

Receipt number 9998-5094010

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

CARL ROBERT CARSON, JR.,
on behalf of himself and all others similarly
situated,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 18-1902 C

**CLASS ACTION COMPLAINT FOR MONEY
DAMAGES**

The named plaintiff,¹ on behalf of himself and all others similarly situated, alleges as follow:

I. INTRODUCTION:

1. This action seeks the recovery of back pay and interest pursuant to 38 U.S.C. §§ 7353(c) and 7354(b)(2). on behalf of the putative class of present and former “supervisory” employees of the Veterans Health Administration of the Department of Veterans Affairs (“VHA” or “VA”) who are considered as Title 38 “Health Care Workers” (“HCW”) employed in one of the specific occupations identified in Attachment A to HRM Letter No. 05-14-06² during the period from January 11, 2004 to July 10, 2014.

2. These “supervisory” employees of the VHA have been paid Saturday premium pay pursuant to Title 38 for scheduled work on Saturdays since July 14, 2014, as have non-supervisory bargaining unit employees. However, such non-supervisory employees, identified by occupation in Attachment A, *supra*, have been paid *retroactively* since July

¹ Plaintiff’s name, home address, and the last four numbers of his redacted social security number is attached as Plaintiff’s Exhibit 1.

² Plaintiff’s Exhibit 2

14, 2014 with “weekend” premium pay for work performed on Saturdays from January 11, 2004 to July 10, 2014. By contrast, “police officer supervisors,” and other supervisors identified by occupation in Attachment A, *supra*, have not been paid *retroactive* payments of Saturday premium pay for work performed on Saturdays during the time period between January 11, 2004 and July 10, 2014.

3. VA Handbook 5007/51, Part V, Chap 6, paragraph 3(c)(3), mandates the payment of premium pay for Saturday work performed after July 10, 2014. The VA’s commitment to pay eligible employees such premium pay specifically identifies “full-time, part-time or intermittent VHA employees in certain identified occupations.” VA Handbook 5007/51, Part V, Chap 6, paragraph 3(c)(3), does not exclude “supervisory” positions from such mandatory pay.

4. In practice, the VA did not pay such premium pay for Saturday work during the period from January 11, 2004 to July 10, 2014 while a series of arbitration proceedings were pending involving non-supervisory, bargaining unit employees. Thereafter, the VA declared in HRML 05-14-06, dated July 11, 2014: “Purpose. This Human Resources Management Letter (HRML) expands the entitlement of title 38 weekend premium pay to additional title 5 occupations that have been determined to provide direct patient-care services or services incident to direct patient care within the Veterans Health Administration (VHA), also referred to as VHA health care workers.” The VA explained that, effective January 11, 2004, “additional positions were determined to be eligible for weekend premium pay. A full-time, part-time or intermittent VHA employee in a position (Occupation, Series and Title)

listed in appendix V-B, who performs service on a tour, any part of which is between midnight Friday and midnight Sunday, will receive premium pay for each hour of service on such tour. Premium pay for service under this paragraph is equal to 25 percent of the employee's basic hourly rate of pay." Section 2(d) provides: "*All employees will receive weekend premium pay retroactively from January 11, 2004, to the prospective start date based on the category of employee.*" (emphasis added).

5. Police officers ("GS 0083 05 Police Officer" and other police positions) were identified as one of the multiple occupations who "will receive weekend premium pay retroactively from January 11, 2004..." No distinction was created by the VA as between supervisory employees and non-supervisory bargaining unit employees. Police Officer Supervisor Carson performed service on more than one hundred (100) tours of duty between January 11, 2004 and July 10, 2014, part of which was between midnight Friday and midnight Sunday (excluding any Sunday hours), but Carson, as well as other supervisory employees of occupations identified in Attachment A who performed service on tours of duty on Saturdays, did not receive retroactive premium pay for each hour of service on such tours from January 11, 2004 to July 10, 2014.

