

11350 PLM-1

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-195564

**DATE:** September 10, 1979

**MATTER OF:** Russell T. Burgess - Claims - 6-Year  
Barring Act

**DIGEST:** Employee's claim for backpay based on performance of higher grade duties from January 2, 1970, through December 2, 1973, was not received in GAO until December 1, 1978. Portion of claim from May 2, 1970, through November 30, 1972, is barred although employee's Personnel Officer furnished sworn statement that his office mailed claim to GAO on April 3, 1978. There is no evidence that GAO received claim before December 1, 1978, after it was resubmitted when agency learned its original submission had not been received and GAO is without authority to waive 31 U.S.C. § 71a which states claim is barred unless it is received within 6 years after date claim first accrued.

AGC 00234

Mr. Wallace E. Hudgins, Personnel Officer, Anniston Army Depot, Department of the Army, has requested reconsideration of our Claims Division's settlement of the claim of Mr. Russell T. Burgess, an employee of the Department of the Army at the Anniston Army Depot. We sustain the settlement for the reasons stated below.

On April 11, 1977, Mr. Burgess filed a claim with the Department of the Army for backpay based on the performance of higher grade duties than those of his position from January 2, 1970, through December 2, 1973, and his claim was denied. The Department of the Army states that on April 3, 1978, it forwarded Mr. Burgess' claim to the General Accounting Office for settlement. By letter dated July 31, 1978, the Anniston Army Depot requested the status of Mr. Burgess' claim. The General Accounting Office, advised that it had never received the April 3 letter submitting Mr. Burgess' claim. Accordingly, it was resubmitted and was not received in this Office until December 1, 1978.

[Claim for BACKpay]

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The law is quite specific that any claim not received in the General Accounting Office within 6 years after the date that the claim first accrued may not receive consideration. 31 U.S.C. § 71a (1976). The date of accrual of a claim for the purpose of the above-cited law is to be regarded as the date the services were rendered and the claim accrues on a daily basis. 29 Comp. Gen. 517 (1950). Therefore, while our Claims Division ruled that Mr. Burgess was entitled to a retroactive promotion effective May 2, 1970, it held that the portion of Mr. Burgess' claim from May 2, 1970, through November 30, 1972, was barred.

With his submission, Mr. Hudgins has forwarded his sworn statement that Mr. Burgess' claim was mailed to the General Accounting Office from the Anniston Army Depot on April 3, 1978. Mr. Hudgins states:

"There is no doubt that the AAD physically deposited in the U.S. Mail the letters and claim documents described and attached herein and that these documents were addressed to the Claims Division of the General Accounting Office. If these letters and documents were not received by GAO they were either lost in the mail by the U.S. Postal Service or they were mishandled and subsequently misplaced by GAO. There was no fault on the part of Mr. Burgess for his claims were in fact mailed to GAO on his behalf by the Depot."

Accordingly, he requests that consideration be given to approving backpay from an established date in April 1978 when, through normal mail delivery, Mr. Burgess' claim would have been received in this Office.

We do not doubt that Mr. Burgess' claim was mailed to this Office on the date described by Mr. Hudgins. However, there is no evidence that the claim was received in this Office before December 1, 1978. The filing of a claim with an administrative office does not meet the requirements of the Act. The claim must be received at the General Accounting Office. Since we are without authority to waive or modify the provisions of

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31 U.S.C. § 71a we have no option but to sustain the Claims Division's settlement letter barring the portion of Mr. Burgess' claim from May 2, 1970, through November 30, 1972.  
B-190841, December 27, 1978.

  
Deputy Comptroller General  
of the United States