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DHS Can't Get Wages Suit Booted From Fed. Claims Court

By Abigail Rubenstein

Law360, New York (December 04, 2013, 6:24 PM ET) -- The U.S. Court of Federal Claims on Wednesday rebuffed the government's attempt to get a putative wage-and-hour class action against the Department of Homeland Security transferred to a federal district court, saying that it had jurisdiction over the workers' Fair Labor Standards Act claims.

Judge Charles F. Lettow denied the government's bid to send the case to the U.S. District Court for the District of Nebraska, finding that the Tucker Act — which gives the court jurisdiction over claims for monetary relief against the United States — allowed it to hear FLSA claims lodged by federal workers.

"Congress never excluded FLSA claims from this court's purview, either expressly or impliedly," Judge Lettow's opinion said. "This court is appropriately a 'competent' court within the terms of the FLSA when jurisdiction is invoked under the Tucker Act."

In the case, a group of current and former employees at DHS' U.S. Citizenship and Immigration Services, Office of Fraud Detection and National Security division claim they were unlawfully denied overtime pay.

The plaintiffs claim that before February 2012, they were wrongly classified as exempt from the FLSA and that they were reclassified as non-exempt in February 2012 even though their duties did not change.

The suit seeks damages in the amount of overtime pay the plaintiffs claim they were improperly denied before the switch.

But rather than respond to the plaintiffs' arguments, the government contended that the Court of Federal Claims lacked jurisdiction to hear the case and requested that it be transferred to Nebraska federal court, according to the judge's order.

The government maintained that because the court lacked jurisdiction under the U.S. Supreme Court's precedent in *United States v. Bormes*, the Tucker Act's general grant of jurisdiction to the court would be wholly displaced by the remedial scheme set out in the FLSA.

But following the Court of Federal Claims' recent ruling in *King v. U.S.* — which determined that the court retained jurisdiction over FLSA suits despite *Bormes*, a case that stemmed from a Fair Credit Reporting Act claim — Judge Lettow held that the court did indeed still have jurisdiction over the case.

The FLSA is not similar to other statutes that have been interpreted to foreclose jurisdiction in the Court of Federal Claims, including the FCRA, Judge Lettow said, and is instead a law that is jurisdictionally open ended.

"We were pleased with Judge Lettow's decision and believe that he analyzed the issue properly,"

said Jacob Y. Statman of Snider & Associates LLC, who represents the plaintiffs. "The Court of Federal Claims has had jurisdiction over federal employees' FLSA claims for many years, and we don't believe the Bormes decision removes that jurisdiction."

A representative for the U.S. Department of Justice was not immediately available for comment on Wednesday.

The plaintiffs are represented by Jacob Y. Statman and Jason I. Weisbrot of Snider & Associates LLC.

The case is Tamara Barry et al. v. U.S., case number 13-457C, in the U.S. Court of Federal Claims.

--Editing by Jeremy Barker.

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