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Pittman  
PLM-1



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

In reply refer to  
B-189228 (BRP)

DEC 28 1978

*[Denial of Overtime Compensation When Accrued More than 6 years  
Prior to Claim]*

Mr. Robert D. Thurston  
3035 West Ox Road  
Herndon, Virginia 22070

Dear Mr. Thurston:

Reference is made to your letter of November 8, 1978, with enclosures, in which you request review and reconsideration of the action dated October 17, 1978, by our Claims Division, which disallowed your claim for overtime compensation for the period January 1, 1962, through February 28, 1972, while formerly employed in the Office of Public Safety, Training Division, Agency for International Development (AID), Department of State. You were informed that inasmuch as your claim was first received in the General Accounting Office on March 8, 1978, more than 6 years after it first accrued, the act of October 9, 1940, 54 Stat. 1061, as amended by Public Law 93-604, approved January 2, 1975, 88 Stat. 1965, now codified at 31 U.S.C. § 71a (1976), bars consideration of your claim by this Office. A copy of the act of October 9, 1940, as amended, was forwarded to you by our Claims Division.

In our decision, Matter of Donald E. Bordenkircher and Chester C. Jew, B-188089, October 31, 1977, it was determined that the claims of Messrs. Bordenkircher and Jew, who were also employed in the Office of Public Safety, for overtime work performed by them during the periods in question were for allowance by AID in the amounts found due and if otherwise proper. By letter dated May 25, 1978, we informed Mr. Joseph J. La Camera, Assistant Controller, Employee Services Division, Office of Financial Management, AID, that 14 additional claims, including your claim, submitted to our Claims Division and to AID appeared to be identical to the claims which were the subject of B-188089, and were for allowance in the amounts found due and if otherwise proper. In light of the provisions of the "Barring Statute," 31 U.S.C. § 71a, we included a listing of the 14 additional claimants showing the date each claim was received in the General Accounting Office. Your claim was received in this Office on March 8, 1978.

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*Letter*

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The record discloses that your original claim to this Office for overtime compensation covered the period December 1962 until June 30, 1972, for 655-1/4 hours of overtime work which you performed. Upon receipt of our letter of May 25, 1978, supra, AID officials determined the amount of overtime compensation allowable was 129 hours worked subsequent to February 1972. Your present claim is for compensation for 8,508-3/4 hours of overtime work performed by you from January 1, 1962, through February 28, 1972, for the calendar years 1970, 1971, and 1972. You contend, in essence, that your claim for overtime compensation for this latter period is not barred by the statute of limitations, 31 U.S.C. § 71a, by reason of (1) a cause of action did not accrue or arise for you until February 25, 1978; (2) misinterpretation and misrepresentation of the law by AID and its administrative officials was such that the correct interpretation of the law was not known to you until February 25, 1978; and (3) actions by AID constituting fraudulent concealment and bad faith were not discovered by you until after February 25, 1978, through research on your part.

Section 71a, title 31, United States Code, provides, in pertinent part, that every claim or demand against the United States cognizable by the General Accounting Office shall be forever barred unless such claim is received in this Office within 6 years after the date such claim first accrued. This Office has held that the date of accrual of a claim for the purpose of the above-cited statute is to be regarded as the date the services were rendered and that the claim accrues upon a daily basis. 29 Comp. Gen. 517 (1950). Thus, only that portion of your claim which accrued after March 8, 1972, may be considered for payment. The remaining portion which accrued prior to March 8, 1972, is barred since it covered a period more than 6 years from its accrual.

We are without authority to waive or modify the application of 31 U.S.C. § 71a. Matter of Donald B. Sylvain, B-190851, February 15, 1978; Matter of John B. Moore, B-187427, June 3, 1977; and B-171774, July 2, 1971. When statutes of limitations are fixed by the Congress, they may not be lengthened by estoppel or waiver by agents of the United States. Kindrew v. United States, 352 F. Supp. 277 (1972). Statutes of limitation such as 31 U.S.C. § 71a are based on the theory that, even if one has a just cause, it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them. Twitchco, Inc. v. United States, 348 F. Supp. 330 (1972).

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We would also point out that everyone is charged with knowledge of the contents of the United States Statutes at Large and the United States Code. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384 (1947).

Accordingly, under the provisions of 31 U.S.C. § 71a, we are precluded from considering your claim for overtime compensation for the period January 1, 1962, through February 28, 1972.

Sincerely yours,

Robert L. Higgins

Robert L. Higgins  
Assistant General Counsel