

Office of the Inspector General

Kenneth S. Apfel
Commissioner of Social Security

Inspector General

The Social Security Administration's 1996 Overtime Settlement Claims under the Fair Labor Standards Act

The attached final report presents the results of our audit of the Social Security Administration's 1996 Overtime Settlement Claims under the Fair Labor Standards Act (A-13-97-9 2016). The objective of the review was to determine whether the reimbursement of overtime claims by the Social Security Administration (SSA), as a result of a 1996 Fair Labor Standards Act settlement, was accurately calculated and to verify documentation used to support hours worked. Additionally, we wanted to determine whether SSA had implemented the settlement in accordance with relevant decisions of the Federal Labor Relations Authority and its arbitrators.

You may wish to comment on any further action taken or contemplated on our conclusions. If you choose to offer comments, please provide your comments within the next 60 days. If you wish to discuss the final report, please call me or have your staff contact Pamela J. Gardiner, Assistant Inspector General for Audit, at (410) 965-9700.

David C. Williams

Attachment

CC:
OIG/ES
IO Reading File
OA Reading File
Subject File
C.MARKOWITZ :pjk :03-26-98

9 7-9 2016.TLReport File

Office of the Inspector General

Kenneth S. Apfel
Commissioner of Social Security

Inspector General

The Social Security Administration's 1996 Overtime Settlement Claims under the Fair Labor Standards Act

OBJECTIVE

The objective of this review entitled, "The Social Security Administration's 1996 Overtime Settlement Claims under the Fair Labor Standards Act" (A-13-97-9 2016), was to determine whether the reimbursement of overtime claims by the Social Security Administration (SSA), as a result of a 1996 Fair Labor Standards Act (FLSA) settlement, was accurately calculated and to verify documentation used to support hours worked. Additionally, we wanted to determine whether SSA had implemented the settlement in accordance with relevant decisions of the Federal Labor Relations Authority (FLRA) and its arbitrators. We conducted this review in response to an allegation concerning the propriety of large retroactive overtime payments being made to employees.

BACKGROUND

In December 1987 and January 1988, the American Federation of Government Employees (AFGE)¹ filed grievances on behalf of certain SSA employees, protesting SSA's determination that these employees were "administrative" employees under the FLSA and therefore exempt from coverage under the overtime provisions in the FLSA. After denial of the grievances in March 1989, AFGE invoked arbitration. In

¹ The AFGE, AFL-CIO is the certified exclusive representative of a nationwide consolidated unit of employees appropriate for collective bargaining at the SSA.

a series of decisions by two arbitrators for the FLRA, as well as FLRA, AFGE prevailed with regard to most employee positions at issue, and damages were awarded to those employees.²

SSA initially paid damages to affected employees under the various decisions rendered; however, AFGE objected to the methods used by SSA to calculate damages. The FLRA filed an unfair labor practice proceeding under

5 United States Code §§ 7116(a)(1) and (8) against SSA in February 1994, claiming SSA failed to obey the decisions rendered in this matter. In

November 1995, an administrative law judge (ALJ) for the FLRA issued a decision in favor of AFGE (Social Security Administration, Respondent, and AFGE, Charging Party, Case Nos. W A-CA-40267 and W A-CA-40268, Nov. 22, 1995 [the Arrigo decision]). ALJ Arrigo ordered SSA to amend damages calculations and to take certain steps to reach more former SSA employees who may have been entitled to damages. SSA filed exceptions to the Arrigo decision.

The parties determined that SSA would continue to pay out damages pending the outcome of the appeal from the Arrigo decision. In November 1996, the parties entered into a settlement agreement whereby SSA would pay damages to certain employees at SSA Headquarters, using the "... same payment methodology used to comply with the arbitration awards in Segal I, II, and III and Vaughn I and II." The parties agreed, however, that "... these payment amounts shall be subject to modification to conform to the final results of the pending unfair labor practice litigation in Cases W A-CA-40267 and W A-CA-40268," except for the issue of

² Arbitrator Henry L. Segal issued three opinions in this matter: "Segal I" – holding that Claims Authorizers and Claims Examiners were nonexempt under the FLSA (May 3, 1991); "Segal II" – setting forth remedies (October 28, 1992); and "Segal III" – determining FLSA status of a variety of other job positions (August 11, 1993). The FLRA upheld Segal I and II following exceptions filed by SSA. U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and American Federation of Government Employees, 44 FLRA 773 (April 14, 1992); U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and American Federation of Government Employees, 47 FLRA 819 (June 9, 1993). Following the retirement of Arbitrator Segal, the status of Computer Specialists (Systems Analysts) was held nonexempt under the FLSA by Arbitrator M. David Vaughn. U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, Case No. BW-89-R-0044, Grievance Nos. CG-UMG-88-01, FO-UMG-87-10 ("Vaughn I"). The status of other SSA employee positions under the FLSA were resolved by settlement of the parties and approved by Arbitrator Vaughn by consent order signed March 25, 1996.

"suffered or permitted" overtime.³ In December 1996, an FLRA arbitrator approved the settlement terms in a consent order. SSA began damages payout in March 1997 and those payouts continue.

SSA's Office of Human Resources (OHR) was responsible for identifying all current and past employees eligible for payments and for calculating the amount of payments due under the settlement. OHR used the Human Resources Management Information System to identify all headquarters nonsupervisory computer analysts from 1982 to the present. A computer tape was created by SSA identifying all eligible personnel by name, Social Security number (SSN), and years covered by the employee's current bargaining position description. The tape was matched with the Department of Health and Human Services (DHHS) payroll records⁴ to identify the number of overtime hours worked by each employee. DHHS has maintained a file of all SSA employees who have worked overtime since 1982.

