

GAO

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: G-187537

*Do not make available to public reading*

FEB 5 1979

688902  
Moshier  
PH-11  
9025 (42)

Thomas G. Wiso, M.D.  
20 Appleton Road  
Natick, Massachusetts 01760

Dear Dr. Wiso:

This is in response to your letter of January 2, 1979, concerning your claim for payment of physicians variable incentive pay (VIP) while you were a member of the Public Health Service. You have requested information regarding the status of your claim and whether there is a statute of limitations regarding your claim either in GAO or the judiciary system.

Your claim was first presented to this Office in September 1976 upon a referral from the Office of United States Senator Robert D. Griffin. While your claim was being processed, there was filed in the United States Court of Claims in December 21, 1976, an action by 203 Public Health Service physicians (Hornak E. Adair, et al. v. United States, Ct. Cl. No. 542-76) each claiming to be entitled to the VIP under 37 U.S.C. 513. Some of the plaintiffs in that case presented the same factual situation and thus the same legal issue with regard to their claims as that presented by your claim. It has long been our practice where a legal question before this Office is also present in a case pending before a court of competent jurisdiction to defer determination pending resolution of the case in court. A copy of a letter addressed to the Honorable James Dixon, Acting Assistant Secretary of Health, dated April 1, 1977, advising that we had suspended further action on your claim until such time as we were informed of the final action of the Court of Claims in the Adair case was furnished you.

We have been informed by the Commercial Litigation Branch of the Department of Justice that the Adair case has been scheduled for trial in the Court of Claims on June 21, 1979.

An individual who has a claim against the United States as a result of an adverse decision of his or her employing agency or department may file a claim directly with the General Accounting Office within 6 years after the date such claim first accrued. See 31 U.S.C. 71a (1976). Generally, no



503403

*Letter Resubmitted*

B-187537

particular form is required for filing a claim. Therefore, receipt of your claim in this Office in September 1976, well within the statutory period, prevents the running of the statute of limitations against you as far as your right to present a claim in this Office is concerned.

An individual may take other action to obtain a favorable ruling on his claim even after having presented a claim to this Office. The United States District Courts and the United States Court of Claims have jurisdiction to consider certain claims against the Government if appropriate action is filed within 6 years following the date the claim first arose. See 28 U.S.C. §§ 146, 1491, 2401, 2501 (1976). However, the filing of a claim with the General Accounting Office does not prevent the statute of limitations from running against you in the U.S. District Court or the U.S. Court of Claims.

We trust that this serves the purpose of your inquiry.

Sincerely yours,

[Edwin J. Monsma

Edwin J. Monsma  
Assistant General Counsel