6. The entitlement to retroactive premium pay was acknowledged and created by by virtue of the VA's commitment on July 11, 2014 to pay retroactive pay as specified in HRM Letter No. 05-14-06 and its Attachment A. Thus, the failure to pay such retroactive pay to supervisors who performed service eligible for weekend premium pay from January 11, 2004 to July 10, 2014 violated VA Handbook 5007/51, Part V, Chap 6,

paragraph 3(c)(3), and HRML 05-14-06, section 2(d), dated July 11, 2014, as well as 38 U.S.C. §§ 7353(c) and 7354(b)(2).

II. FACTUAL ALLEGATIONS WITH RESPECT TO THE EMPLOYEE CLASS

7. Human Resources Management Letter No. 05-14-06, added fifty-three (53) specialized “health care occupations” whose employees were entitled “to receive weekend premium pay” as identified in Attachment A.

8. During the period from January 11, 2004 to July 10, 2014, Plaintiff Carson was a “GS 0083 05 Police Officer” who was employed as a “supervisor” of police officers. Carson, and other “supervisory” members of the putative class, performed work on tours of duty, part or all of which included hours of work between midnight Friday to midnight Sunday (excluding any Sunday hours on such tours of duty), from January 11, 2004 to July 10, 2014, but they did not receive “weekend premium pay” at the time they performed such work as their occupations were not yet included in the list of VHA occupations which were entitled to receive such “weekend premium pay.”

9. Plaintiff, and members of the putative class, could not file a back pay claim for “weekend premium pay” at the time they performed such work from January 11, 2004 to July 10, 2014 inasmuch as during that time period, the VA had not yet committed to pay them retroactively for such “weekend premium pay.”

10. However, based upon VA’s lawful commitment contained in Human Resources Management Letter No. 05-14-06, dated July 11, 2014, to pay such retroactive pay to “all” eligible employees who had performed service on Saturday tours of duty,

plaintiff Carson, and members of the putative class, claim back pay as well as interest on such back pay pursuant to the following: VA Handbook 5007/51, Part V, Chap 6, paragraph 3(c)(3); HRML 05-14-06, section 2(d); 38 U.S.C. §§ 7353(c), 7354(b)(2); the Back Pay Act, 5 U.S.C. § 5596(b); and reasonable attorneys' fees, and reasonable attorneys' costs which include reasonable fees and costs incurred by the Class Action Administrator hired by such attorney, and appointed by the Court, to administer the class action.

IV. JURISDICTION AND VENUE

11. Jurisdiction over this action is conferred by 28 U.S.C. §§ 1346(a)(2)(Tucker Act) and 2501, and 5 U.S.C. § 5596 (the Back Pay Act).

VI. CLASS DESCRIPTION

12. Employees covered by this class action are those who worked in various occupations as designated pursuant to Attachment A to Human Resources Management Letter No. 05-14-06, as civil service employees who were employed by the VA (as defined by 5 U.S.C. § 2105) during the period from January 11, 2004 to July 10, 2014.

13. Class Description: The "opt-in" putative class consists of all persons who meet the following qualifications:

All General Schedule ("GS") and Federal Wage System ("FWS") "supervisory" employees of the Veterans Health Administration ("VHA"), who were identified by occupation in Attachment A to Human Resources Management Letter No. 05-14-06,

dated July 11, 2014 (“HRM Letter”), and who were employed at any time from January 11, 2004 to July 10, 2014 by the Department of Veterans Affairs (“VA”) in the Veterans Health Administration (“VHA”) in one of the following occupations:

