



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

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APR 10 1962

B-148496

Mr. R. C. Donatelli, Regional
Accounting Officer
Post Office Department
Philadelphia Regional Office
Philadelphia 1, Pennsylvania

Dear Mr. Donatelli:

This refers to your letter of March 23, 1962, with enclosure, claim No. S-495, concerning the claim of Mrs. Marie F. Borke for terminal leave pay believed to be due incident to her service in the Post Office at Meadowbrook, Pennsylvania, during the period from 1934 to 1943.

You say that the claimant will visit your office soon to discuss her claim and you request that we notify you of the action we take on her claim. We enclose herewith a copy of our decision of today to Mrs. Borke sustaining the disallowance of her claim.

Very truly yours,

FRANK H. WEITZEL

Assistant Comptroller General
of the United States

Enclosure



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B-146496

APR 10 1962

Mrs. Maria E. Korke
Haddonview Road
R. D. #1
Cape May, New Jersey

Dear Mrs. Korke:

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This refers to your undated letter postmarked March 14, 1962, and your letter of February 26, 1962, forwarded here for our consideration by the Post Office Department, requesting further consideration of the action taken by our Office pursuant to the act of October 9, 1940, 54 Stat. 1361. Your claim is for terminal leave pay believed to be due incident to your service in the Post Office at Haddonbrook, Pennsylvania, during the period from 1944 to 1948.

Your claim was first received in the General Accounting Office on November 29, 1961, and on December 8, 1961, the Claims Division of our Office informed you that your claim was precluded from our consideration by the act of October 9, 1940, a copy of which was sent you. That act provides in pertinent part as follows:

"That every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under section 105 of the Budget and Accounting Act of June 10, 1921 (42 Stat. 24), and the Act of April 10, 1928 (45 Stat. 413), shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in said office within ten full years after the date such claim first accrued: Provided, That when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established.

"Sec. 2. Whenever any claim barred by section 1 shall be received in the General Accounting Office, it shall be returned to the claimant, with a copy of this Act, and such action shall be a complete response without further communication."

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On February 6, 1962, our Office again informed you that your claim was barred from consideration by our Office because more than ten full years had elapsed between the date your claim first accrued and the date your claim was first received in our Office.

In your letters you repeat your claim and request reconsideration apparently without regard to the ten-year statute of limitations of which you were informed in our prior communications. You say that you filed a claim in 1946 in the Post Office at Philadelphia, Pennsylvania. Except in the case of certain members of the military and naval forces, the statute expressly prohibits consideration by the General Accounting Office of claims filed here later than ten full years after the date such claim first accrued. The fact that you may have filed a claim with the Post Office Department within the ten-year period would not satisfy the requirements of the act of October 9, 1940, since it provides that such claims must be received in our Office within such period. Any claim that you may have had for terminal leave accrued to you not later than the date of your separation from the Post Office Department in 1943, and since you do not appear to have been a member of the military or naval forces after that date, the ten-year period in your case expired in 1953. There is no record of your filing any claim in the General Accounting Office (a separate agency of the Government) prior to that date.

The limitation, prescribed by statute, upon consideration of claims by our Office, is not a mere statute of limitations but is a condition precedent to the right to have claims considered by the General Accounting Office. See Bartlesville Zinc Company v. Mallon, 56 F.2d 154, and Carpenter v. United States, 56 F.2d 828. Consequently, no exceptions may be made to the provisions of the statute nor may any extension of time within which claims may be filed be granted. See 25 Comp. Gen. 670; 32 id. 267. As stated before, the fact that you may have filed a claim with the Post Office Department within the ten-year period involved does not operate to alter the limitation imposed upon our Office by law.

Furthermore, aside from the fact that we are precluded from considering your claim under the act of October 9, 1940, even if your claim had been sent to the General Accounting Office within the ten-year period there was no authority, at the time of your separation from the Federal Service, to pay postal employees a lump-sum payment for accrued annual leave to their credit at the time of separation. It was not until December 21, 1944, that Public Law 525, 58 Stat. 845, was enacted which provided for a lump-sum payment for accumulated or accrued annual or vacation leave due any officer or employee of the Government in the event of his separation from the service. The act of December 21, 1944, is not retroactively effective. See 26 Comp. Gen. 532. Prior to

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the passage of Public Law 525 the only way a postal employe could be compensated for accumulated and accrued leave was to be retained on the payroll until he had received salary covered by the period of such leave. Thus, it is evident that you were not entitled to any payment after separation from the service for leave of absence which you failed to receive during Government service. See 16 Comp. Gen. 899; Autler v. United States, 101 Ct. Cl. 641.

The prior action of our Office in disallowing your claim was correct and must be sustained.

Very truly yours,

FRANK H. WEITZEL

Assistant Comptroller General
of the United States