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United States  
General Accounting Office  
Washington, D.C. 20548

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Office of the General Counsel

B-271346

July 12, 1996

**DIGEST**

Secret Service special agent's claim for overtime premium pay withheld due to the limitation in 5 U.S.C. § 5547(c) on the amount of premium pay that is payable to a law enforcement officer in any pay period was properly denied. While the agent argues that he should have been paid the withheld premium pay in a lump sum in the calendar year following the year in which it was withheld, as authorized under 5 U.S.C. § 5307(b), this section applies only to payments withheld due to the limitation in section 5307(a) on aggregate annual compensation payable. Section 5307(b) does not authorize lump sum payments of amounts withheld due to the pay period limitation on premium pay provided in section 5547(c).B-271346

July 12, 1996

Mr. Harold L. Bibb  
8563 Huntleigh Way  
Germantown, Tennessee 38138

Dear Mr. Bibb:

This is in further response to your February 6, 1996, letter requesting review of our Claims Group's denial<sup>1</sup> of your claim for additional compensation for overtime you worked as a special agent, United States Secret Service. Your claim arose as a result of the Secret Service's application to your pay of the biweekly limitation provided by 5 U.S.C. § 5547(c) on premium pay that may be paid to a law enforcement officer. It is your position that the premium pay denied you as a result of that limitation should be paid to you pursuant to another provision of law, 5 U.S.C. § 5307, in a lump sum in the year following the year in which it was earned. The Secret Service denied your claim on the basis that section 5307 does not apply to the additional premium pay you seek, and our Claims Group subsequently denied your claim on the same basis. For the reasons explained below, the Secret Service and the Claims Group were correct in denying your claim.

The record shows that pursuant to the biweekly limitation provided by 5 U.S.C. § 5547(c), the Secret Service denied payment to you of premium pay for the pay period ending May 14, 1994, for 13.25 hours of overtime in the amount of \$401.06, and for the pay period ending November 27, 1993, for 1 hour of overtime in the amount of \$32.42.

Title 5, U.S. Code, Chapter 55, Subchapter V, provides the authority for payment of various types of premium pay and specifies the types of work for which it is payable (including overtime<sup>2</sup>) and the methods of computation. Section 5547, entitled "Limitation on premium pay," is a part of Subchapter V, and provides limitations on the amounts of premium pay that may be paid. Subsection 5547(c) applies specifically to law enforcement officers and provides that premium pay for overtime [under section 5542] may be paid "only to the extent that the payment does not cause the officer's aggregate rate of pay for any pay period to exceed the lesser of --

(A) 150 percent of the minimum rate payable for GS-15 (including any applicable locality-based comparability payment under section 5304 or similar

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<sup>1</sup>Settlement Certificate Z-2869662, Dec. 22, 1995.

<sup>2</sup>Section 5542 authorizes premium pay for overtime.

provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the rate payable for level V of the Executive Schedule."

As noted above, it was these provisions of section 5547, specifically applicable to the amount of premium pay for overtime that may be paid to a law enforcement officer for "any pay period," that precluded the Secret Service from paying you the amounts for overtime worked in the two pay periods referred to above. It is your position, however, that these amounts should have been paid to you in a lump sum in the year following the year in which they were earned as authorized by 5 U.S.C. § 5307.

Section 5307 is a provision of title 5, U.S. Code, Chapter 53, Subchapter I, which makes provisions for the pay comparability system. Section 5307(a), which provides limitations on certain payments which would cause an employee's aggregate annual compensation to exceed specified annual limitations, states in pertinent part as follows:

"(a)(1) Except as otherwise permitted by or under law, no allowance, differential, bonus, award, or other similar cash payment under this title may be paid to an employee in a calendar year if, or to the extent that, when added to the total basic pay paid or payable to such employee for service performed in such calendar year as an employee in the executive branch . . . such payment would cause the total to exceed the annual rate of basic pay payable for level I of the Executive Schedule, as of the end of such calendar year."

Section 5307(b)(1) provides that "Any amount which is not paid to an employee in a calendar year because of the limitation under subsection (a) shall be paid to such employee in a lump sum at the beginning of the following calendar year."  
(Emphasis added.)

