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FILE: B-194474

DATE: May 3, 1979

MATTER OF: Mr. Harry Iredale III - ^[Claim For] Retroactive
Overtime Compensation _{JL}

DIGEST: Civilian employee of the Navy was interned in North Korea from January 23 to December 23, 1968, with the crew of the USS Pueblo, during which time he was paid his regular salary. His subsequent claim for overtime compensation for that period, first received in the General Accounting Office on February 24, 1977, may not be considered, since the law provides that every claim cognizable by the General Accounting Office "shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued * * *." 31 U.S.C. § 71a (1976).

Mr. Harry Iredale III, 615 Center Street, Herndon, Virginia 22070, requests reconsideration of the determination made by our Claims Division on January 25, 1979, that his claim for overtime compensation for the period January 23, 1968, to December 23, 1968, incident to his employment with the Department of the Navy, was barred by the 6-year statute of limitations applicable to claims received in the General Accounting Office, 31 U.S.C. § 71a (1976).

Mr. Iredale was serving on temporary duty as a civilian oceanographer, grade GS-9, aboard the USS Pueblo (AGER-2) when that ship was seized by North Koreans on January 23, 1968. He was interned in North Korea until December 23, 1968. Pursuant to the Missing Persons Act, as amended and codified, 5 U.S.C. § 5561, et seq., he received the regular compensation of his grade GS-9 position for the period of his internment, and, in addition, his 1968 income tax was refunded as the result of special legislation enacted for his benefit.

Several years later, on June 2, 1975, Mr. Iredale filed a claim with the Department of the Navy for overtime compensation covering the period of his internment in 1968. It appears that he was prompted to file the claim after reading a newspaper article concerning Matter of Lawrence J. Stark, 54 Comp. Gen. 934 (1975) and 55 Comp. Gen. 147 (1975). In that case we expressed the view that a civilian employee of the Navy who was stationed in Vietnam and captured by hostile forces, was eligible for

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continued overtime compensation under the Missing Persons Act during his captivity, provided it could be established that prior to his capture overtime work was a part of his regularly scheduled workweek or was ordinarily required of him on a regular basis. The conclusion reached in the case of Mr. Stark was consistent with our longstanding interpretation of the Missing Persons Act that in certain circumstances an interned civilian employee is eligible for continued overtime compensation. See 22 Comp. Gen. 745 (1943).

It further appears that after Mr. Iredale filed his claim for retroactive overtime compensation with the Department of the Navy in June 1975, a disagreement arose among Navy authorities with respect to the substantive merits of the claim. Correspondence contained in the file indicates that officials of the Naval Oceanographic Office felt Mr. Iredale should be eligible for overtime compensation. However, Navy disbursing officers and officials of the Navy Office of Civilian Manpower Management expressed doubt as to whether the circumstances of Mr. Iredale's temporary duty assignment aboard the USS Pueblo could serve as a proper basis in fact for computing overtime compensation. Consequently, on February 22, 1977, Navy authorities forwarded the claim to our Claims Division for adjudication, as a matter involving doubtful elements of fact and law.

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Mr. Iredale's claim was first received in this Office on February 24, 1977. As previously indicated, our Claims Division by letter dated January 25, 1979, advised him that his claim was barred by the 6-year limitation period prescribed by 31 U.S.C. § 71a for claims received in the General Accounting Office. An apology was offered to Mr. Iredale for the delays that had occurred in the matter.

In his correspondence requesting reconsideration, Mr. Iredale has questioned the correctness of that determination, and he has asked why 3-1/2 years were required to determine that his claim was subject to the statute of limitations. In addition, he has suggested, in effect, that even if his claim is subject to the statute of limitations, he deserves relief from its provisions. In that connection, he suggests that Navy authorities should have automatically taken care of the matter at the time he was released

from internment in 1968, and that he should not have been placed in the position of having to submit a request for overtime compensation.

Section 71a of title 31, United States Code, provides in pertinent part:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued: * * * (Emphasis supplied.)

Under that provision of law, as a condition precedent to a claimant's right to have his claim considered by the General Accounting Office, his claim must be "received in said office" within 6 years after it "first accrued". Hence, the filing of a claim with a governmental agency other than the General Accounting Office does not toll the running of the limitation period. Also, a claim for compensation incident to employment "first accrues" as a general rule at the time the claimant's services to the Government are rendered. We do not have authority to waive any of the above-quoted provisions of the barring act or make any exceptions to the time limitation it imposes. See Matter of Richard C. Clough, 58 Comp. Gen. 3 (1978); Matter of Sam Friedman, et al., B-189690, February 16, 1978; and Matter of Donald B. Sylvain, B-190851, February 15, 1978.

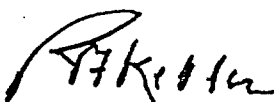
In the present case, Mr. Iredale's claim for overtime compensation covering his 1968 internment must be regarded as having "first accrued" no later than December 23, 1968, the date of his release from North Korea. The claim was not received in this Office until February 24, 1977, more than 8 years later. Thus, the claim is subject to the 6-year statute of limitations, 31 U.S.C. § 71a.

With respect to Mr. Iredale's question as to why 3-1/2 years elapsed from the time he submitted his claim to the Navy in 1975 to the time in 1979 our Claims Division advised him that the claim was barred by the statute of limitations, it appears that

between June 1975 and February 1977 Navy authorities expended considerable time and effort attempting to reconstruct Mr. Iredale's 1967 and 1968 pay records and to formulate an estimate as to how much overtime work he might have performed in 1968 but for his internment. As previously indicated, even then those authorities were unable to agree on the substantive merits of the claim. Apparently, it did not occur to them at the time that the claim might be subject to 31 U.S.C. § 71a and other similar barring statutes contained in the United States Code, which have been enacted primarily to relieve the Government of the necessity of retaining and going back over old records in an attempt to settle stale claims. See Matter of Melvin Gray, B-190168, November 9, 1977; compare Haislip v. United States, 152 Ct. Cl. 339 (1961). The delays that occurred in the handling of Mr. Iredale's claim after February 1977 were apparently partly due to slowness in processing requests for information relating to the dates of Mr. Iredale's internment. The delays in settling this matter are regrettable, but such delays have no bearing on the issue of whether any payment may be lawfully made on Mr. Iredale's claim.

With regard to Mr. Iredale's suggestion that in December 1968 the Navy should have automatically taken care of the question of his eligibility for overtime compensation, and that he should therefore be relieved from the provisions of 31 U.S.C. § 71a, it should be noted that the burden of proof as to the existence and nonpayment of a valid claim against the Federal Government is on the claimant. If Mr. Iredale felt that in his particular case the Navy in December 1968 should have paid him overtime compensation in addition to his regular salary for the period of his internment, the burden would have been upon him--not the Navy--to initiate a claim and establish eligibility for the additional pay. In any event, and as previously mentioned, we have no authority to waive the statutory provisions of 31 U.S.C. § 71a in these or any other circumstances, and therefore Mr. Iredale's claim is barred by law.

Accordingly, the determination made by our Claims Division is sustained.


Deputy Comptroller General
of the United States