13300 Transp. Number

DECISION

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

[Applicability of Statute of Limitations To Moving Expenses]

FILE: B-195738 **DATE:** April 1, 1980

MATTER OF: Thomas R. Hopkins - Transfer expenses and statute of limitations

DIGEST: Employee of Bureau of Indian Affairs was transferred in 1971 and received travel advance. Even though he filed claim with Bureau in 1975, it was not received in GAO until 1979 and is barred under 6 year limitation on filing claims in 31 U.S.C. 71a (1976). Nevertheless, to extent he used the travel advance for authorized transfer expenses, the advance may not be collected by the Bureau. B-179935, February 26, 1974.

This responds to a request by Josephine Montoya, a certifying officer in the Albuquerque, New Mexico Office, Bureau of Indian Affairs, Department of the Interior, for our opinion on whether the statute of limitations precludes reimbursement for moving expenses incurred in connection with the transfer of Thomas R. Hopkins, a Bureau employee, from Washington, D.C. to Albuquerque, New Mexico in 1971.

Mr. Hopkins did not submit his travel voucher to the Bureau until March 1975. Discrepancies noted in Mr. Hopkins' claim caused it to be returned to him on March 28, 1975, and Mr. Hopkins did not resubmit his claim until June 26, 1979. At issue is whether the fact that Mr. Hopkins submitted his voucher to the Bureau (albeit deficient) in March 1975, tolled the running of the statute of limitations and, if not, whether the Bureau is entitled to recover the $3,848 travel advance given to Mr. Hopkins in September 1971.

The General Accounting Office (GAO) had no notice of Mr. Hopkins' claim until August 13, 1979, when we received the certifying officer's request. Section 71a of title 31, United States Code, as amended by Pubic Law 93-604, approved January 2, 1975, bars claims which are not received in the GAO within 6 years after the date they first accrue. We have long held that the filing of a claim in the agency or administrative office concerned does not meet the requirement of 31 U.S.C. §71a. See 53 Comp. Gen. 148, 155 (1973). We are without authority to waive or modify the application of this statute. Donald B. Sylvain, B-190851, February 15, 1978. Therefore, since Mr. Hopkins' claim was not received in this Office within 6 years from the date it accrued, it is barred. However, there remains for consideration the question of the outstanding travel advance paid to Mr. Hopkins in 1971.

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In the present case the Bureau has not reimbursed Mr. Hopkins for his travel and transportation expenses incident to his transfer, but it did advance him funds on September 15, 1971, for the expenses he might incur incident to his transfer. An advance of funds is based on the employee's prospective entitlement to reimbursement for those expenses after they are incurred, FTR §2-1.6a, but an advance of funds does not necessarily mean that the employee will ultimately be reimbursed for those expenses. B-178595, June 27, 1973.

The statute which authorizes travel advances, 5 U.S.C. 5705 (1976), by its terms provides that "[a] sum advanced and not used for allowable travel expenses is recoverable from the employee or individual or his estate ***." The statute authorizes recovery by setoff or deduction against amounts due the employee or by other methods provided by law. Although 28 U.S.C. §2415 (d) imposes a 6-year limitation on actions by the Government to recover money paid to a Federal employee, we held in Collection of Debts, B-189154, May 8, 1979 (58 Comp. Gen. 501), that section 2415 does not apply to the Government's collection of debts through administrative setoff. Hence, Mr. Hopkins' $3,848 travel advance is recoverable by the Bureau through setoff against his pay or other amounts owed him. However, for the reasons stated below, we conclude that Mr. Hopkins is entitled to retain the travel advance to the extent that he used those funds for authorized travel in connection with his 1971 transfer.

The same question was presented to us concerning a civilian employee of the Air Force Department in B-179935, February 26, 1974. There the employee had received a travel advance and had failed to file his claim within the statutory period. Nevertheless, we held that the advance should not have been setoff against amounts otherwise allowable since it appeared that the advance was used for authorized travel long before the expiration of the statutory period. We found support for the holding in the language of 5 U.S.C. § 5705 and in several Federal court decisions. The rationale is well stated in one of those cases, Pennsylvania Railroad Co. v. Miller, 124 F.2d 160 (5th Cir. 1941). The court, under the doctrine of recoupment, allowed the defendant to claim by way of deduction all just allowances arising out of the transaction that formed the ground for plaintiff's action, even though the defendant's claim was barred by limitation. The court stated the rule as follows, 124 F. 2d at 162:

"Recoupment goes to the foundation of the plaintiff's claim; it is available as a defense, although as an affirmative cause of action it may be barred by limitation. The defense of recoupment, which arises out of the same transaction as plaintiff's claim, survives as long as the cause of action upon the claim exists."

Similarly, in Stone v. White, 301 U.S. 532 (1937), the Supreme Court allowed the Government to use the defense of recoupment against a petitioner-taxpayer even though the Government's claim was barred by the Revenue Act of 1928. According to the Court, "'[s]uch a defense is never barred by the statute of limitations so long as the main action itself is timely.' Bull v. United States 295 U.S. 247, 262 ***."

The doctrine of recoupment, as enunciated by the courts, is equally applicable to cases before this Office. As shown by B-179935, supra, the defense of recoupment applies specifically to attempts by the Government to collect travel advances from employees.

With regard to whether Mr. Hopkins' claim should be increased to reflect an additional $52.73 for transportation and storage of household goods, the Bureau refers to our decision which gives an agency authority to unilaterally increase a voucher showing an underclaim of up to $30. Such adjustments are "limited to minor errors in computation or extension on vouchers clearly claiming for the proper quantity of supplies or services at the proper unit price or prices." 57 Comp. Gen. 298 (1978). Although this adjustment does not fall within the purview of our decision cited above, since the Bureau may only collect the amount of funds not used for authorized travel from Mr. Hopkins' travel advance, the adjustment may be made in computing the actual amount of funds used for authorized travel.

In accordance with the above, this Office is barred from considering the merits of Mr. Hopkins' claim but the Bureau may only recover from his travel advance that amount not used for authorized travel.

Milton J. Socolar

For the Comptroller General
of the United States