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

B-167602 (THK)

May 19, 1981

The Honorable Manuel Lujan, Jr.,
House of Representatives

Dear Mr. Lujan:

This replies to your letter of February 20, 1981, which transmitted documents pertaining to the claims of Mr. Lorenzo G. Baca and a number of others for overtime compensation and requested our views concerning them.

During the period involved, January 1959 to July 1, 1966, Mr. Baca and the other claimants were employed as guards by the General Services Administration (GSA) but were assigned to duty at an installation of the Atomic Energy Commission (AEC) in accordance with a memorandum of understanding between the two agencies. The overtime claimed is approximately 6 minutes before and 6 minutes after the claimants' regular 8 hour tours of duty each day, a total of 12 minutes a day or 1 hour a week.

Claimants contend they were required to spend this time at the work place picking up and returning parts of their uniforms and firearms which they were not permitted to wear or carry to and from their residences, standing inspections, receiving instructions and assignments, and walking between the location of these activities and their guard posts. Claimants further contend that AEC had authority to and in fact did officially order or approve this overtime as required by law, 5 U.S.C. 5542. AEC and its successor, the Department of Energy, support the claimants' contentions.

GSA, on the other hand, disputes them. It maintains that, except in the case of emergencies, only GSA could officially order or approve overtime for these employees under the memorandum of understanding and that GSA did not approve the overtime here claimed.

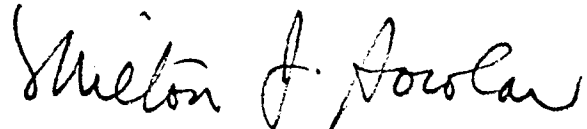
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The General Accounting Office (GAO) has previously considered this case in four Comptroller General decisions-- Lorenzo G. Baca, et al., B-167602, October 30, 1978; August 11, 1977; August 4, 1976; and September 21, 1973 (53 Comp. Gen. 181). In each of these decisions this Office concluded that it could not allow the claims. In summary, our decisions were based on our conclusion that while the memorandum of understanding between AEC and GSA gave AEC authority to order or approve certain irregular, unscheduled overtime, this memorandum reserved to GSA the authority to order or approve any regularly scheduled overtime, such as this preshift and postshift time, which would cause a change in the regularly scheduled daily tour of duty and in the regularly scheduled administrative workweek.

We trust that this information will be helpful in replying to your constituents. The material you sent us is enclosed in accordance with your request.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosures