



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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August 5, 1998

Ms. Lucy DLG. Nielsen
Secretary, Department of Finance
Capitol Hill
Saipan, MP 96950

Dear Ms. Nielsen:

Subject: Final Letter Report on the Audit of Abuse of Government Time by a
Department of Finance Technical Financial Analyst (Report No.
LT-98-07)

This report presents the results of our audit of abuse of government time by a Department of Finance (DOF) Technical Financial Analyst. The objective of our audit was to determine whether the DOF Technical Financial Analyst abused government time in violation of applicable laws and regulations.

Our audit showed that the DOF Technical Financial Analyst abused his status as an employee exempted from overtime under the Fair Labor Standards Act (FLSA) by repeatedly coming late for work, taking time off at will, and leaving work several hours earlier than the set time. The employee, however, was paid in full without deductions although he had not performed additional work and was not charged annual leave to offset the lost hours. During the six-month period under audit, the employee's absences resulted in total hours worked of only 456 hours out of 748 hours (excluding holidays and approved leave). In effect, the employee was overpaid by 292 hours or \$5,975. The employee was also overpaid \$327 in overtime pay when he was temporary assigned at the Federal Emergency Management Agency (FEMA) from December 21, 1997 to January 24, 1998.

We recommended that the Secretary of Finance (1) take appropriate disciplinary action against the employee in accordance with personnel regulations; (2) issue a directive to the timekeeper, employee's supervisor, and all FLSA- exempt employees that overtime-exempt status does not excuse an employee from complying with time and attendance policies, and that failure to comply with these policies will be addressed by appropriate actions; and (3) recover from the Technical Financial Analyst the \$6,302 overpayment (\$5,975 for tardiness and absences, and \$327 excess overtime).

In her letter response dated July 15, 1998 (Appendix B), the Secretary of Finance concurred with all the recommendations, and provided OPA copies of the letter and memorandums issued to address the recommendations. For Recommendations 1 and 3, a reprimand letter was issued on July 06, 1998 to the DOF Technical Financial Analyst including repayment options. The employee has been given until July 31, 1998 to indicate the method of repayment. In her letter of reprimand, the Secretary of Finance correctly stated: "Your actions demonstrated a blatant disregard for timekeeping and attendance regulations, policies and practices that cannot be excused by your claim of misunderstanding the work and attendance requirement of your overtime exempt status."

For Recommendation 2, a memorandum was issued to all DOF division directors regarding time and attendance for FLSA exempt employees. The Technical Financial Analyst's Division Director also issued memorandums regarding time and attendance which have been initialed by all division employees, including the subject employee, to indicate they have read the policies.

Based on the response we received from the Secretary, we consider Recommendations 1 and 2 closed. Recommendation 3 is considered resolved pending the full recovery of the \$6,302 overpayment. The additional information or action required to close Recommendation 3 is presented in Appendix C.

BACKGROUND

In March 1998, the Office of the Public Auditor (OPA) received information that an employee of DOF often failed to complete the regular eight hours of work per day. It was alleged that the employee was often late, took time-off (absence of less than eight hours) at will, or left several hours early. The employee, however, was being paid in full without being charged the appropriate type of leave. After preliminary inquiry, OPA determined that abuse of government time may have occurred and that a formal audit should be conducted.

The DOF employee in question occupied the position of Technical Financial Analyst (Employee no. 75108). Based on the employee's Notification of Personnel Action (NPA) which became effective January 5, 1997, he was a Civil Service employee (under pay level 32, step 12) entitled to an annual salary of \$42,558 (equivalent to an hourly rate of \$20.461). Each pay period, he was entitled to accumulate eight and four hours of annual and sick leave, respectively. The employee's NPA indicated that he was "FLSA-exempt." This means that he was not eligible for overtime because his position is considered exempted from the FLSA's overtime provisions. His actual job duties included (1) reviewing billing statements for telephone (local and long-distance) and gasoline charges incurred by various government offices and departments, and (2) requesting processing of payments to vendors.

DOF Timekeeping Requirements

All DOF employees, including those under FLSA-exempt status, are required to use the time clock to document daily time and attendance in their time cards. At the end of each pay period,

the division's timekeeper summarizes the time cards and prepares the summary time sheet (STS) which is certified by the Division Director. The STS, which shows the number of hours worked and leave taken by employees, is forwarded to the DOF-Payroll Section for payroll processing.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of the audit was to determine whether the DOF Technical Financial Analyst abused government time in violation of applicable laws and regulations.

