

DECISION



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

FILE: B-214245

DATE: July 23, 1984

MATTER OF: Mary J. Kampe and Martha R. Johnson

DIGEST:

Several years after they were hired, the employing agency determined that the salary of two employees should have been based on their highest previous rate as was required by the applicable agency regulations. The resulting claims for retroactive payment are continuing claims that accrued on the dates the services were rendered by the employees and not the date that the agency determined that its highest previous rate policy had not been followed. Accordingly, in view of the statute of limitations set forth at 31 U.S.C. § 3702(b), the agency had no authority to allow any part of the claims more than 6 years prior to the date the agency made payment.

The Department of Agriculture has presented the question as to the dates that two claims for retroactive pay adjustments are deemed to have accrued for the purpose of the commencement of the 6-year statute of limitations period set forth at 31 U.S.C. § 3702(b).¹ These claims, which are based on the agency's determination that it was required to compute the employees' rates of pay upon appointment based upon their highest previous rate, are viewed as having accrued on a daily basis. Thus, any unpaid portions of the claims received in the General Accounting Office more than 6 years from the date of accrual are barred from consideration.

Background

The record shows that Ms. Mary J. Kampe and Ms. Martha R. Johnson were hired by the Soil Conservation

¹ The request for an advance decision has been submitted by Mr. W. D. Moorman, Authorized Certifying Officer, National Finance Center, United States Department of Agriculture.

029519

B-214245

Service on January 7, 1975, and January 8, 1974, respectively. Their salaries were set at grades GS-2, step 1 and GS-4, step 1, respectively, although they both had prior Government service at higher pay rates.

At the time of Ms. Kampe's and Ms. Johnson's appointments the Department of Agriculture's personnel manual provided:

"(1) Policy. The policy of the Department is to pay an employee at the maximum rate permitted by law and regulation unless there are compelling administrative reasons to do otherwise." Subchapter 2-4a(1) of Chapter 531, U.S. Department of Agriculture Personnel Manual.

By letter dated October 4, 1983, the Director of Personnel of the Soil Conservation Service, determined that upon their appointment the compensation of both of these employees should have been based upon their highest previous rate in accordance with the Department of Agriculture policy. Accordingly, the agency took corrective action effective the pay period beginning November 13, 1983. The Soil Conservation Service has computed that Ms. Kampe was underpaid in the amount of \$7,056.37 during the period from January 7, 1975, through November 11, 1983, and that Ms. Johnson was underpaid in the amount of \$9,093.50 for the period from January 8, 1974, through November 12, 1983.

The Department's National Finance Center has advised us that the claims for retroactive pay adjustments were allowed for the period back to 6 years from the date the claims were first received by the Center. The Conservation Service, however, maintains that the claims are not barred by the 6-year period of limitations set forth at 31 U.S.C. § 3702(b), arguing that the claims did not accrue until October 4, 1983, the date the Conservation Service's Director of Personnel determined that the employees' rates of pay should have been established in accordance with the highest previous rate rule. As support for this position they cite 34 Comp. Gen. 605 (1955). The National Finance Center disagrees, noting that our decisions indicate that claims of this nature accrue on a daily basis on the day the services were performed and that any part of the claim more

than 6 years old is barred by the statute of limitations set forth at 31 U.S.C. § 3702(b).

Analysis

Section 3702(b) of title 31, United States Code, 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. In 34 Comp. Gen. 605 (1955), the decision cited by the Soil Conservation Service in support of its position, we considered a situation in which a determination of the validity of a claim by a designated agency was specifically required by statute in order for the claim to be payable. Under those circumstances, we held that the claim did not accrue for purposes of the running of the statute of limitations until a determination of the validity of the claim had been made by the designated agency. Also, see Leverett C. Burke and James E. Mole, 62 Comp. Gen. 275 (1983), and Ralph C. Harbin, 61 Comp. Gen. 57 at 59-60 (1981) where the claims were based on appeals decided by the Civil Service Commission. In those cases, the Civil Service Commission had determined that the employees involved had been improperly separated from their positions. Thus, the employees were entitled to backpay under the Back Pay Act, 5 U.S.C. § 5596, the provisions of which authorize backpay for an employee who is found by an appropriate authority to have undergone an unjustified or unwarranted personnel action which results in the withdrawal or reduction of pay or allowances. We held in these cases that the employee's statutory claim is not established until the designated agency has acted or declined to act, and the claim accrues as a whole on the date of the administrative determination. Also, see Friedman v. United States, 310 F.2d 381 (Ct. Cl. 1962), cert. denied, sub nom. Lipp, et al. v. United States, 373 U.S. 932, and Feldman v. United States, 181 F. Supp. 393 (Ct. Cl. 1960).

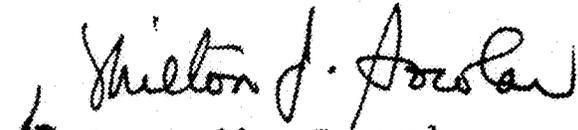
However, in cases such as this, where claims are payable at the time the employee performs service for which compensation is denied, there is no other condition precedent to payment of the claims such as an administrative body's factual or legal determination that the employee is entitled to backpay. Such claims accrue at the time the work is performed, and the 6-year barring act begins to run

at that time. See Leverett C. Burke and James E. Mole, 62 Comp. Gen. 275, supra, and Richard C. Clough, 58 Comp. Gen. 3 (1978). We have applied this continuing claim rule to claims arising from mandatory agency actions which were not taken due to error. See Richard C. Bockus, B-198085, November 5, 1980. Also, see Alfred L. Lillie, B-209955, May 31, 1983, where the employing agency found that the failure of an intermittent employee to receive within-grade step increases pursuant to 5 U.S.C. § 5335 for about a 19-year period was due solely to administrative error. We followed the rule that the date of accrual of the claim for backpay was the date the service was rendered for which the compensation was claimed and that the claim accrued on a daily basis. Thus, we held that the portion of the claim for backpay which accrued prior to 6 years from the date that the claim was first received in this Office was barred from consideration. The claims for backpay in this case are based upon the employing agency's failure to set the employee's rates of pay upon appointment at the higher rate in grade, as was required by agency policy. These claims accrued on a daily basis as of each day on which the work was performed. They did not accrue on the date the Personnel Director determined that the employees' pay should have been established at the highest previous rate. Accordingly, any portion of the claims remaining unpaid which accrued prior to January 27, 1978, 6 years prior to the date the claims were first received in this Office, January 27, 1984, are barred from consideration.

As to the portions of the claims paid by the National Finance Center, the Center states that it allowed payment retroactively 6 years from the date on which the claims were received in the National Finance Center. However, when a claim has not been referred to our Office for prior recording, an agency may pay only those items of the claim which accrued not more than 6 years prior to the date of payment, not 6 years prior to the agency's receipt of the claim. See Anthony Santomango, B-197603, August 21, 1980; and FAA Technicians, B-200112, December 21, 1981. Accordingly, payment for any part of the claim for the period more than 6 years prior to the date of payment by the National Finance Center was an erroneous payment subject to collection

B-214245

action, or to consideration for waiver under 5 U.S.C. § 5584 (1982), and 4 C.F.R. §§ 91-93 (1984).


for Comptroller General
of the United States