



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Mr. Agazarian

18767

OFFICE OF GENERAL COUNSEL

In reply refer to:
B-202170

July 8, 1981

Mr. Mike Harpold
President
National Immigration and Naturalization
Service Counsel
P.O. Box 2353
San Francisco, California 94126

Dear Mr. Harpold:

We refer again to your letter dated February 9, 1981, on behalf of employees who were detailed to Fort McCoy, Wisconsin. The matter presented was whether the employees in question would be entitled to overtime compensation under 5 U.S.C. § 5542 for time spent traveling to and from work by bus.

As we stated in our letter dated March 2, 1981, our regulations require that a copy of your request be served on the appropriate agency representative and that a statement of service be submitted to this Office. See section 21.4 of the enclosed regulations. Since we have not received the requested statement of service we will not act on this matter. We are returning the enclosures to your letter of February 9, 1981. You may submit this matter to us again upon compliance with the service requirements of our regulations.

In that connection you may wish to consider the following laws and decisions of the Comptroller General.

Concerning traveltime as hours of employment 5 U.S.C. § 5542(b)(2) (1976), provides in pertinent part as follows:

"(b) For the purpose of this subchapter--

* * * * *

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--

017539

B-202170

"(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

"(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

Thus, under title 5, United States Code, traveltime performed outside the regular workweek is compensable only if one or more of the conditions set forth in subsection 5542(b)(2)(B) have been met. Matter of James C. Holman, B-191045, July 13, 1978, and Matter of George W. Porter, B-191691, March 21, 1979 (copies enclosed). There is no entitlement to overtime compensation for time spent in commuting to work where the travel does not meet the criteria of 5 U.S.C. § 5542(b)(2)(B). See Matter of William S. Reustle, B-194451, March 25, 1980, copy enclosed.

The Court of Claims has held that travel which has no purpose other than to transport an employee to and from the place where he is to perform his duties is not work and is not compensable as overtime. Barth v. United States, 215 Ct. Cl. 383, 568 F.2d 1329 at 1331 (1978) and court cases cited therein.

We note that in presenting this matter you referred to Federal Personnel Manual Letter 551-11 (October 4, 1977). We call to your attention that such letter is only for application to claims for overtime compensation of employees who have been designated as nonexempt under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 et seq. (1976).

Your submission does not indicate whether any of the employees in question have been designated as nonexempt under the FLSA so as to be covered by that Act. The Office of Personnel Management (OPM) has authority to administer the FLSA with regard to Federal employees and has issued Federal Personnel Manual (FPM) Letter 551-7, July 1, 1975, which

B-202170

concerns the determination of an employee's exempt or nonexempt status under the FLSA. Instructions as to whether traveltime is "hours of work" under the FLSA are contained at FPM Letter 551-10, April 30, 1976, and FPM Letter 551-11, October 4, 1977.

We trust that the above information will be of assistance to you.

Sincerely yours,

- Edwin J. Monsma
Edwin J. Monsma
Assistant General Counsel

Enclosures