The scope of our audit covered a six-month period from the pay period ending October 11, 1997 up to March 28, 1998. To accomplish our objective, we accounted for the employee's time charges based on the time cards and other attendance records; compared the information we obtained with that recorded in the STS and payroll payment records; examined correspondence and documents related to the employee's employment; and interviewed DOF personnel responsible for this matter.

This performance audit was conducted at the DOF office in Saipan in March and April 1998. The audit was made, where applicable, in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as were considered necessary in the circumstances. We completed our field work on April 13, 1998.

As part of our audit, we performed a limited review of internal controls over relevant timekeeping procedures performed by DOF. We found weaknesses in these areas which are discussed in the Findings and Recommendations section of this report. Our recommendations, if implemented, should improve controls in this area.

FINDINGS AND RECOMMENDATIONS

The DOF Technical Financial Analyst Repeatedly Abused Government Time and was Overpaid by Nearly \$6,000

As permitted under existing federal laws and local personnel regulations, the CNMI Government can deduct absences of less than eight hours from the salaries of FLSA-exempt employees unless the lost time is offset through additional work or charged against accrued annual leave. This means that excessive tardiness and absences of FLSA-exempt employees should not be tolerated and paid by the government. Our audit showed, however, that the DOF Technical Financial Analyst abused his status as an FLSA-exempt employee by repeatedly coming late for work, taking time off at will, and leaving work several hours earlier than the set time. The employee, however, was paid in full without deductions although he had not performed additional work and was not charged annual leave to offset the lost hours. During the six-month period under audit, the employee's absences resulted in total hours worked of only 456 hours out of 748 hours (excluding

holidays and approved leave). This represents only 61% of the total hours that he should have worked. In effect, the employee was overpaid by 292 hours or \$5,975. This occurred because the employee said he believed that his status as an FLSA-exempt employee allowed him to work for less than eight hours a day without being deducted for absences. The timekeeper concurred with the incorrect interpretation and did not deduct the employee's absences from his pay. The employee's supervisors also failed to enforce the regulations by not taking action against the employee. As a result, the employee was paid for hours not worked, resulting in abuse of public funds for personnel costs. Similar situations are likely to recur unless appropriate disciplinary actions are taken.

FLSA-Exempt Employees Can Be Deducted For Tardiness and Absences

The CNMI Government, as a public agency with a historic policy of hourly payments and deductions, can deduct absences of less than eight hours in duration without disqualifying the employee from exempt status. This is consistent with the August 19, 1992 additional regulations issued by the United States Department of Labor on the salary basis test applicable only to the public sector, which state in part:

“Special provisions applicable to employees of public agencies.

(a) An employee of a public agency who otherwise meets the requirements of §541.118¹ shall not be disqualified from exemption under §§541.1, 541.2, or 541.3¹ on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee . . .”

The Director of Personnel, in his March 20, 1997 Instructional Memorandum, also stated that in accordance with 29 CFR §541.5(d), FLSA-exempt employees' salary can be subjected to deductions for tardiness and absences of less than eight hours in a day just like other employees. The exempt employees, however, can offset the tardiness and absences against accrued leave, if available, or against extra work performed during the same day. The Director issued the explanation because of the misinterpretation by some FLSA-exempt employees that they can be absent at will. The Director explained, however, that the employee must be allowed to utilize accrued leave to offset the tardiness or absence unless (1) the situation is one where leave had not been requested or had been requested and denied, but the employee was absent regardless; (2) the employee's accrued leave has been exhausted and none is available to offset the absence; or (3) the employee chooses to use leave without pay rather than accrued leave. In other words, exempt workers can be treated the same as covered workers with regard to the timekeeping actions for

¹ Relates to employees exempt from the Fair Labor Standards Act as being Executive, Professional, or Administrative.

minor tardiness and absences as well as absences in excess of eight hours. According to the Director, “a pattern of tardiness or absences can, and should, also be the subject of disciplinary action and/or reflected in the employee’s performance rating report”.

The Director further explained that “if an employee is requested, approved or suffered to work extra time on the same day that tardiness or minor absences occur, the Appointing Authority or Division Director *must credit* that extra work time against the missed time. They also *have the discretion, but are not required*, to accept additional work hours performed on other days during the pay period in question in lieu of periods of tardiness or absence.”

In addition, the Director stated that the Governor’s Directive No. 175 dated April 4, 1996 emphasized that the standard government workday runs from 7:30 a.m. to 4:30 p.m. with an hour set aside for lunch. Unless assigned to a different schedule by the Appointing Authority, all employees, whether covered or exempt (from FLSA), are expected to work these hours. If an exempt status employee fails to comply with this schedule, the Appointing Authority must effect the appropriate or disciplinary measures to correct the employee’s time and attendance performance.

