



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-275828.2

January 28, 1997

Oceanside, CA 90249

Dear Mr. :

This is in response to your letter dated December 3, 1996, with enclosures, requesting that the Comptroller General waive the time limitations for filing claims provided by 31 U.S.C. § 3702. You ask that we waive the time limitation so that you may receive payment for military retired pay for 3 months in 1987 for which you received checks from the U.S. Marine Corps but which you failed to negotiate. As explained below, we may not comply with your request.

You recently discovered the three checks in question, each in the amount of \$922.55, dated in March, April, and May 1987, respectively, in your safe after your secretary misplaced them. Copies of correspondence enclosed with your letter show that in July 1996, you forwarded the checks to the Defense Finance and Accounting Center (DFAS), asking that replacement checks be issued. However, by letter dated November 13, 1996, DFAS, Kansas City Center, advised Congressman Ron Packard, who had inquired about the matter on your behalf, that reissuance of the checks is barred by 31 U.S.C. § 3702(c), which provides that any claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized issuance of the check within 1 year after the date of issuance. While this 1-year limitation does not affect the underlying obligation for which the check was issued, a claim for the amount due based on the underlying obligation is subject to 31 U.S.C. § 3702(b), which currently provides that the claim must be received by the official responsible for settling the claim or the agency that conducts the activity from which the claim arises within 6 years after the claim

accrues.¹ As DFAS advised, since your claims for retired pay for March, April, and May 1987 were not filed within 6 years of those dates, the claims are barred by section 3702(b).

In addition, however, DFAS advised Congressman Packard that a recent amendment to 31 U.S.C. § 3702 authorizes the Comptroller General, under certain conditions, to waive the time limitations prescribed in subsections 3702(b) or (c) upon request of the Secretary of the service concerned. You request that the Comptroller General grant such a waiver so that you may receive the retired pay in question.

The authority to waive the time limitations to which you refer is contained in subsection (e), added to 31 U.S.C. § 3702 by section 608 of the National Defense Authorization Act for Fiscal Year 1997.² This authority is to be exercised "upon request of the Secretary concerned," and it applies only to claims "for pay or allowances provided under title 37" of the U.S. Code. We have not received a request from the Secretary of the Navy³ for such a waiver in your case. In any event, your claim for retired pay is not a claim for pay or allowances under title 37 (Pay and Allowances of the Uniformed Services); it is a claim for retired pay which arises under title 10 of the U.S. Code. See 10 U.S.C. chs. 61-71. Therefore, the authority provided by subsection 3702(e) to waive the time limits prescribed by subsections 3702(b) or (c) would not apply to your claim.

For the reasons explained above, we may not take the action you request.

Sincerely yours,



Robert P. Murphy
General Counsel

¹Congress recently amended this statute to eliminate the Comptroller General's role in the receipt and settlement of claims and to substitute the language referred to above. See Pub. L. No. 104-53, § 211, 109 Stat. 535 (1995), which transferred the Comptroller General's claim settlement authority under section 3702 to the Director of the Office of Management and Budget, effective June 30, 1996, and Pub. L. No. 104-316, Title II, 110 Stat. 3826 (1996), which amended the language of section 3702 to reflect the transfer of this authority.

²Pub. L. No. 104-201, § 608, 110 Stat. 2542, Sept. 23, 1996.

³The Secretary concerned with respect to matters concerning the Marine Corps is the Secretary of the Navy. 37 U.S.C. § 101(5).