

VICKERS



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Commander James H. Baker, USN (Retired)
File: B-193856.4
Date: June 19, 1992

DIGEST

Claim for recovery of funds withheld from retired officer's last active duty pay to settle a charge for excess weight in a shipment of claimant's household goods is barred by 31 U.S.C. § 3702(b)(1), because it was not filed at our Office until 1991, more than 6 years after the 1982 accrual date of the claim. Claimant's 1982 request to the agency that it forward his claim to our Office does not avoid the bar. However, service's claim for remainder of debt is also barred because administrative offset was not initiated within 10 years.

DECISION

Commander James H. Baker, USN (Retired), has appealed the denial by our Claims Group of his claim for \$2,977.28 of which \$1,562.89 was withheld from his last active duty pay in 1982 and the remaining \$1,414.39 which the Navy now wants to deduct from his retired pay.

Commander Baker filed for an adjustment in March 1982 with the Navy Material Transportation Office (NMTO) to recover funds that had been withheld from his pay to settle a charge for excess weight in the shipment of his household good from Seattle, Washington, to Alexandria, Virginia. The claim was based on discrepancies Commander Baker said he found in the weight tickets submitted by the household goods carrier. When the request for adjustment was denied, Commander Baker states that he filed a DD Form 1351-2 on September 23, 1982, with the NMTO so that they could forward it to our Office to appeal the denial.

Our Claims Group denied Commander Baker's claim, filed first with our Office on November 12, 1991, because it was barred by 31 U.S.C. § 3702(b)(1) which states that every claim

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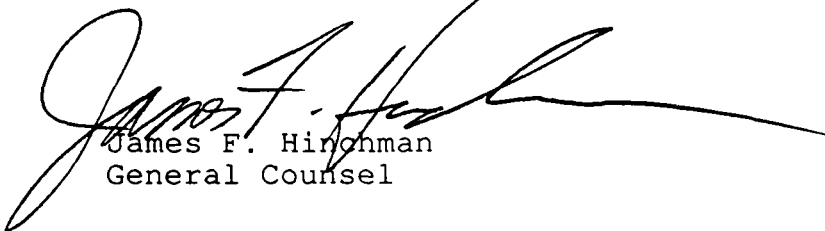
against the United States shall be barred unless it is received in our Office within 6 years after the date the claim accrued.¹

A thorough review of our records shows that our Office never received the September 1982 appeal of the NMTO denial of Commander Baker's claim.

Under 31 U.S.C. § 3702(b)(1), as a condition precedent to a claimant's right to have his claim considered by our Office, it must have been received here within the 6-year period. The primary purpose of the barring act is to relieve the government of the necessity of retaining and going back over old records for the purpose of settling stale claims. However, even if the records still exist which may substantiate the claim, our Office does not have any authority to waive any of the provisions of the act or make any exceptions to the time limitations it imposes. Sergeant James W. Mobley, USAF, Retired, B-196632, Dec. 4, 1979. Moreover, even if the delay in filing a pre-June 15, 1989, claim with our Office was caused at the agency level and not by the employee or member, the limitations of the barring act still apply. 62 Comp. Gen. 80 (1982). Also, even if the agency mailed the documents concerning a pre-June 15, 1989 claim to our Office and they were lost in the mail, the claim is still barred. Russell T. Burgess, B-195564, Sept. 10, 1979.

However, as regards the remaining \$1,414.39 which the Navy now wants to collect by administrative offset of Commander Baker's retired pay, we believe the Navy's recovery of that amount by offset is also barred.

Under 31 U.S.C. § 3716(c)(1), the government has 10 years in which to collect a claim by offset. Since the Navy's claim for the remaining amount arose on March 8, 1982, more than 10 years has now lapsed. See also 4 C.F.R. § 102.3(b)(3).



James F. Hinchman
General Counsel

¹The regulations implementing 31 U.S.C. § 3702(b)(1) were revised on June 15, 1989, to provide that the requirements of the statute will be satisfied by timely filing with the agency involved as well as with this Office. However, the regulation precludes consideration of any claims which were barred prior to June 15, 1989. 54 Fed. Reg. 25,437 (1989), codified at 4 C.F.R. § 31.5.