[Emphasis in original of Director’s memorandum]

CNMI Personnel Regulations on Employees’ Absences

The Personnel Service System Rules and Regulations (PSSRR) have no provision allowing employees to leave the office before the regular time-off without appropriate charges for leave. Employees who leave the office before the regular time-off should request annual leave, sick leave or leave without pay (LWOP) depending on the circumstances. Section VII.A7 of the PSSRR provides that all employees who are absent from duty without prior approval, except in bonafide emergencies, shall be charged as being absent without leave (AWOL). Section VII.A5D of the PSSRR provides that at the end of each pay period, tardiness shall be charged to LWOP. The timekeeper shall determine the total number of minutes the employee has been late during the pay period, and charge LWOP to the hour amount nearest the total minutes tardy. Employees who are AWOL and LWOP are subject to loss of pay and do not accrue annual leave or sick leave. Hours not worked should be charged to the appropriate type of leave because annual leave and sick leave are accrued only if employees are on pay status for the entire pay period.

On May 30, 1995, the Director of Personnel issued a memorandum to all Department and Activity Heads to provide guidelines in determining appropriate penalties for government employees guilty of acts of willful misconduct, negligence, or dishonesty. AWOL and habitual tardiness are two of the offenses which were provided with appropriate penalties as follows: first offense is a letter of reprimand, second offense is a letter of reprimand to 15 days suspension, and third offense is a dismissal of the employee. Penalties are given as a range (e.g. official reprimand to removal) to allow for differences in the seriousness of the offense, possible extenuating circumstances, and the past record of the employee.

Excessive and Unauthorized Time-Off Improperly Charged to Regular Hours

The DOF Technical Financial Analyst abused his status as an FLSA-exempt employee by repeatedly coming late for work, taking time off at will, and leaving work several hours earlier than the set time. The employee, however, was paid in full without deductions although he had not performed additional work and was not charged annual leave to offset the lost hours.

During the six-month period under audit, the employee's absences resulted in total hours worked of only 456 hours out of 748 hours (excluding holidays and approved leave). This represents only 61% of the total hours that he should have worked. In effect, the employee was overpaid by 292 hours or \$5,975 (computed by multiplying 292 hours by the employee's hourly rate of \$20.461).

Based on the STS, the employee was credited with 748 regular hours during the first six months of fiscal year 1998. Based on his time cards, however, he actually worked only 456 hours. In 12 of the 13 pay periods examined, the employee incurred absences of less than eight hours in a day (by coming late, taking time off, or leaving early) ranging from 9 to 41 hours per pay period. In these 12 pay periods, there was only one day when he completed eight hours. There was also only one pay period where he completed 80 hours (i.e., when he was temporarily assigned to FEMA from December 17, 1997 to January 3, 1998).

The employee's absences were not charged to leave but instead were paid as regular work hours. (See Appendix A for details). For example, there was one day when he arrived at 7:56 a.m. and left at 8:44 a.m., yet he was still paid for eight hours. The employee's absences were not charged against accrued leave, and the time cards did not indicate that the employee had either worked overtime or performed extra work on other days during the pay periods in question.

No Documents to Support Charges Against Accrued Leave And an Additional Overpayment

Our review also showed that in some of those instances where the employee was charged leave, there was no approved leave application form to support the leave taken. During the six-month period, the employee was charged leave in 12 instances totaling 14 days of annual leave and 9 days of sick leave. In 6 of the 12 instances, 7 days of annual leave and 4 days of sick leave were not supported by approved applications for leave. (See Appendix A for details). The CNMI Personnel Regulations provide, however, that leave taken by employees should be supported by approved applications for leave, to ensure proper authorization by superiors.

The employee was also overpaid \$327 in overtime pay when he was temporary assigned at FEMA from December 21, 1997 to January 24, 1998. During this period, the employee was allowed to charge overtime although he was FLSA-exempt, under a waiver granted by the Director of Personnel (we did not question the waiver which was justifiable). Our review showed, however, that the employee should have been granted only 4 hours of overtime amounting to \$82 instead of 16 hours amounting to \$409. (See Appendix A for details). The difference of 12 hours consisted of (a) 8 hours of overtime charged on December 20, 1997, Saturday (at 1½ times the regular rate) - the employee did not time-in-and-out during this day, and (b) 4 hours of overtime (at the regular rate) erroneously granted to the employee - the employee was credited with five hours

instead of one hour of work performed on December 23, 1998, Tuesday, from 12:00 p.m. to 1:00 p.m.; thus, in order to meet the 40 hours work week requirement, his overtime hours should be less by 4 hours.

