

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

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FILE: B-210748**DATE:** August 3, 1983**MATTER OF:** Phyllis Rinkach - Refund of
Health Benefits Premiums**DIGEST:**

1. Although employee enrolled in low option health benefits plan at time of appointment, payroll deductions were made at high option rate, resulting in underpayment of compensation. Employee is entitled to reimbursement of premiums erroneously deducted from her pay, subject to the 6-year limitation on claims in 31 U.S.C. § 71a.
2. Excessive health benefits premiums were erroneously deducted from employee's pay from March 1968 until September 1982. Employee claims refund of excessive premiums for entire period. Her claim was received in the General Accounting Office on February 9, 1983. Under 31 U.S.C. § 71a, a claim bearing the signature and address of the claimant must be received in GAO to stop the running of the 6-year statutory limitation on the filing of claims against the United States. The earlier filing of a claim with the employing agency does not stop the running of the statute. Consequently the refund claim is barred for the period before February 9, 1977.

The Department of Health and Human Services (HHS), has requested a decision regarding an employee's entitlement to a refund of health benefits premiums for a 14 1/2-year period.

By letter dated February 4, 1983, the Director, Pay Systems Division, Office of the Secretary, HHS, informed us that, effective March 24, 1968, Phyllis Rinkach, because of an administrative error, has had deductions for high option

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health benefits premiums made from her compensation when low option deductions should have been made, resulting in an underpayment of compensation.

The question raised is whether Ms. Rinkach is entitled to reimbursement for the excessive premiums erroneously deducted from her salary for the full period from 1968 to September 1982.

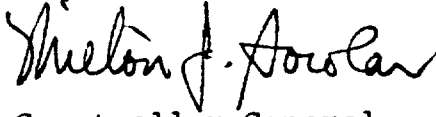
In 1968, Ms. Rinkach enrolled in the Health Benefits Program, electing the Service Benefit Plan at the low option. However, due to administrative error, high option premiums were deducted from her pay from March 24, 1968, to September 1982. On September 29, 1982, she submitted a claim for refund of the excess deductions. The claim was subsequently forwarded to the General Accounting Office and was received here on February 9, 1983.

We believe it is clear that Ms. Rinkach is entitled to a refund of the excess deductions taken from her pay. She was underpaid as a result of the agency's error in deducting the wrong amounts from her pay. Moreover, she was paying for health benefits that she did not receive and could not have received. The Office of Personnel Management has informed us that health benefits coverage is determined by the option the employee elects on the enrollment forms. Therefore, since Ms. Rinkach elected the low option, she was not entitled to high option benefits, notwithstanding the high option deductions.

However, the period for which she may receive a refund is limited by section 71a of title 31, United States Code (now codified as 31 U.S.C. § 3702(a) by Public Law 97-258, approved September 13, 1982, 96 Stat. 877, 970) which requires that every claim cognizable by this Office must be received here within 6 years after the date such claim first accrued. Under these provisions we have always considered receipt of a claim here as constituting a condition precedent to a claimant's right to have such claim considered on its merits by this Office. Alfred L. Lillie, B-209955, May 31, 1983. The date of accrual of a pay claim for the purpose of the above-cited statute is the date the services were rendered and such claims accrue upon a daily basis. 29 Comp. Gen. 517 (1950). Therefore, it follows that the date of accrual of the present claim is the date

on which excessive health benefits premiums were first erroneously deducted from Ms. Rinkach's salary and that her claim continued to accrue on a daily basis as further premiums were deducted. Donald B. Sylvan, B-190851, February 15, 1978. We are without authority to waive or modify the application of 31 U.S.C. § 71a. Frederick C. Welch, B-206105, December 8, 1982, 62 Comp. Gen. _____.

Thus, with regard to the present case, only that portion of Ms. Rinkach's claim which accrued within 6 years prior to the date on which this Office first received a claim in writing and signed by Ms. Rinkach can be considered. Since her claim was received February 9, 1983, that portion of the claim which accrued between March 24, 1968, through February 8, 1977, is barred under 31 U.S.C. § 71a. Thus, Ms. Rinkach is entitled only to reimbursement for erroneous premiums deducted on or after February 9, 1977.

for 
Comptroller General
of the United States