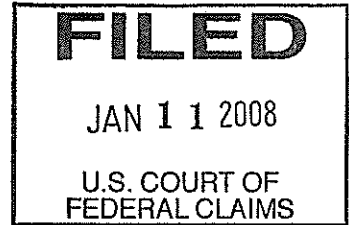


ORIGINAL



UNITED STATES COURT OF FEDERAL CLAIMS

ANYA GAYLE, on her own behalf and
others similarly situated,

v.

CASE NO.: **08-18 C**

UNITED STATES OF AMERICA,

CLASS/COLLECTIVE ACTION

Defendant.

COMPLAINT

1. Plaintiff, ANYA GAYLE ("Plaintiff"), is a former employee of the Department of Veterans Affairs ("VA") (and thus the United States of America ("USA" or "Defendant")) and worked for Defendant as a non-exempt "per diem" or "hourly" medical assistant in New York during the relevant limitations period. Plaintiff brings this action against the USA for unpaid overtime compensation, liquidated damages, declaratory relief, reasonable attorneys' fees and costs, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (the "FLSA") and 28 U.S.C. §2201, on behalf of herself and all those similarly situated to her.

2. This action is brought under the FLSA to recover overtime compensation, liquidated damages, declaratory relief, and reasonable attorneys' fees and costs on behalf of each and every non-exempt similarly situated "per diem" or "hourly" medical assistant employed by the VA (and thus, the United States of America) at any time during the last three years.

3. This Court has jurisdiction over Plaintiff's claims pursuant to 5 U.S.C. §8715, 28 U.S.C. §1346(a)(2), 28 U.S.C. §1361, 28 U.S.C. §1491, 28 U.S.C. §§2501, 2516 and 2517, the FLSA (29 U.S.C. §216(b)), and the authority to grant declaratory relief under the FLSA pursuant to 28 U.S.C. § 2201 et seq.

4. Defendant is an enterprise engaged in commerce or in the production of goods for commerce as defined by 29 U.S.C. §203(s)(1)(C).

5. At all times relevant to this action, Plaintiff, and those similarly situated to her regularly worked more than forty (40) hours per week in the performance of her/their job duties and responsibilities on behalf of USA. *See* Example of Plaintiff's time sheets attached as Exhibit 1.

6. At all times relevant to this action, USA failed to comply with 29 U.S.C. §§ 201-209, because Plaintiff, and those similarly situated to her, performed services for Defendant for which no provisions were made by Defendant to properly pay Plaintiff, and those similarly situated to her, for those hours worked in excess of forty (40) within a work week. Specifically, despite treating Plaintiff as an employee in all respects under the "economic realities" test, USA failed and/or refused to pay Plaintiff proper time and one half overtime compensation for all hours worked over forty (40) in one or more workweeks.

7. USA and its officers and agencies are responsible under the United States Constitution, federal law, and regulations for the establishment and administration of personnel, employment and compensation policies and practices and for applying to Plaintiff and those similarly situated to her, the provisions of the FLSA and other applicable federal pay and compensation statutes and regulations.

8. Upon information and belief, the full records concerning the number of hours worked and amounts paid to Plaintiff, and others similarly situated to her, are in the possession and custody of Defendant.

9. Plaintiff's Notice of Consent to Join this lawsuit has been contemporaneously filed with this Complaint.

RECOVERY OF OVERTIME COMPENSATION

10. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-9 above.

11. Plaintiff, and those similarly situated to her, are/were entitled to be paid time and one-half their regular rate of pay for each hour worked in excess of forty (40) per work week. During their employment with Defendant, Plaintiff, and those similarly situated to her, regularly worked overtime hours but were not paid time and one half compensation for same by USA. Instead, they simply were paid on a "per diem" or "hourly" basis without regard to overtime.

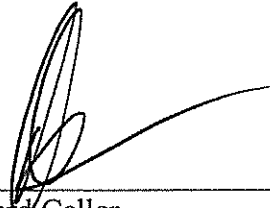
12. As a result of the conduct of its officers and agencies, USA had engaged in an intentional, willful, and unlawful act in refusing to pay Plaintiff, and those similarly situated to her, time and one half their regular rate of pay for each hour worked in excess of forty (40) per work week in one or more work weeks. As a result, Plaintiff, and those similarly situated to her, have suffered damages and have incurred reasonable attorneys' fees and costs.

