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DECISION

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

FILE: B-197485

DATE: May 16, 1980

MATTER OF: Charles V. Waldron

DIGEST: The exception to the 6-year statute of limitations, 31 U.S.C. 71a, tolling the running of the 6-year period for members of the armed forces in wartime, is applicable only to members on active duty and does not apply to the claim of a former Navy member for retired pay which first accrued while he was on the temporary disability retired list and for severance pay which first accrued when he was discharged from that list.

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This decision is the result of an appeal by Mr. Charles V. Waldron, a former chief petty officer in the Navy, to an action taken by our Claims Division, which informed him that his claim for retired and disability severance pay could not be considered because it has not been timely filed. For the following reasons we must conclude that Mr. Waldron's claim cannot be considered because it is barred by the time limitations of the act of October 9, 1940, 54 Stat. 1061, as amended by Public Law 93-604, approved January 2, 1975, 88 Stat. 1965, 31 U.S.C. 71a (1976).

Chief Petty Officer Charles V. Waldron, USN, Retired, was transferred to the Temporary Disability Retired List (TDRL) on August 31, 1963. He was paid retired pay commencing September 1, 1963, through May 30, 1964. On June 1, 1964, his retired pay was suspended because his whereabouts were unknown. Mr. Waldron was discharged from the TDRL with entitlement to severance pay on September 30, 1968. By letter dated July 29, 1978, he filed a claim with the Navy for retired pay for the period June 1, 1964, through September 30, 1968, and for the severance pay due on his discharge from the TDRL on September 30, 1968. The Navy forwarded the claim as doubtful to our Claims Division because of the period of time which elapsed since the claim first accrued. By letter dated December 14, 1978, Mr. Waldron was informed that his claim was barred under the provisions of the above-cited act.

That act, as codified in 31 U.S.C. 71a(1), provides in part as follows:

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B-197485

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office under sections 71 and 236 of this title shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within 6 years after the date such claim first accrued: Provided, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established."

Mr. Waldron's claim for retired pay began to accrue in 1964, when the payments authorized by 10 U.S.C. 1202 and 1401 were suspended because his whereabouts were unknown. His claim for severance pay under 10 U.S.C. 1203 and 1212 accrued in 1968, when he was discharged from the TDRL with severance pay and payment was not made because his whereabouts were still unknown. His claim was filed in the Claims Division of this Office on November 23, 1978, more than 10 years from the date it accrued, and considerably longer than the 6-year limitation set forth in 31 U.S.C. 71a, and as a result was barred from consideration by this Office.

Counsel for Mr. Waldron has advanced the view that the last proviso in 31 U.S.C. 71a, relating to an individual serving in the military or naval forces during the time of war or when war intervenes within 5 years after a claim accrues, who may present his claim within 5 years after peace is established, should be controlling in this case. In this regard, counsel has cited authority to show that the Vietnam conflict should be considered a war within the meaning used in the statute and if this view is adopted, Mr. Waldron's claim would have been filed within 5 years of the date peace was established.

We need not discuss whether the Vietnam conflict is to be considered a war for the purposes of the statute since it is our view that the last proviso of 31 U.S.C. 71a(1) is not for application on the basis of the facts in Mr. Waldron's case.

B-197485

The statute refers to "any person serving in the military or naval forces of the United States." We construe "serving" as referring to serving on active duty. Furthermore, the provision was enacted simply to protect the interests of soldiers and sailors whose military status in time of war might interfere with their freedom of action to file a claim with our Office. See B-194474, October 24, 1979. In other words, if an individual serving in the armed services had a claim which accrued during war or his claim accrued and subsequently war broke out, such individual is granted additional time following the establishment of peace to file a claim because of the potential inability to file because of his duties in wartime.

Mr. Waldron's case is different from those which could be considered under the war-time proviso. When Mr. Waldron's claim arose he was not on active duty; he was in fact in a retired status on the temporary disability retired list. The commencement of the Vietnam conflict had no bearing whatever on his ability to file a claim with this Office. This is applicable to his claims for both retired pay and severance pay.

We would also like to point out that the limitation prescribed in the statute, upon consideration of claims by this Office, is not a mere statute of limitation but is a condition precedent to the right to have claims considered by the General Accounting Office. Compare Bartlesville Zinc Company v. Mellon, 56 F. 2d 154 (1932), and Carpenter v. United States, 56 F. 2d 828 (1932). Further, in the absence of specific statutory exemption, we have no authority of dispensation in matters involving the act, and legally we may make no exceptions to its provisions. ✓

Accordingly, whatever the reason for Mr. Waldron's failure to file a timely claim with this Office, we have no authority to consider it, and we must sustain the action of our Claims Division.

Milton J. Aroslaw

Acting Comptroller General
of the United States