

**DECISION**



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

**FILE:** B-206669

**DATE:** August 10, 1982

**MATTER OF:** Chester F. Milbourn - Statute of Limitations - Backpay

- DIGEST:**
1. Employee claims backpay for service as a member of the uniformed service during World War II. Claimant did not submit claim to GAO until 1981 even though statutory basis relied upon by claimant became law in 1949. Claim may not be allowed since Act of October 9, 1940, as amended, 31 U.S.C. § 71a, bars consideration of claims received in GAO more than 6 years after date claim first accrues.
  2. GAO is without authority to waive or modify the application of 31 U.S.C. § 71a, even though claimant was not aware of basis for his claim until proximate time of his filing with our Office.

Mr. Chester F. Milbourn has appealed the determination by our Claims Group on June 22, 1981, (Z-2830864), which denied his claim for backpay while he was a member of the Department of the Army since it was not received in this Office within 6 years from the date it first accrued. Mr. Milbourn's claim is based on the fact that he served in the New Mexico National Guard before he became 18 years of age and that the Army did not credit those years of service in determining his pay while he was a member of the Army during World War II. Our Claims Group denied his claim as barred by the 6-year Statute of Limitations in 31 U.S.C. § 71a. The decision of our Claims Group is affirmed.

The facts of this case as presented by Mr. Milbourn are summarized as follows. From April 1921 until at least August 23, 1925, when Mr. Milbourn turned 18, he served in the New Mexico National Guard. Mr. Milbourn became a member of the Department of the Army during World War II and served for approximately 3 years. Mr. Milbourn alleges that he was not credited for pay purposes for his service in the New Mexico National Guard before the age of 18 as required by 37 U.S.C. § 205(d). This provision was passed in 1949 as section 202(c) of the Career Compensation Act of 1949, Public Law 351, October 12, 1949,

63 Stat. 802, 808, and originally codified at 37 U.S.C. § 233(c) (1952) and currently codified at 37 U.S.C. § 205(d). This provision provides for the inclusion of periods of service for computing basic pay performed by a member before the age of 18.

The Act of October 9, 1940, 54 Stat. 1061, as amended by section 801 of Public Law 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 must be received in our Office within 6 years after the date it first accrued or be forever barred.

The issue is when did Mr. Milbourn's claim first accrue. At first Mr. Milbourn argued that his claim was based on an amendment passed in 1975. However, Mr. Milbourn has not identified this amendment and now relies on 37 U.S.C. § 205(d). Any claim he may have under that statute accrued on or before October 12, 1949, the date of its enactment. Therefore, his claim is barred by 31 U.S.C. § 71a since he did not submit a claim to this Office until 1981 which was well beyond the 6-year period allowed.

One of the prime objectives of the statute of limitations is to prevent factual issues from having to be resolved too long after events occurred - with witnesses dead or gone, records lost or destroyed, and memories confused or dimmed - at time when the past cannot be reconstructed with any pretense of accuracy. Friedman v. United States, 310 F.2d 381 (1962), cert. denied, 373 U.S. 932 (1963).

Mr. Milbourn raises the following arguments against the applicability of 31 U.S.C. § 71a. He argues that 31 U.S.C. § 71a is not applicable to claims under title 37 and specifically 37 U.S.C. § 205(d). Also, he argues that since 37 U.S.C. § 205(d) was passed after 31 U.S.C. § 71a, the statute of limitations does not apply. Both of these arguments have no legal merit since these two statutes coexist and can be given effect together. The limitation period in 31 U.S.C. § 71a applies to all claims against the United States including claims filed

pursuant to 37 U.S.C. § 205(d). Accordingly, since his claim was not filed within the 6-year period set forth in 31 U.S.C. § 71a, his claim is time barred.

Mr. Milbourn's final argument concerning the statute of limitations issue is that he was not notified of his rights under 37 U.S.C. § 205(d). However, there is no requirement that an individual must be notified that he has a claim against the United States before the statute of limitations begins to run.

Notwithstanding the fact that Mr. Milbourn's claim is time barred, we shall briefly discuss the reasons why his claim is without merit. Mr. Milbourn admits that during his period of service he was paid in accordance with applicable statutes. He claims that 37 U.S.C. § 205(d) set forth a retroactive right to longevity pay for service performed before the passage of such act. However, this analysis is incorrect. As stated previously, 37 U.S.C. § 205(d) was originally passed as part of the Career Compensation Act of 1949, 63 Stat. 802. Section 533(a), of that Act, 63 Stat. 841, states that the Act shall become effective October 1, 1949, and "no pay, allowances, or benefits provided herein shall accrue to any person for any period prior thereto." Therefore, even if Mr. Milbourn's claim was not time barred, the provision of 37 U.S.C. § 205(d) would not apply to Mr. Milbourn as his service in the Army was performed prior to October 1, 1949.

Since Mr. Milbourn's claim was received in this Office in 1981, more than 6 years from the date it first accrued, it is barred and may not be considered by this Office. The reasons why the claim was not submitted within 6 years of accrual and the substantive merits of the claim are irrelevant since we do not have authority to modify or waive the provisions of the Act or make any exceptions to the time limitations it imposes. Further, we have consistently held that the filing of a claim with the administrative agency concerned does not toll the running of the statute. Carlton L. Sheppard, Jr., B-204542, November 30, 1981, and cases cited therein.

*Milton J. Fowler*  
for Comptroller General  
of the United States