It is section 5307(b)(1) that you believe authorizes the payment to you of the overtime pay you were denied for the pay periods in question. However, as the statute states and the Claims Group settlement advised you, the lump sum payments authorized by subsection (b)(1) apply only to amounts that were not paid because of the annual limitation provided by subsection (a). Subsection (b)(1) does not apply to amounts not payable because of the section 5547 limitation on the amount of premium pay that may be paid for any pay period, which was the limitation which prevented the Secret Service from compensating you for overtime worked in the two pay periods in question.

Put another way, these are two separate limitations on the amounts of compensation payable. First is section 5547 which places specific limitations on the

amount of premium pay that may be paid in a pay period, and it is applied on a pay period by pay period basis. It makes no provision for payment in a lump sum in a future calendar year of any amount withheld because of its provisions.<sup>3</sup> Second is section 5307 which places specific limitations on the aggregate annual compensation an employee may be paid, with the proviso that an amount not paid because of that annual compensation limitation may be paid in a lump sum at the beginning of the next calendar year.<sup>4</sup> While both of these provisions may apply to limit an employee's pay under certain circumstances, the provision applicable to your claim is section 5547. As noted, section 5547 does not authorize the payments you seek, and the provision in section 5307(b) authorizing a lump sum payment in a subsequent year does not apply to the amounts withheld from you by virtue of section 5547.

We trust this helps you understand why your claim could not be allowed.

Sincerely yours,

/s/Seymour Efros  
for Robert P. Murphy  
Associate General Counsel

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<sup>3</sup>See also implementing regulations found in 5 C.F.R. § 550.107.

<sup>4</sup>See also implementing regulations found in 5 C.F.R. Part 530.



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Office of the General Counsel

B-271346

July 12, 1996

The Honorable Fred Thompson  
United States Senator  
The Federal Office Building, Suite 403  
167 North Main Street  
Memphis, Tennessee 38103

Dear Senator Thompson:

This is in further response to your letter of April 16, 1996, concerning Mr. Harold L. Bibb's claim for premium pay for overtime he worked in his position as a special agent, United States Secret Service. His claim was denied by the Secret Service and by our Claims Group.

We have reviewed the matter and agree with the Secret Service and the Claims Group that under the applicable provisions of law, the claim may not be allowed. Enclosed is a copy of our letter dated today to Mr. Bibb explaining our conclusion in more detail.

We trust this serves the purpose of your inquiry.

Sincerely yours,

/s/Seymour Efros  
for Robert P. Murphy  
General Counsel

Enclosure



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General Accounting Office  
Washington, D.C. 20548

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Office of the General Counsel

B-271346

July 12, 1996

The Honorable Bill Frist  
United States Senator  
28 White Bridge Road, Suite 211  
Nashville, Tennessee 37205

Dear Senator Frist:

This is in further response to the letter dated April 9, 1996, from your office concerning matters raised by Mr. Harold L. Bibb related to his claim for premium pay for overtime he worked in his position as a special agent, United States Secret Service. His claim was denied by the Secret Service and by our Claims Group.

We have reviewed the matter and agree with the Secret Service and the Claims Group that under the applicable provisions of law, the claim may not be allowed. Enclosed is a copy of our letter dated today to Mr. Bibb explaining our conclusion in more detail.

We trust this serves the purpose of your inquiry.

Sincerely yours,

/s/Seymour Efros  
for Robert P. Murphy  
General Counsel

Enclosure



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Office of the General Counsel

B-271346

July 12, 1996

The Honorable Ed Bryant  
Member, United States  
House of Representatives  
5909 Shelby Oaks Drive, Suite 219  
Memphis, Tennessee 90134

Dear Mr. Bryant

This is in further response to your letter dated April 2, 1996, concerning Mr. Harold L. Bibb's claim for premium pay for overtime he worked in his position as a special agent, United States Secret Service. His claim was denied by the Secret Service and by our Claims Group.

We have reviewed the matter and agree with the Secret Service and the Claims Group that under applicable provisions of law, the claim may not be allowed. Enclosed is a copy of our letter dated today to Mr. Bibb explaining our conclusion in detail.

We trust this serves the purpose of your inquiry.

Sincerely yours,

/s/Seymour Efros  
for Robert P. Murphy  
General Counsel

Enclosure