13. As a result of USA's willful violation of the FLSA *via* the acts of its officers and agencies, Plaintiff, and those similarly situated to her, are entitled to liquidated damages.

14. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff, and all other similarly situated employees, demand judgment against Defendant for the payment of all overtime hours at one and one-half the regular rate of pay for the hours worked by them for which Defendants did not properly compensate them, liquidated damages, reasonable attorneys' fees and costs incurred in this action, declaratory relief, and any and all further relief that this Court determines to be just and appropriate.

DATED this 1st day of December 2007.



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Pro Hac Vice Admission Pending
OF COUNSEL

EXHIBIT A

Fee Base Time Schedule

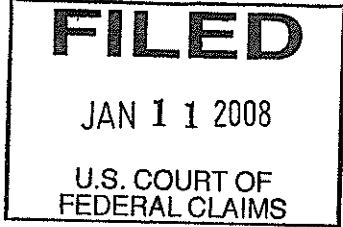
| Name <u>G. Ayle, Anya</u> NOD <u>4/9/06 to 4/15/06</u> | | | | | | |
|--|---------|----------|---------------------|-------|----------|----------------------|
| Title RN LPN NA | | | | | | |
| Day | Date | Unit | Time in | Lunch | Time out | Supervisor Signature |
| Sunday | 4/9/06 | Unit 23 | 12 ⁰⁰ A | — | 8 AM | Paula J. Desmond |
| Monday | 4/10/06 | Unit #34 | 12 ⁰⁰ A | — | 8 AM | Kevin Williams |
| Tuesday | 4/11/06 | Unit 34 | 12 ⁰⁰ A | — | 8 AM | Brown |
| Wednesday | 4/12/06 | Unit 34 | 12 ⁰⁰ A | ~ | 8 AM | Brown |
| Thursday | 4/13/06 | ER | 11 ³⁰ AM | ~ | 8 AM | William J. ... |
| Friday | 4/14/06 | Unit 34 | 11 ⁴⁵ AM | ~ | 8 AM | Kevin Williams |
| Saturday | | | | | | |

- Instructions**
1. Fill in your name and title.
 2. Fill in correct month/day.
 3. Fill in unit where you worked.
 4. Fill in the time you started, had lunch, and ending time in appropriate boxes.
 5. Have your Supervisor sign for each day worked.
 - *Supervisor can be: a Nurse Manager, NOD, Charge Nurse or Nursing Instructor.
 6. You must hand this form into the NOD office (Bldg 200 Rm C128) or Nursing office (Bldg 6 Rm 128) at the end of each week.
 - *Or you may fax it to the NOD office fax no. 6075 or Timekeeper fax no. 6040.
 7. If you need to speak with a timekeeper call ext. 2474

It is your responsibility to get this form filled out completely and turned in on time. Failure to do so may result in errors or delays in your paycheck.

Receipt

ORIGINAL



In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)
Anya Gayle

If this is a multi-plaintiff case, pursuant to RCFC 20(a), please attach an alphabetized, numbered list of all plaintiffs.

Name of the attorney of record (See RCFC 83.1(c)): Richard B. Celler
Firm Name: Morgan and Morgan
Post Office Box: 08-18 C
Street Address: 7450 Griffin Road, Suite 230
City-State-Zip: Davie, Florida 33314
Telephone & Facsimile Numbers: 954-318-0268 / 954-333-3515

Is the attorney of record admitted to the Court of Federal Claims Bar? Yes No

Does the attorney of record have a Court of Federal Claims ECF account? Yes No
If not admitted to the court or enrolled in the court's ECF system, please call (202) 357-6406 for admission papers and/or enrollment instructions.

Nature of Suit Code: 3 0 4
Select only one (three digit) nature-of-suit code from the attached sheet. If 213, identify partnership or partnership group. If numbers 118, 134, 226, 312, 356, or 528 are used, please explain.

Agency Identification Code: V A
See attached sheet for three-digit codes.

Amount Claimed: \$ In Excess of \$10,000 per claimant
Use estimate if specific amount is not pleaded. inclusive of Attorney's fees and costs.

Disclosure Statement:
Is a RCFC 7.1 Disclosure Statement required? Yes No
If yes, please note that two copies are necessary.

Bid Protest:
Indicate approximate dollar amount of procurement at issue: \$ W/A
Is plaintiff a small business? Yes No

Vaccine Case:
Date of Vaccination: _____

Related Cases:
Is this case directly related to any pending or previous case? Yes No
If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.