(1) GS 0080 02 Security Officer; GS 0081 03 Firefighter (Bas Life Spt/Haz Mat Tech); GS 0081 04 Firefighter (Structural); GS 0081 05 Firefighter (Hazardous Materials Tech); GS 0081 07 Firefighter (Paramedic); GS 0083 02 Detective; GS 0083 03 Police Officer (Instructor); GS 0083 05 Police Officer; GS 0085 04 Security Guard; GS 0086 01 Security Clerk; GS 0086 02 Security Assistant; GS 0086 04 Security Assistant (OA); GS/GM 0301 61 Rehabilitation Medicine Coordinator; GS 0301 68 Patient Representative; GS 0303 03 Medical Administrative Assistant; GS 0303 04 Domiciliary Assistant; GS 0303 11 Prosthetic Clerk; GS/AD 0303 13 Patient Services Assistant; GS 0303 16 Medical Data Clerk (Typing); GS 0303 19 Medical Data Clerk; GS 0303 44 Prosthetic Clerk (OA); GS 0303 45 Medical Data Clerk (OA); GS 0303 57 Patient Services Assistant (OA); GS 0350 09 X-Ray Film Processing Equipment Opr; GS 0394 02 Communications Clerk; GS 0394 03 Communications Clerk (OA); GS 0394 08 Communications Clerk (Typing); GS 1001 11 Interpreter (OA); GS 1046 02 Clerk-Translator; GS 1715 02 Vocational Rehabilitation Specialist; GS 1715 04 Vocational Development Specialist; WG/WL/WS 3511 10 Laboratory Worker; WG/WL/WS 3566 10 Housekeeping Aid; WG/WL/WS 3566 30 Housekeeping Aid Training Leader; WG/WL/WS 3566 40 Housekeeping Storeroom Attendant; WG/WL/WS 3566 60 Housekeeping Aid (Leader); WG/WL/WS 4742 10 Utility Systems Repairer-Operator; WG/WL/WS 4742 20 Utility Systems Repairer; WG/WL/WS 4801 10 Equipment Servicer (Wheelchair Repair); WG/WL/WS 4805 10 Medical Equipment Repairer;

WG/WL/WS 4805 20 Medical Equipment Worker; WG/WL/WS 5306 20 Air Conditioning Equipment Mechanic; WG/WL/WS 5309 20 Boiler Plant Equipment Mechanic; WG/WL/WS 5402 20 Boiler Plant Operator; WG/WL/WS 5406 30 Utility Systems Operator; WG/WL/WS 5415 20 Air Conditioning Equipment Operator; WG/WL/WS 5703 60 Motor Vehicle Operator; WG/WL/WS 7304 10 Laundry Worker; WG/WL/WS 7305 50 Laundry Machine Operator; WG/WL/WS 7305 60 Laundry Machine Opr (Motor Veh Opr); WG/WL/WS 7404 20 Cook; WG/WL/WS 7408 10 Food Service Worker; WG/WL/WS 7408 20 Food and Sanitation Worker; and

(2) who performed service on tours of duty any part of which was within the period beginning midnight Friday and ending midnight Sunday (which did not include any Sunday hours) at any time from January 11, 2004 to July 10, 2014; and/or

(3) whose “retroactive pay,” pursuant to Human Resources Management Letter No. 05-14-06, section 2(d), dated July 11, 2014, was not paid by Defendant in accordance with the VA’s commitment under force of law to pay such retroactive pay “from January 11, 2004 to the prospective start date based on the category of employee” to eligible employees who performed such service during tours of duty, any part of which was within the period beginning midnight Friday and ending midnight Sunday (not including any Sunday hours), from January 11, 2004 to July 10, 2014.

VII. THIS ACTION IS PROPERLY MAINTAINED AS A CLASS ACTION UNDER RCFC 23

14. The class is so numerous that joinder of all members is impracticable as the pool of potential class members is in excess of 1,000 present and former employees.

15. There are common questions of law and fact affecting the members of the class. The overriding legal question in this case is whether the VA violated the commitment it made to “all employees” within designated occupations identified in Attachment A,

supra, to pay retroactive pay for work performed on Saturdays (which did not include Sunday hours) from January 11, 2004 to July 10, 2014.

16. Plaintiff's claims are typical of the claims of members of the class because the harm suffered by Plaintiff and the other class members was caused by the same systemic policy of the VA since July 11, 2014 to fail to pay eligible members of the class retroactive remuneration of twenty-five (25) percent premium pay for service performed on Saturdays during shifts which included hours between midnight Friday and midnight Sunday (not including Sunday hours) pursuant to its July 11, 2014 agreement and commitment for periods of such service from January 11, 2004 to July 10, 2014.

