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D. Agazarian

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

FILE: B-190851

DATE: February 15, 1978

**MATTER OF: Donald B. Sylvain - Claim for
Retroactive Compensation**

DIGEST: Public Health Service employee filed with agency on March 19, 1976, a claim for back-pay incident to extended detail to a higher grade position from December 30, 1968, to April 4, 1970. Claim was not received in General Accounting Office until June 14, 1976. It may not be considered since act of October 9, 1940, as amended, 31 U.S.C. § 71a provides that every claim cognizable by GAO is barred forever unless it is received in GAO within 6 years after date claim accrued. Filing claim with administrative office concerned does not meet requirement of barring act.

By letter dated November 8, 1977, Mr. Donald B. Sylvain, an employee of the Department of Health, Education and Welfare (DHEW), Public Health Service, Health Resources Administration (HRA), appealed the action of our Claims Division which returned his claim for backpay as a result of the claim being barred by the statute of limitations.

The record shows that on March 19, 1976, Mr. Sylvain filed a claim with the HRA for a temporary promotion and accompanying backpay in connection with a detail to a higher grade position for the period December 30, 1968, to April 4, 1970. The claim was based on decisions of our Office which held that employees detailed to higher grade positions for more than 120 days, without Civil Service Commission approval, are entitled to a retroactive temporary promotion, with backpay, for the period beginning with the 121st day of the detail until the detail is terminated. Matter of Everett Turner and David L. Caldwell, B-183086, December 5, 1975, 55 Comp. Gen. 539; Matter of Marie Grant, B-184990, February 20, 1976, 55 Comp. Gen. 785 (1976).

On March 29, 1976, Mr. Sylvain was advised by the Director, Division of Personnel Management, HRA, that DHEW

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had instructed him to suspend action on all claims for backpay incident to improper details until the Civil Service Commission had formulated guidelines for handling such claims. Mr. Sylvain was informed by the Acting Director, Division of Personnel Management, on June 2, 1976, that the agency would hold onto all claims arising out of an alleged improper detail until the status of the application of our decision in Turner-Caldwell, supra, was finally resolved.

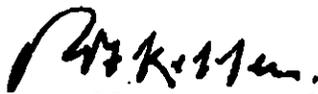
The General Accounting Office (GAO) had no notice of Mr. Sylvain's claim until June 14, 1976, when our Claims Division received correspondence from Mr. Sylvain concerning his claim which was pending with his agency. Our Claims Division informed Mr. Sylvain on October 20, 1976, that his claim was barred under the provisions of the act of October 9, 1940, 54 Stat. 1061, as amended by section 801 of Pub. L. 93-604, approved January 2, 1975, 88 Stat. 1965 31 U.S.C. § 71a, which provides that every claim or demand cognizable by the GAO shall be forever barred unless received in this Office within 6 years after the date such claim first accrued. We have long held that the filing of a claim in the administrative office concerned does not meet the requirement of the barring act of October 9, 1940, as amended 31 U.S.C. § 71a. See 53 Comp. Gen. 148 at 155 (1973). Also, our 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, even if Mr. Sylvain's claim of March 19, 1976, had been forwarded promptly by his agency, only that portion covering the period between its receipt in this Office and April 4, 1976, could have been considered. The remainder would have been 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 John B. Moore, B-187427, June 3, 1977, and B-171774, July 2, 1971. Therefore, since the claim was not received in this Office within 6 years from when it accrued it is barred.

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Section 7.1 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies, as informally amended by letter of March 14, 1975, from the Director of our Claims Division to the heads of all agencies, provides that claims which accrued 4 years prior to receipt by agencies should be forwarded here. Therefore, the agency should have forwarded the claim to this Office in a more timely manner so that a portion thereof would not have been barred. However, there is no provision in 31 U.S.C. § 71a, for making an exception to the barring of claims when the reason for such barring might be due to administrative error. B-175278, April 12, 1972. In addition, section 31.5 of title 4, Code of Federal Regulations (1976), provides in pertinent part that claimants should submit their claims directly to the Claims Division of the GAO if the statutory period of limitations will soon expire.

In accordance with the above, this Office is barred from considering the merits of Mr. Sylvain's claim and the action of our Claims Division is sustained.


Deputy Comptroller General
of the United States



D. Agazarian (P)

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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February 15, 1978

Senator Charles McC. Mathias, Jr.
United States Senate

Dear Senator Mathias:

Further reference is made to your letter dated December 2, 1977, concerning the claim of Mr. Donald B. Sylvain, an employee of the Public Health Service, for backpay incident to an extended detail to a higher grade position. Mr. Sylvain appealed the action of our Claims Division which returned his claim as barred by the statute of limitations.

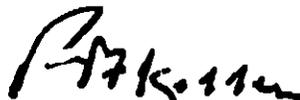
By our decision of today, B-190851, copy enclosed, we have sustained the action of our Claims Division. The act of October 9, 1940, 54 Stat. 1061, as amended by section 801 of Pub. L. 93-604, approved January 2, 1975, 88 Stat. 1965, 31 U.S.C. § 71a, provides that every claim or demand against the United States cognizable by the General Accounting Office is barred forever unless such claim is received in our Office within 6 years after it first accrued. As noted in our decision, we are without authority to make any exceptions to the provisions of the barring act.

Also, we have taken steps to protect the interests of claimants by instructing agencies to forward claims which accrued more than 4 years prior to receipt by them to our Office. In addition, in section 31.5 of the Code of Federal Regulations, we have advised claimants to submit their claims to our Office if the statutory period of limitation will soon expire.

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We regret that we are unable to reach a determination more favorable to your constituent. Your enclosures are returned.

Sincerely yours,



Deputy Comptroller General
of the United States

Enclosures

