



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lieutenant Colonel Ralph M. Gibson, USAFR, Retired
File: B-223734
Date: October 21, 1986

DIGEST

1. A member of the Air Force Reserve was transferred to the Retired Reserve in 1966 upon reaching age 60 without receiving credit for a claimed 9-year service period from July 1943 to April 1952. His claim for pay and allowances for this 9-year period was first received in the General Accounting Office in March 1986. His claim for pay and allowances may not be considered, since it accrued no later than the date of his transfer to the Retired Reserve, and the Barring Act, 31 U.S.C. § 3702(b), bars consideration of claims received in the General Accounting Office more than 6 years after they have accrued.

2. An Air Force reservist was transferred to the Retired Reserve at age 60 without entitlement to military retired pay because the official records showed that he had completed only 14 of the 20 years of creditable service required to establish eligibility for Reserve retirement with pay. He claims that he performed an additional 9 years of creditable service as a reservist from July 1943 to April 1952, and that he is therefore entitled to retired pay. His claim for retirement pay first accrued in 1966, but it is a continuing claim that accrues day to day, so that the 6-year limitation period prescribed by the Barring Act, 31 U.S.C. § 3702(b), precludes consideration of only that part of the retirement claim pertaining to more than 6 years before March 1986, when the claim was filed in the General Accounting Office. However, since the member has not furnished sufficient evidence to establish that he performed service for the claimed 9-year period, the entire claim for retirement pay is denied.

DECISION

Lieutenant Colonel Ralph M. Gibson, USAFR, Retired, appeals the determination by our Claims Group that his claim for backpay and allowances for an alleged period of service from July 1943 to April 1952 cannot be considered because of the

037173

6-year limitation in 31 U.S.C. § 3702(b) for claims cognizable by our Office. We affirm our Claims Group's determination on the compensation claim. We also deny Colonel Gibson's claim for retirement pay based on the alleged 9-year period of service, which was not considered by our Claims Group, because he has not submitted evidence sufficient to prove the claim.

BACKGROUND

In January 1966 Colonel Gibson was transferred to the Retired Reserve upon reaching 60 years of age. He was notified at that time that he had not accrued the service requirements to receive retirement pay. Since 1973 Colonel Gibson has written numerous letters to the White House and to the Army and Air Force Boards for Correction of Military Records to establish that he spent the period from July 1943 to April 1952 doing secret undercover work for the Army for which he was not compensated and for which he did not receive credit upon his transfer to the Retired Reserve.

Colonel Gibson has two separate claims based upon the 9-year period he alleges he performed service. The first involves compensation for the alleged service. The second involves retirement pay for which he would have been eligible if the 9-year service period had been added to the other 14-1/2-year service period which Colonel Gibson and the Air Force agree was performed. Although Colonel Gibson has been corresponding for years about his claims, they were not sent here until March 1986.

ANALYSIS AND CONCLUSION

Subsection 3702(a) of title 31, United States Code, provides that except as otherwise provided by law the Comptroller General shall settle all claims against the United States Government. The Barring Act of October 9, 1940, as amended and now codified at subsection 3702(b), further provides, however, that any such claim must be received by the Comptroller General within 6 years from the date it first accrued. Under that provision of law a claim not received in our Office within the 6-year period is barred, notwithstanding that it may have been filed with another government agency at some earlier time. See, e.g., Jack C. Smith, et al., 63 Comp. Gen. 594, 596 (1984); and Frederick C. Welch, 62 Comp. Gen. 80, 83 (1982). We have no authority to waive any of the provisions of the Barring Act or to make any exceptions to the time limitations it imposes. Frederick C. Welch, supra, 62 Comp. Gen. at 83.

In the present case we find that Colonel Gibson's claim for compensation for the 9-year period could have "accrued,"

or come into existence, no later than the end of the 9-year period in 1952, or certainly no later than his transfer to the Retired Reserve in 1966. We first received his claim in March 1986, well over 6 years later. Hence, we are precluded by the Barring Act, 31 U.S.C. § 3702(b), from considering his claim for compensation, regardless of any circumstances that might explain or mitigate the lapse of time, or the claimant's delay in pursuing the matter. However, even though Colonel Gibson's claim for retired pay first accrued in 1966 when he became eligible to receive it (assuming service was performed for the 9-year period), the claim is a continuing one, accruing in additional amounts day by day as Colonel Gibson becomes entitled to them over the years. Lieutenant Colonel Donald E. Keen, USAR, Retired, B-193181, May 22, 1979. Sergeant Donald G. Leska, USA, Retired, B-187084, October 22, 1976. Therefore, the Barring Act precludes consideration of only that part of the retired pay accruing between 1966 and 6 years prior to March 1986, the filing of the claim in our Office. The part of the retired pay claim accruing after February 1980 may be considered on the merits.

Although Colonel Gibson describes particular assignments that he performed and places where he performed them, the only documentary evidence in the record before us tending to support Colonel Gibson's assertions that he did perform service for the 9-year period in question is his identification card, which was issued in 1966 at the time of his transfer to the Retired Reserve. That identification card was the type issued to those eligible for retired pay rather than another type issued to those not eligible for retired pay. However, this evidence is refuted by the Chief of Staff, Headquarters, Air Force Manpower and Personnel Center, who said in a letter dated April 7, 1986, concerning the 9-year service period that the identification card was erroneously issued and would be retrieved. The letter also stated:

"While many qualified reviewers have spent numerous hours earnestly searching for exception, none can be found, nor have you provided sufficient evidence to substantiate your position. Thus, your status must remain as the record indicates, Retired without pay. * * * Since there is no evidence to support your claims and since you have not presented any documentation which substantiates them, we see no purpose in responding to further inquiries. Unless you can present new evidence, we will consider previous exhaustive searches conclusive and will file future correspondence without action."

Our cases permit claimants to furnish documentary evidence, such as military personnel records, birth certificates, census records, school records, or other official records to establish their claims. See 44 Comp. Gen. 284 (1964). However, since Colonel Gibson has furnished no such evidence, besides the erroneously issued identification card, and in light of the letter from the Air Force Manpower and Personnel Center, we conclude that he has not established that he performed creditable military Reserve service for the 9-year period in question. Therefore, his claim for retirement pay cannot be allowed.

Accordingly, our Claims Group's determination that nothing is due on Colonel Gibson's claim is sustained.

for *Harry D. Van Cleave*
Comptroller General
of the United States