17. Plaintiff does not have interests antagonistic to, or in conflict with, members of the class.

18. Plaintiff will fairly and adequately protect the interests of the class.

19. Plaintiff has retained competent counsel experienced in class action litigation and in litigation involving federal pay statutes.

20. Certification of this case as a class action is appropriate because Defendant has acted or refused to act since July 11, 2014 on grounds generally applicable to the class by denying proper compensation of 25% premium pay to class members who worked on shifts which included Saturday hours (not including any Sunday hours), pursuant to 38 U.S.C. §§ 7353(c) and 7354(b)(2) within the six-year period preceding the filing of this Complaint.

VIII. THE APPLICABLE LAW

21. The decision of this court in *Adams, et al. v. United States*, 99 Fed. Cl. 700 (June 30, 2011), provides that the Saturday premium "pay" paid to VHA workers for working on regular and customary tours of duty which include Saturday hours (and at night) must be considered as part of the employees' regular "pay."

IX. PLAINTIFF' CAUSE OF ACTION:

22. Plaintiff incorporates herein by reference the allegations of the Complaint set forth in paragraphs 1 through 21 above.

23. Plaintiff, and members of the putative class who are similarly situated, regularly and customarily worked on Saturdays during the period from January 11, 2004 to July 10, 2014, but they did not receive 25% premium pay for work performed on such shifts which included Saturday hours between midnight Friday and midnight Sunday (excluding any Sunday hours).

24. From July 11, 2014 to the present time, Plaintiff and members of the putative class were not paid "retroactive pay" for work on Saturdays from January 11, 2004 to July 10, 2014 as memorialized by the Department of Veterans Affairs' regulation and its commitment to pay such retroactive pay as specified in HRML 05-14-06, section 2(d), July 11, 2014.

25. As a result of the foregoing, there is due and owing to Plaintiff, and members of the eligible opt-in putative class, under §§ 7353(c) and 7354(b)(2) of Title 38, United States Code, payment equal to the amount of 25% Saturday premium pay, that they should have received retroactively after July 11, 2014 for hours of work on Saturday (which did not include any Sunday hours) from January 11, 2004 to July 10, 2014, plus interest thereon pursuant to the Back Pay Act, 5 U.S.C. § 5596(b).

26. Plaintiff is unable to determine the exact amounts hereof because the relevant records, books, and accounts are maintained by and are in the exclusive possession and control of Defendant.

WHEREFORE, Plaintiff prays that this Court:

(a) Certify this action as an "opt-in" class action pursuant to Rule 23 of the Rules of the United States Court of Federal Claims; certify Plaintiff as the class representative; and approve the undersigned attorney as Class Counsel;

(b) Enter judgment against Defendant for back pay due Plaintiff, and all other

putative class members who file timely “opt-in” claims to be included in the certified class, for periods of work on Saturday hours from January 11, 2004 to July 10, 2014 owed “retroactively” by Defendant equal to the 25 % Saturday premium pay pursuant to 38 U.S.C. §§ 7353(c) and 7354(b)(2) as memorialized and committed by the Department of Veterans Affairs on July 11, 2014 as specified in HRML 05-14-06, section 2(d); and

(c) Award interest pursuant to 5 U.S.C. § 5596(b) on all above amounts;

(d) Award reasonable attorneys’ fees and the reasonable costs and disbursements of this action to Class Counsel, as well as the reasonable costs and fees of Class Counsel incurred by the Administrator which is hired by Class Counsel and thereafter is appointed by the court which is to be paid by Defendant under the Back Pay Act; said Administrator to administer the class action, to give appropriate Notice to the class, to calculate and pay eligible opt-in members of the class appropriate individual back pay damages, and to compute and pay over all taxes due and owing to various governments; and

(e) Grant such other relief as may be just and proper.

Dated: December 10, 2018

(s)Ira M. Lechner
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PLAINTIFF'S EXHIBIT 1: List of Names, Address, Last four SSN of Plaintiff

1. CARL R. CARSON. JR.
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