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 ROBERT C. STEMPIHAR, \*  
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 Appellant, \*  
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 v. \*  
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 DAVID W. ADAMANY, Secretary \*  
 Department of Revenue, \*  
 \*  
 Respondent. \*  
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 Case No. 74-59 \*  
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OFFICIAL

OPINION AND ORDER

Before JULIAN, Chairman, STEININGER, AHRENS, SERPE, WILSON

OPINION

I. Facts

Appellant is a permanent employee working as a tax representative for the Wisconsin Department of Revenue. On April 11, 1974 Appellant asked for overtime in the form of compensatory time off which he claims to have accrued during the 1974 filing period. This request was denied. Subsequently Appellant filed a grievance which was denied at steps 1, 2, and 3. The last step was denied on June 14, 1974. Thereafter Appellant filed an appeal with this Board, which was received June 20, 1974.

Appellant as a tax representative has flexible working hours. He is expected to spend as much time each day as is required to complete his job. If a job requires that he spend more than eight working hours on it, then Appellant may accrue that excess time so as to make a subsequent working day shorter.

Appellant received a memorandum dated December 27, 1973 from Paul R. Gaiek, his supervisor, assigning him to work in Sheboygan on Mondays from January 7 through April 15, 1974. This correspondence further informed Appellant:

You will report on Monday, January 7, 1974 at 7:45 a.m. and presumably work until 4:30 p.m. that date. Your expenses will be paid from Milwaukee to Sheboygan and you will be entitled to a noon lunch.

Tuesday through Friday you will report to the Milwaukee district office and assume your duties in this office. Any scheduling of work for you on Monday nights at the Milwaukee district office will be eliminated, however, you may be scheduled for work on Saturday's if we are open.

Appellant lives in Sheboygan and commutes to the Milwaukee District Headquarters each day. The 59 mile one-way trip normally takes one and one quarter hours.

During each of the weeks in question, Appellant drove home from Milwaukee office on Friday night and back there on Tuesday morning. On each of the Mondays during this period, Appellant commuted only from his home in Sheboygan to the Sheboygan office. This trip was one and one half miles one-way and took less than fifteen minutes.

Appellant received mileage for fifteen round trips for his special assignment. He was also reimbursed for all his lunches in Sheboygan pursuant to the memorandum.

## II. Conclusions

This Board has jurisdiction over the instant case under Sect. 16.05(7). The appeal was timely filed (Administrative Practices Manual, Bulletin Number 1, Non-contractual Employee Grievance Procedures.)

Appellant Is Not Entitled to 37 1/2 Hours  
Compensatory Time Off

It is true that there is some confusion in policy of the Department of Revenue regarding compensation for time worked over an eight hour day or forty hour week. Wisconsin Statute, Section 16.086(6), provides that an overtime policy should be developed by the Director of the Bureau of Personnel. There are two applicable Director's rules. Pers. 5.06(2) states that overtime is to be held to a minimum, and that all overtime work for either compensatory time off or cash payment must be authorized by the appointing authority. Pers. 5.06(4) states that pay rates for exempt employees are generally intended to compensate for all required employment hours. The appointing authority, however, may compensate exempt employees for emergency, scheduled or non-regular overtime work at his or her discretion.

Appellant is an exempt employee as defined in Administrative Practices Manual, Bulletin Number 1, Overtime. In this status, Appellant works a flexible schedule. For example, if he works ten hours one day, he may work only six the next. On his time sheet he would show that he worked eight hours each day. This flexibility underscores the need for the requirement that the appointing authority approve in advance any overtime.

Appellant contends that the memorandum of December 27, 1973 from Paul Gaieck, his supervisor implies approval of overtime for travel as required by Wisconsin Administrative Code Section Pers. 5.06(4). This Board does not agree with Appellant's interpretation.

The memorandum clearly instructs Appellant on what dates he should be at the Sheboygan office, who his supervisor will be and

where he should report for the rest of each of those weeks. The memorandum also provides that Appellant will get mileage and reimbursement for lunches on those Mondays. No where can it be inferred from the contents that this memo constituted the required prior approval.

Appellant's supervisors knew he lived in Sheboygan and that his commuting time from his home to the Sheboygan office would not be greater than the time to the Milwaukee office. They required he work a full day (7:45 a.m. through 4:30 p.m.) in the Sheboygan office, realizing that no extra travel time was involved.

However, even assuming that the memorandum constituted advance approval for compensatory time off, this Board must deny Appellant's request. Granting such a request would clearly violate established policy.

It is not the policy of the state to pay an employee travel expenses for his daily commuting in and out of work. (Section 16.535(5)) An employee generally may live anywhere he wants so long as he is able to get to work on time.

Each district office in the Department of Revenue can draw up its own policies within the guidelines set forth by the department. The Milwaukee District Office issued the following memorandum (#310-1) regarding travel expenses on September 1, 1972:

6. When an employee travels directly from his home to an assignment away from his office or vice versa, the normal daily travel time between his home and his office should not be included on the form 734, (Monthly Time Report).

Example: Employee normally leaves home at 7:15 a.m. and arrives home at 5:15 p.m. when traveling to and from his office. If he travels to Madison and leaves home at 6:30 a.m. and arrives home at 5:00 p.m., he would include 1/2 hour (45 minutes minus 15 minutes) of additional travel time in the TOTAL hours worked that day.

For a tax representative whose hours and daily place of work vary, the policy is that as outlined above. Of course, if the employee reports to district headquarters first, it is understood that travel expenses are paid by the state. The requirement is only that the expenses be actually, reasonably and necessarily incurred in the discharge of the employee's duties. (Section 20.916(1))

Appellant contends that he should be given travel expenses for the Mondays in question since he did travel from Milwaukee to Sheboygan and back. However, these trips to which he refers were not made on the Mondays but made on the Friday evenings after and the Tuesday mornings before his regular work. In other words, they were normal commuting trips.

In actuality Appellant commuted one and one-half miles or less than fifteen minutes each of those fifteen Mondays to or from work. The fact that Appellant was given mileage based on the distance from Milwaukee District Headquarters and Sheboygan is irrelevant. That policy whereby an employee is reimbursed without regard to whether he actually traveled the reported miles is not at issue.

The policy which governs Appellant's grievance clearly looks to the number of miles traveled and compares them to the number ordinarily traveled for commuting. The trip from Appellant's home to the Sheboygan office involved substantially less time and fewer miles than the trip to the Milwaukee District office.

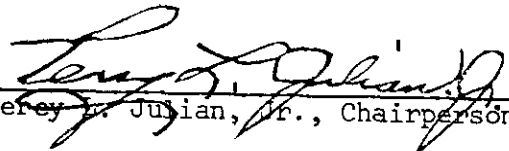
Therefore, the Board finds that Appellant's request for compensatory time off was properly denied, and accordingly, affirms Respondent's action.

ORDER

IT IS ORDERED that the action of Respondent is affirmed.

Dated May 28, 1975

STATE PERSONNEL BOARD

  
Percy L. Julian, Jr., Chairperson