



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

18995

OFFICE OF GENERAL COUNSEL

B-188023

July 31, 1981

The Honorable Stuart E. Schiffer
Acting Assistant Attorney General
Civil Division
Department of Justice

Attention: Carmen Shepard, Esq.

Dear Mr. Schiffer:

Subject: Joan J. Shapira v. United States
Court of Claims No. 392-81C

On June 29, 1981, you requested our report on the subject petition filed June 22, 1981, wherein the plaintiff claims overtime compensation incident to her alleged performance of overtime duty between January 1, 1969, and December 31, 1971, as an employee of the Veterans Administration Hospital in Portland, Oregon.

In Matter of Joan J. Shapira, B-188023, July 1, 1977, exhibit "A" attached to the petition, the Comptroller General upheld our Claims Division's disallowance of plaintiff's claim by Settlement Certificate Z-2596383, June 28, 1976, copy enclosed. Plaintiff's claim for overtime compensation for the period to July 10, 1969, was barred by 31 U.S.C. 71a which 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. The remainder of plaintiff's claim was disallowed on the basis that overtime was not officially "ordered or approved" as is required by 5 U.S.C. 5542 since the record did not establish that the proper agency official ordered, approved, or induced the performance of overtime work.

It appears that the action filed by the plaintiff is barred by 28 U.S.C. 2501 (1976) which provides, in pertinent part, that "Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues."

Presenting a claim to the General Accounting Office and a decision thereon is not a prerequisite to suit and does not toll the running of the statute of limitations, 28 U.S.C. 2501. Iran National Airlines Corp. v. The United States, 175 Ct. Cl. 504 at 508 (1966) and Oregon Forest Fire Association, et al. v. The United States, 170 Ct. Cl. 308 at 317, 318 (1965).

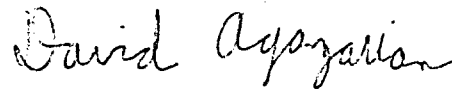
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Our records provide no evidence of anything which might form the basis of a counterclaim or setoff against the plaintiff.

If you should desire further assistance in this matter do not hesitate to contact me at 275-6404.

Sincerely yours,

A handwritten signature in cursive script that reads "David Agazarian".

David Agazarian
Attorney-Adviser

Enclosure

SETTLEMENT CERTIFICATE

UNITED STATES

GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

In correspondence
please refer to:

Division: **Claims**

Claim No.: Z-2596383

JUN 28 1976

(Date)

Joan J. Shapira
2900 East McLoughlin Boulevard
Vancouver, Washington 98661

Madam:

Your claim for overtime compensation alleged to be due for work performed during the period January 12, 1969 through December 1971, as an employee of the Veterans Administration is barred and disallowed for the reasons stated below.

The act of October 9, 1940, 54 Stat. 1061, as amended by Section 801 of the General Accounting Office Act of 1974, approved January 2, 1975, Pub. L. 93-604, requires that all claims cognizable by the General Accounting Office be received in this Office within six full years after the date such claims first accrued or be forever barred. Your claim was first received in the General Accounting Office on July 10, 1975. Thus under the express provisions of the act, as amended, that portion of your claim for overtime compensation from January 12, 1969 to July 10, 1969, is barred and may not be considered.

The record shows that during the period July 10, 1969 through December 1971 you were employed at the Veterans Administration Hospital, Portland, Oregon. You state that during that period you performed 6,320 hours of overtime work for which you were not compensated, either by overtime pay or compensatory time. It appears you submitted a claim for overtime compensation to the Veterans Administration in January 1975. However, the record indicates the claim was denied on the basis that the overtime for which compensation is claimed was not officially ordered or approved.

Section 201 of the Federal Employees Pay Act of 1945, as amended, 5 U.S.C. 5542(a) provides that hours of work in excess of 40 hours in an administrative workweek, or in excess of 8 hours in a day, are overtime when such hours are officially ordered or approved. Regulations of the Civil Service Commission implementing this law, 5 CFR 500.111(c) provide that:

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"(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 this authority has been specifically delegated."

The administrative report on your claim shows that the Assistant Hospital Director was the official authorized to approve overtime in the Portland VA Hospital. However, there is no indication in the file that the overtime for which compensation is claimed was authorized or approved by that official. Therefore, such overtime is not compensable.

Your claim includes time sheets signed by your supervisor and statements from other Hospital employees to the effect that you worked many overtime hours. However, such documentation can not serve to override the requirement that overtime must be officially mandated. There is no information in the record before us which indicates that the official authorized to approve overtime induced or demanded performance of the overtime claimed here. The mere knowledge of overtime without official inducement is not sufficient to allow payment of overtime compensation in the absence of an order approving or authorizing overtime by a competent official. See B-179908, December 20, 1973; Rilello v. United States, 174 Ct. Cls. 1252, 1257 (1966); and Boyle v. United States, 198 Ct. Cls. 331, 359 (1972).

Since the record shows that any overtime you may have performed was neither authorized nor approved as required by law and regulation, your claim may not be allowed.

Sincerely yours,

For the Director, Claims Division

A. M. Cruver

Adjudicator-Authorizer

cc: Veterans Administration
Office of the Controller
Washington, D. C. 20420

Re: 047C3;9-16

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