Misinterpretation of FLSA-Exempt Status

This occurred because the employee said he believed that his status as an FLSA-exempt employee allowed him to work less than eight hours a day without having pay deducted for absences. The timekeeper concurred with this incorrect interpretation and did not deduct the employee's absences from his pay. The employee's supervisors also failed to enforce the regulations by not taking action against the employee. As a result, the employee was paid for hours not worked, resulting in waste and abuse of public funds for personnel costs. Similar situations are likely to recur unless appropriate disciplinary actions are taken.

According to the employee, as FLSA-exempt, he is not required to work the regular eight hours because he is occasionally asked to work beyond the regular working hours and is not paid overtime. He could not provide, however, any documentation to evidence work performed beyond the regular working hours. In our discussion with a DOF official, we were informed that the employee may have been asked to attend Senate hearings where he stayed beyond 4:30 p.m.; however, these extra work hours are minimal and not sufficient to cover the time-off he incurred.

The timekeeper agreed with the employee's interpretation. The timekeeper relied on the instruction of the Administrative Officer that FLSA-exempt employees were not subject to deductions for absences of less than eight hours in a day. When asked, the Administrative Officer stated that she got this opinion from an official of the Office of Personnel Management (OPM). The OPM official denied, however, that he made such a statement because he is well aware of the March 20, 1997 memorandum issued by the Personnel Director.

The DOF officials were lax in the enforcement of the regulations and failed to take disciplinary action against the employee abusing government time. In our discussion with a DOF official, we were informed that during the first six months of fiscal year 1998, DOF officials were not aware of the employee's abuse of government time. It was only immediately prior to the start of the audit that somebody informed them of the abuse.

Subsequent Events

On April 9, 1998, the employee filed a Notice of Grievance with the Chairman of the Civil Service Commission. In the letter, he stated that he was very disturbed when he learned that his time and attendance was under investigation by OPA. He also questioned his transfer under the supervision of the Acting Director of Finance and Accounting. He stated that these things could be the result of racial (because he is the only Carolinian in this position) and sexual (there are only a few men in DOF) discrimination. OPA cannot comment on the issue of discrimination. The change of supervisor, however, seems a practical move by the Secretary of Finance. The former supervisor of the employee, who is the Special Assistant to the Secretary, moved to a separate office building. The Special Assistant therefore would constantly need to drive back and forth to

supervise the employee. The Acting Director of Finance and Accounting is a reasonable choice as supervisor because she is the highest ranking official in the same building with the employee.

Conclusion and Recommendations

The Technical Financial Analyst willfully abused government time as evidenced by his pattern of tardiness and absences. DOF officials, including the timekeeper and the employee's immediate supervisor, sanctioned the abuse by not enforcing the appropriate timekeeping requirements. Accordingly, we recommend that the Secretary of Finance:

1. Take appropriate disciplinary actions against the employee in accordance with personnel regulations.
2. Issue a directive to the timekeeper, employee's supervisor, and all FLSA- exempt employees that overtime-exempt status does not excuse an employee from complying with time and attendance policies, and that failure to comply with these policies will be addressed by appropriate actions.
3. Recover from the Technical Financial Analyst the \$6,302 overpayment (\$5,975 for tardiness and absences, and \$327 excess overtime). The employee, however, should be given the option to offset his time-off against his annual leave in accordance with existing personnel regulations.

Secretary of Finance Response

In her letter response dated July 15, 1998 (Appendix B), the Secretary of Finance concurred with all the recommendations, and provided OPA copies of the letter and memorandums issued to address the recommendations, as follows.

Recommendations 1 and 3 - The Secretary of Finance issued a reprimand letter on July 06, 1998 to the DOF Technical Financial Analyst including repayment options. The employee has been given until July 31, 1998 to indicate the method of repayment. In her letter reprimand, the Secretary of Finance correctly stated: "Your actions demonstrated a blatant disregard for timekeeping and attendance regulations, policies and practices that cannot be excused by your claim of misunderstanding the work and attendance requirement of your overtime exempt status."

Recommendation 2- The Secretary of Finance issued a memorandum to all DOF division directors regarding time and attendance for FLSA exempt employees. The Technical Financial Analyst's Division Director also issued memorandums regarding time and attendance which have been initialed by all division employees, including the subject employee, to indicate they have read the policies.

OPA Comments

Based on the response we received from the Secretary, we consider Recommendations 1 and 2 closed. Recommendation 3 is considered resolved pending the full recovery of the \$6,302 overpayment. The additional information or action required to close Recommendation 3 is presented in Appendix C.

