UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 16-0023

In re:

BRIAN N. STALLONS,

Petitioner

DECISION AND ORDER

I. PRELIMINARY STATEMENT

This matter is before the Office of Administrative Law Judges ("OALJ") upon the November 12, 2015, filing of a request by Brian N. Stallons ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the Food Safety and Inspection Service ("FSIS"; "Respondent") of the United States Department of Agriculture ("USDA"), and if established, the propriety of imposing administrative wage offset.

II. PROCEDURAL HISTORY

Petitioner's request for a hearing was forwarded to OALJ by FSIS on November 12, 2015, together with Petitioner's documents marked "Attachments 1 through 6" and "Summation". These documents constitute argument and are hereby identified as "Petitioner's Pre-hearing Argument". Petitioner also filed schedules that are marked as "Pay Periods 01; 02; 04; 09; 11 and 18", and hereby identified as "PX-1". Petitioner included copies of email correspondence dated October 22, 2014, hereby identified as "PX-2". Time and attendance records were also submitted and are hereby identified as "PX-3". Email correspondence dated September 30, 2014, is hereby identified as "PX-4". A POV Cost Comparison Worksheet is identified as "PX-5". Regulatory guidance identified as "PX-6" and "PX-7" was submitted. Notice of Overpayment of Salary and Demand for payment and envelope information is identified as "PX-8" through "PX-10".

On January 13, Petitioner submitted supplemental argument and evidence, consisting of agency regulations identified as "PX-11"; email communications at "PX-12, 13, and 14"; Earnings and Leave Statements, "PX-15- 18"; email communication of October 27, 2014, "PX-19"; Cost comparison calculation at "PX-20". I have marked Petitioner's copy of "Notice of Intent to Request a Hearing" dated November 24, 2014 as "PX-21".

On November 12, 2015, documents marked as FSIS' "administrative report" with attachments and "FSIS Directive 3800.1" The report is hereby identified as "RX-1". The email exchange attached thereto is hereby identified as "RX-2". A copy of OPM's "Hours of Work for Travel" is hereby identified as "RX-3".

FSIS requested an expedited hearing, and by Order issued January 13, 2016, I set a hearing to commence by telephone on January 20, 2016. I also set deadlines for the parties to file supplemental documents.

A telephonic hearing commenced as scheduled on January 20, 2016. Petitioner appeared as his own representative and testified. Dr. David Thompson, Deputy District Manager of the Jackson District for FSIS represented Respondent and testified. Evelyn C. McGovern, Chief Employment, Classification, and Compensation Branch, Human Resources Management Division of FSIS also testified.

All of the documentary evidence is hereby admitted to the record and the record is closed. This Decision and Order is based on the documentary and testamentary evidence and the arguments of the parties.

III. DISCUSSION OF THE EVIDENCE

Petitioner Brian Stallons has been employed by FSIS for twenty nine years, and has held the position of relief Consumer Safety Inspector ("CSI") for the past eight years. He works a flexible schedule that requires him to report to temporary duty stations on a regular basis. The

FSIS District Office located in Jackson, Mississippi issues him a weekly schedule that assigns duty locations to each CSI. See, PX-1.

Mr. Stallons believed that he was responsible for determining whether staying at a temporary duty station or commuting back to his home would represent the most cost efficient method of travel. In order to make that assessment, Mr. Stallons conducted a cost comparison for assignments to Unionville, Kentucky in pay periods 1, 2, 4, 9, 11 and 18 of 2014, and concluded that it was more advantageous to the government to commute daily. See, PX-5. When calculating the costs of commuting as compared with the cost of staying at the temporary duty station, Petitioner factored in the extra hours he would spend commuting, minus the time of his regular commute to his regular duty station. Petitioner identified those additional hours as overtime on time and attendance reports for those pay periods. Petitioner's time and attendance reports were approved by his supervisor Dr. Janey Kelso and he was paid for overtime accrued during a daily commute to and from the temporary duty station. PX-3.

On September 30, 2014, the Jackson District Office of FSIS received a report of non-reimbursable overtime hours, which found that Petitioner had reported working overtime that should not have been treated as paid overtime. After discussion between Dr. Thompson, Dr. Kelso, and Petitioner, Petitioner was directed to submit corrected time and attendance reports that removed some of the overtime hours in the pay periods in question. As a result, FSIS determined that Petitioner had been overpaid, and on November 16, 2014, he was issued a "Notice of Overpayment of Salary and Demand for Payment".

On November 26, 2014, Petitioner challenged that finding and filed a request for a hearing. PX-21. The request was not forwarded to FSIS to schedule a hearing, and as a result, salary offset was implemented. With the help of Ms. McGovern, the salary offset action eventually was suspended pending the results of a hearing on Petitioner's appeal.