During the match process, the DHHS payroll system computed back pay, liquidated damages, and interest by pay period for each year covered by the employee's current position description. Each covered employee was to receive the difference between the overtime compensation he/she originally received and what he/she should have received under the FLSA decision. The output of the match produced an SSA FLSA back pay report for each eligible SSA headquarters employee showing gross payment amounts for back pay, liquidated damages, and/or interest. A composite check tape computer listing was generated from the match showing the actual payment amounts (gross less withholding taxes) by SSN, name, timekeeper number, dollar amounts paid, and bank account number. There were 3,368 payments initially issued totaling \$9,405,620.

SCOPE

This audit was performed in accordance with generally accepted government auditing standards. We reviewed the methodology employed by SSA to ensure its compliance with the terms of the 1996 Settlement. We performed our review at SSA Headquarters in Baltimore, Maryland. Field work was conducted from June through November 1997 and included:

- interviewing personnel within the OHR's Personnel Management Information Systems and Payroll, and the Office of Labor-Management and Employee Relations Staff to understand the process used to accumulate and calculate payments, as well as to obtain documentation regarding the litigation;
- identifying documentation available to support the calculation used;

³ The Segal II opinion stated that employees may recover "suffered and permitted" overtime, that is, certain overtime not already documented in SSA time and attendance records, to the extent employees properly could prove such overtime was worked. The parties thereafter agreed to a lump sum settlement for "suffered or permitted" overtime, resulting in a payment of \$131.30 to each employee, while affording employees the opportunity to prove "suffered and permitted" overtime above that amount. The Amigo decision held that the lump sum settlement violated the earlier orders entered in this matter.

⁴ DHHS will continue to prepare payroll tapes for SSA until March 1998.

- examining systems output identifying eligible SSA Headquarters employees, gross amounts for back pay, liquidated damages, and/or interest;
- testing the accuracy of the calculations used in computing employees' back pay; and
- reviewing unfair labor practice litigation to include grievances, opinions, arbitrator decisions, and settlement agreements regarding the FLSA overtime settlement of 1996 between SSA and AFGE.

RESULTS OF REVIEW

In testing the accuracy of the calculations used in computing employees' back pay, we found that such calculations were correct. However, we were unable to verify documentation used to support hours worked as shown on the computer generated payment systems output because SSA does not maintain time and attendance records past the required retention period of 3 years. In addition, we were unable to determine the basis for the computation of the negotiated lump sum settlement of \$131.30 paid to each employee for "suffered or permitted" overtime as explained in footnote 3 of this report. We do note, however, that employees were given the opportunity to dispute the payment, and receive higher amounts if they could provide proof that their damages exceeded \$131.30.

In addition, SSA reduced overtime back payment awards by 50 percent for those employees who earned overtime during the period December 16, 1981 through August 1, 1987. This reduction was made based on a directive issued by the Office of Personnel Management (OPM) which stated that paid time off during a work period (for holiday, annual leave, sick leave, or any excused absence with pay) could not count toward hours worked for purposes of calculating overtime under the FLSA. However, rather than using existing payroll records to deduct paid leave from hours worked for purposes of calculating overtime back pay awards, SSA simply reduced overtime back pay by 50 percent for all employees.

The Arrigo decision held that SSA improperly reduced overtime payments by 50 percent and, citing Lanehart v. Homer and Acton v. U.S.,⁵ held that no reduction should have taken place for the affected employees between December 1981 and August 1, 1987. Moreover, the Arrigo decision criticized SSA for not diligently trying to locate and notify retired personnel due payments under this agreement and ordered SSA to enhance its efforts.

SSA appealed the Arrigo decision based on their contention that they properly relied on OPM regulations in determining the amount of the back pay due for overtime worked. While that appeal was pending, in the 1996 Settlement the parties agreed to continue making payments using the same methodology used to comply with the earlier orders entered in this litigation. On December 23, 1997, the FLRA issued a final decision sustaining AFGE's position as set out in the Arrigo decision.

CONCLUSION

Although the calculations we tested were accurate, we were notable to review documentation to support hours worked because required documentation retention periods had expired. Concerning calculations of "dam age" awards, we have just received notification that the FLRA has sustained the union's position wherein it contested SSA's payment methodology as being inconsistent with the arbitration awards. We were informed at our exit conference that SSA will make no further appeals. Accordingly, we have requested that SSA provide documentation supporting the calculations of payments to be made as a result of the December 23, 1997 decision in order to ensure that the calculation of such payments is accurate.

David C. Williams

⁵ In Lanehart v. Homer, 818 Fed. Cir. 1574 (Fed. Cir. 1987), the U.S. Court of Appeals for the Federal Circuit concluded that hours worked for purposes of calculating overtime under the FLSA must include all paid leave. Although SSA reduced overtime in reliance on OPM regulations only for hours worked prior to the Lanehart decision, in Acton v. U.S., 932 F.2d 1464 (Fed. Cir. 1991), the Federal Circuit held that the proper statute of limitations for overtime back pay awards under the FLSA was 6 years, notwithstanding any applicable OPM directives in force prior to the Lanehart decision.

APPENDICES

MAJOR REPORT CONTRIBUTORS

Office of the Inspector General

Scott Patterson, Director, Evaluations and Technical Services

Carl Markowitz, Audit Manager

Steve Weal, Auditor

1.