



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carmine A. Barone - Backpay - Barring Act

File: B-230396

Date: June 15, 1988

DIGEST

An employee's claim for backpay, which accrued more than 6 years from the date the claim was filed in GAO, is barred by the 6-year limitation set forth in 31 U.S.C. § 3702(b) (1982). Although the employee argues that the delay in filing the claim with GAO was due to the agency's failure to advise him of his right to appeal its decision to GAO, we have consistently held that we are without authority to waive or modify the application of 31 U.S.C. § 3702(b).

DECISION

Mr. Carmine A. Barone has appealed the determination by our Claims Group (Z-2864701) dated September 21, 1987, that his claim for backpay is barred under 31 U.S.C. § 3702(b) since it was not received by the General Accounting Office within the 6-year time limitation specified in that provision. For the reasons stated below, we sustain the Claims Group's determination.

BACKGROUND

Mr. Barone, a grade GS-13 Safety Specialist with the Occupational Safety and Health Administration (OSHA), Department of Labor, contends that he was required to perform the duties of a grade GS-14 Area Director from February 2, 1975, until June 3, 1979. Mr. Barone claims that he contacted the Region VII Regional Administrator for OSHA in March 1979 and requested backpay for the period of time he was performing the duties of a grade GS-14 Area Director. Mr. Barone states further that this request was denied by the Regional Administrator.

The first written claim by Mr. Barone for backpay was a memorandum to OSHA dated August 19, 1986. This claim was denied by the agency on November 14, 1986, based on the agency's determination that the 6-year statutory time

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limitation contained in 31 U.S.C. § 3702(b) for filing claims against the United States had expired since the timeframe for Mr. Barone's claim ended on June 3, 1979. Mr. Barone requested a review of the agency's decision in a letter received by the Claims Group on November 25, 1986. Mr. Barone based his request on his belief that the agency should have advised him of his right to appeal the denial of the claim he contends he made in March 1979. He believes that the statute of limitations should be waived in this case.

By letter dated September 21, 1987, our Claims Group determined that Mr. Barone's claim was barred by the 6-year limitation in 31 U.S.C. § 3702(b) since the claim was not timely filed with the General Accounting Office and we have no authority to waive the statutory time limitation. Mr. Barone now seeks a reconsideration of our Claims Group determination, reiterating his belief that the statutory time limitation should be waived since he had not been timely notified of his right to file a claim with the General Accounting Office.

OPINION

Under the Barring Act of October 9, 1940, as amended and now codified at 31 U.S.C. § 3702(b) (1982), every claim or demand against the United States cognizable by the General Accounting Office must be received in this Office within 6 years from the date it first accrued or be forever barred. If a claim is not received within 6 years it may not receive consideration on the merits.

We have consistently held that the filing of a claim with another agency does not satisfy the requirements of the act and does not stop the running of the 6-year limitation. Russell T. Burgess, B-195564, Sept. 10, 1979. We have taken this position even where a delay in filing was the fault of the agency and not the employee. Frederick C. Welch, 62 Comp. Gen. 80 (1982); Jones and Short, et al., B-205282, June 15, 1982. Moreover, we have consistently held that this Office does not have any authority to waive or make any exceptions to the time limitations contained in the Barring Act. Welch, supra; Burgess, supra.

We note that there is no regulatory requirement that an agency notify an employee that he has a right to appeal an agency determination. We do have an instruction contained in section 7.1, title 4, GAO Policy and Procedures Manual for Guidance of Federal Agencies, which instructs the heads of all agencies that claims received by them 4 years after the date of their accrual should be forwarded to our Claims

Group. If, however, this instruction is not complied with, we are without authority to waive or modify the application of 31 U.S.C. § 3702(b). Welch, supra; Jerry L. Courson, B-200699, Mar. 2, 1981.

Since Mr. Barone's claim was received in this Office on November 25, 1986, more than 6 years from the date it first accrued, it is barred by the above-cited act and may not be considered by this Office. The action by our Claims Group is hereby sustained.

Milton J. Auster
for Comptroller General
of the United States