A review of the documentary evidence demonstrates that Petitioner was instructed to stay at the temporary duty station, as his work schedules reflect "S". See, PX-1. The work schedules state that employees with a commute of over 60 miles will stay, and will be entitled to travel overtime only on the first and last days of travel. On the same instructions, he is advised to "perform travel that is most advantageous to the Government" pursuant to Directive 3800.1.

I accord weight to Petitioner's testimony that his cost comparison indicated to him that it was to the government's benefit that he should commute. Petitioner's decision to commute was influenced by his understanding of Directive 3800.1. His time and attendance record included overtime for commuting hours that was initially approved by his supervisor, despite the explicit language on the work schedule directing him to stay and explaining that a commute of more than 60 miles indicated staying at the temporary duty station and prohibiting collecting overtime for commuting hours on days other than the first and last days of the detail.

I also accord weight to the testimony of Dr. Thompson, who believed that the 60 mile commuting standard was efficient and would serve to eliminate reviewing cost comparisons. The instructions on the work schedule explicitly direct employees with a commute of 60 miles to a temporary duty station to stay near the temporary work site. The agency has the regulatory authority to impose standards regarding when it will pay overtime for travel in such instances, and direct instructions such as those on the work schedules should not be subject to interpretation by employees.

It is clear that Petitioner took the exhortation to keep the government's benefit in mind when traveling on business when he prepared his cost comparison. However, he erred in his calculation by not considering the cost of mileage using a government vehicle. See, RX-2. Had he done so, he should have concluded that his daily commute to a temporary work site was not in the government's interest.

Petitioner argued that he saved the government the cost of lodging. See, PX-11. However, that is immaterial to my finding that he improperly collected overtime by commuting. Petitioner's work schedule clearly directed him to stay at the temporary housing. Applying the "plain meaning rule"[1] of statutory interpretation that, if the language of the statute is clear, there is no need to look elsewhere to ascertain the statute's meaning to these circumstances, the instruction to employees to stay at a temporary site where a commute is more than 60 miles is plain. If Petitioner believed that the instruction to travel in a manner advantageous to the Government was contrary to the direct instruction to stay, he should have clarified his understanding with his supervisor.

Even accepting Petitioner's position that he had the duty to investigate whether a commute was economically beneficial to the government, despite clear instructions to stay, Petitioner should not have commuted. His calculations did not consider all costs, and therefore his decision to commute is not substantiated. Petitioner was not entitled to overtime pay for commuting travel on other than the first and last days of travel to and from the temporary work site.

In concluding that Petitioner was paid overtime hours that he should not have been paid, I have not considered actual costs of the commute versus staying. I base my determination solely upon Petitioner's interpretation of instructions and travel regulations, and his reliance upon a cost comparison that was erroneous. Although I credit Petitioner's intentions, his miscalculation demonstrates the utility of the work schedule instructions to stay at a temporary duty station when the commute exceeds 60 miles.

Petitioner filed an appeal of the salary offset determination and a request for a hearing within the time required. The agency failed to address the request and improperly offset his

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[1] *Boston Sand & Gravel Co. v. United States*, 278 U.S. 41, 48 (1928).

wages. However, as I have concluded that Petitioner was improperly paid overtime for commuting hours, the agency's error did not prejudice Petitioner.

IV. FINDINGS OF FACT

1. Petitioner is employed by FSIS as a Consumer Safety Inspector (CSI).
2. Petitioner was assigned to a detail at a location that was a round trip commute of 170 miles from his house.
3. Petitioner's work schedules for the pay periods at issue herein direct him to stay at the temporary duty station, and further note that if a commute home is more than 60 hours, employees would not get overtime for travel other than on the first and last day of the assignment.
4. Petitioner's work schedules also direct employees to be mindful of performing travel in a manner advantageous to the government.
5. Lodging was located 30 miles from the temporary duty station.
6. Petitioner prepared a cost comparison that demonstrated to him that it was financially beneficial to the Government for him to commute from his residence to the temporary duty station for the duration of the detail.
7. Petitioner's cost comparison failed to include the cost of mileage on the government vehicle.
8. When the cost of mileage is added to Petitioner's original cost comparison, the results demonstrate that it was not in the government's interest for Petitioner to commute.
9. Petitioner is not entitled to overtime pay for commuting hours on other than the first and last day of travel.
10. Petitioner was erroneously paid overtime.

V. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA FSIS for the amount of overtime he was erroneously paid minus the amount of money that was taken from his salary through salary offset.

3. All procedural requirements for administrative salary offset have been met.

ORDER

For the foregoing reasons, Petitioner shall be subjected to administrative salary offset.

Petitioner is encouraged to negotiate repayment of the debt in installments.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

So Ordered this 2nd day of February, 2016, in Washington, D.C.

[redacted]

Janice K. Bullard
Administrative Law Judge