime entitlement. This procedure is quite correct as neither 5 U.S.C. § 5542 nor the FLSA require the pyramiding of an employee's overtime compensation by giving him the combined benefits of both laws. The two overtime laws must be recognized as separate authorities which grant distinct benefits and, therefore, the entitlements under the two laws must be computed separately. The employee then receives compensation under whichever law provides the greatest entitlement. 54 Comp. Gen. 371 (1974); B-183493, July 28, 1976.

We trust the above provides you the information to satisfactorily respond to your constituent. We have returned your enclosures as requested.

Sincerely yours,

Milton J. Socolar

For The Comptroller General
of the United States

Enclosures