

DECISION



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

15354

Dunn
Reese
PLM 1

FILE: B-198085

DATE: November 5, 1980

MATTER OF: Richard C. Bockus - [Claim for Retroactive Compensation]

DIGEST: In December 1978, employee of Forest Service filed grievance with employing agency for backpay. Agency found backpay necessary because agency failed to promote employee when employee was entitled while on military furlough from April 1, 1968, to March 5, 1972. Agency found employee to have been underpaid since his return to duty on March 6, 1972. Agency submitted claim to General Accounting Office on March 7, 1980, and it was received on March 12, 1980. Under 31 U.S.C. 71a (1976), claim against the United States is barred unless presented to this Office within 6 years from date claim accrues. Therefore, we may not consider any element of claim accruing before March 12, 1974.

By letter dated March 7, 1980, which was received in the General Accounting Office on March 12, 1980, Mr. Brad Womack, Authorized Certifying Officer, National Finance Center, Department of Agriculture transmitted and requested an advance decision on the claim of Mr. Richard C. Bockus for a retroactive promotion and backpay. The award of a retroactive promotion and backpay was granted by the Classification and Pay Group, Personnel Management Staff, Forest Service, as a remedy for the failure of the Forest Service to timely process promotions for Mr. Bockus to which he was found to have been entitled while he was on military furlough from April 1, 1968, to March 5, 1972. The agency found Mr. Bockus to have been underpaid since his return to duty on March 6, 1972, as a result of the agency's failure to promote Mr. Bockus in accordance with agency and Civil Service Commission regulations. The personnel management group leader forwarded the payroll action request to the National Finance Center on September 13, 1979. However, the Finance Center did not forward the request to our Office until March 7, 1980, and it was received in our Office on March 12, 1980. The National

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B-198085

Finance Center forwarded the payroll action request because of concern that all or part of the claim may not be payable because of the Barring Act, 31 U.S.C. 71a (1976). Further, the Finance Center asks on what date did the claim first accrue.

Section 71a(1) of title 31, United States Code, provides in pertinent part:

"Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued * * *." (Emphasis added.)

We have consistently held that the filing of a claim with an agency does not satisfy the requirements of section 71a and does not toll the running of this barring act, even though the delay at the agency level was the fault of the agency, not the employee. Matter of Donald B. Sylvain, B-190851, February 15, 1978. Therefore, the 6-year bar must be applied from the time Mr. Bockus' claim was received here, March 12, 1980, not the date it was filed with the Forest Service.

In this case the promotion in question would have been given more than 6 years prior to the date the claim was filed in this Office. However, in cases involving mandatory agency actions which were erroneously not taken we have applied the continuing claim rule. Under that rule the date of accrual of the claim is regarded as the date services were rendered and the claim accrues on a daily basis. 29 Comp. Gen. 517 (1950). In the instant case the Forest Service determined that Mr. Bockus was underpaid since March 6, 1972. However, his claim was not received in our Office until March 12, 1980. Therefore, we may not consider any element of the claim which accrued before March 12, 1974. Beulah A. Walker, B-189384, September 22, 1977. Accordingly, Mr. Bockus is entitled only to backpay beginning March 12, 1974.

B-198085

Mr. Bockus' claim should be processed in accordance with the foregoing.

Milton J. Fowler

For The Comptroller General
of the United States