Our office has implemented an audit recommendation tracking system. All audit recommendations will be included in the tracking system as open or resolved until we have received evidence that the recommendations have been implemented. An *open* recommendation is one where no action or plan of action has been made by the client (department or agency). A *resolved* recommendation is one in which the auditors are satisfied that the client cannot take immediate action, but has established a reasonable plan and time frame of action. A *closed* recommendation is one in which the client has taken sufficient action to meet the intent of the recommendation or we have withdrawn it.

Please provide to us the status of recommendation implementation within 30 days along with documentation showing the specific actions that were taken. If corrective actions will take longer than 30 days, please provide us additional information every 60 days until we notify you that the recommendation has been closed.

Sincerely,



Leo L. LaMotte
Public Auditor, CNMI

xc: Governor
Lt. Governor
Eleventh CNMI Legislature (27 copies)
Acting Special Assistant for Management and Budget
Acting Attorney General
Public Information Officer
Press

SUMMARY OF TIME CHARGES OF EMPLOYEE NO. 75108
For Work Performed from September 28, 1997 to March 28, 1998

Pay Period	Period Covered	Per Time Card (No. of Hours)				Per STS (No. of Hours)				STS Over by					
		Reg	AL	SL	Hol	Reg	AL	SL	Hol	Admin	OT	Reg	OT		
22	09/28/97-10/11/97	51	8			59	72	8				80	21		
23	10/12/97-10/25/97	37	16 ^a	8	8	69	48	16	8			80	11		
24	10/26/97-11/08/97	23	32	8	8	71	32	32	8	8		80	9		
25	11/09/97-11/22/97	41	8	8	8	57	64		8	8		80	23		
26	11/23/97-12/06/97	39		8 ^a	8	55	64		8	8		80	25		
01	12/07/97-12/20/97	38	8 ^a		8	54	64	8				80	26		
02	12/21/97-01/03/98	52		16	12	80	52		16	12		80	0		
03	01/04/98-01/17/98	18	8 ^a	8	8	46	56	8	8	8	16 ^c	96	38		
04	01/18/98-01/31/98	57				57	80					80	23		
05	02/01/98-02/14/98	23	16			39	64	16				80	41		
06	02/15/98-02/28/98	31	8 ^a	8	8	47	64	8	8			80	33		
07	03/01/98-03/14/98	17	16 ^a	16		49	48	16	16			80	31		
08	03/15/98-03/28/98	29	32 ^a	8	8	69	40	32	8			80	11		
TOTAL		456	112	72	80	28	4	752	748	112	72	80	28	16	1,056

- a Indicated in the time card as leave but not supported by approved applications for leave.
- b Should be paid at 1 times the employee's regular rate to meet the 40 hours work week requirement.
- c Eight hours was paid at 1 ½ times the employee's regular rate and eight hours at 1 times the regular rate.

Note: Appendix B which contains the response letter from the Secretary of Finance has been intentionally omitted to reduce this publication's file size. A copy of this appendix may be requested by e-mail to rcabigao@opacnmi.com.

AUDIT OF ABUSE OF GOVERNMENT TIME BY A
DEPARTMENT OF FINANCE TECHNICAL FINANCIAL ANALYST

STATUS OF RECOMMENDATIONS

Recommendations	Agency to Act	Status	Agency Response/ Action Required
1. Take appropriate disciplinary actions against the employee in accordance with personnel regulations.	DOF	Closed	The Secretary of Finance concurred with all the recommendations, and provided OPA copies of the letter and memorandums issued to address the recommendations. For Recommendations 1 and 3, a reprimand letter was issued on July 06, 1998 to the DOF Technical Financial Analyst including repayment options. The employee has been given until July 31, 1998 to indicate the method of repayment.
2. Issue a directive to the timekeeper, employee's supervisor, and all FLSA-exempt employees that an overtime-exempt status does not excuse an employee from complying with time and attendance policies; and that failure to comply with these policies will be addressed by appropriate actions.	DOF	Closed	For Recommendation 2, a memorandum was issued to all DOF division directors regarding time and attendance for FLSA exempt employees. The Technical Financial Analyst's Division Director also issued memorandums regarding time and attendance which have been initialed by all division employees, including the subject employee, to indicate they have read the policies.
3. Recover from the Technical Financial Analyst the \$6,302 overpayment (\$5,975 for tardiness and absences, and \$327 excess overtime). The employee, however, should be given the option to offset his time-off against his annual leave in accordance with existing personnel regulations.	DOF	Resolved	Further Action Needed Recommendation 3 - Provide OPA a copy of the CNMI Treasury official receipt showing full recovery of the \$6,302 overpayment, or copies of documents evidencing offset of time-off against annual leave.