

GAO

Report to

May 1999

Foreword

This is the Introduction to the Fourth Edition of the Civilian Personnel Law Manual. The Manual is prepared by the Office of General Counsel, U.S. General Accounting Office (GAO). The purpose of the Manual is to present a summary of GAO's decisions concerning the legal entitlements of federal employees, including an overview of the statutes and regulations which give rise to those entitlements, in the following areas: Title I—Compensation, Title II—Leave, Title III—Travel, and Title IV—Relocation.

The reader is advised, however, that GAO's authority to settle claims and issue Comptroller General decisions in the above four areas has been transferred to the executive branch. Section 211 of the Legislative Branch Appropriations Act of 1996 (November 19, 1995) transferred our claims settlement authority to the Director of the Office of Management and Budget (OMB), effective June 30, 1996. The Director in turn has delegated these functions to the Office of Personnel Management (civilian pay and leave claims), the General Services Administration (civilian travel and relocation claims), and the Department of Defense (military members' claims). Our authority to issue advance decisions related to the transferred functions and to grant waivers of debts has also been transferred to the executive branch by the GAO Act of 1996 (October 19, 1996).

This edition of the Civilian Personnel Law Manual is being published in loose leaf style with the introduction and four titles separately wrapped. The Manual generally reflects decisions of this Office issued through September 30, 1994. The material in the Manual is, of course, subject to revision by statute or through the decision-making process. Accordingly, this Manual should be considered as a general guide only and should not be considered as an independent source of legal authority. This Manual supersedes the Third Edition (1989) of the Civilian Personnel Law Manual.



Robert P. Murphy
General Counsel

Contents

Foreword		1
Introduction		4
	Part I	4
	Part II	18

Abbreviations

AID	Agency for International Development
C.F.R.	Code of Federal Regulations
Comp. Gen.	Decisions of the Comptroller General of the United States (published volumes)
DOD	Department of Defense
DOHA	Defense Office of Hearings and Appeals
F.2d	Federal Reporter
FTR	Federal Travel Regulations
GAO	General Accounting Office
GAO manual	(in a citation)—General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies
OMB	Office of Management and Budget
OPM	Office of Personnel Management
Pub. L. No.	Public Law Number
S. Ct.	Supreme Court Reporter
Stat.	Statutes at Large
U.S.	(in a citation)—United States Reports
U.S.C.	United States Code
USPHS	U.S. Public Health Service
§	section
§§	sections

Introduction

Part I

GAO's Authority to Issue Decisions and Settle Claims

Editor's note: Pursuant to laws enacted in 1995 and 1996, GAO's authority to issue personnel law decisions and settle claims was transferred to the executive branch. Effective June 30, 1996, Public Law 104-53 (November 19, 1995) transferred the claims settlement function from GAO, where it was initially placed when GAO was established in 1921, to the executive branch. Then, on October 19, 1996, Public Law 104-316 also transferred to the executive branch GAO's authority to waive recovery of erroneous payments and to issue decisions related to the transferred functions. Details of the transfers are described below.

Claims and Related Functions

Section 211 of the Legislative Branch Appropriations Act, 1996, Public Law 104-53, 109 Stat. 514, 535, November 19, 1995, transferred various claims settlement and related functions of the Comptroller General, the head of the General Accounting Office, to the Director of the Office of Management and Budget (OMB) effective June 30, 1996, with the authority to delegate the functions to such agencies as he deemed appropriate. On June 28, 1996, the OMB Director delegated these functions in part to the Office of Personnel Management, in part to the General Services Administration, and in part to the Department of Defense, as follows.

- Office of Personnel Management

Claims involving federal civilian employees' compensation and leave, and settlement of deceased employees' accounts. 31 U.S.C. § 3702; 5 U.S.C. § 5583.

- General Services Administration

Claims for expenses incurred by federal civilian employees for official travel and transportation, and relocation expenses incident to transfers. 31 U.S.C. § 3702.

- Department of Defense

Claims related to uniformed service members' pay, allowances, travel, transportation, retired pay, and survivor benefits (does not include civilian employees). 31 U.S.C. § 3702.

The mailing addresses of the offices to which the various claims functions have been transferred are as follows:

Office of Personnel Management, Office of the General Counsel, Claims Adjudication Unit, 1900 E Street, NW, Washington, D.C. 20415

General Services Administration, Board of Contract Appeals, Attn: Clerk of the Board (Room 7022), 18th and F Streets, NW, Washington, D.C. 20405

Department of Defense, Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, VA 22203

Section 202(b) and (n) of the General Accounting Office Act of 1996, Public Law 104-316, 110 Stat. 3826, 3842-46, October 19, 1996, subsequently amended 31 U.S.C. § 3702 and 5 U.S.C. § 5583 to reflect these transfers. Subsequently, by determination dated December 17, 1996, the OMB Director delegated settlement authority for claims not covered by the above transfers to the agency out of whose activity the claim arose.

Decisions and Waivers

Section 204 of the General Accounting Office Act of 1996, Public Law 104-316, 110 Stat. 3842-46, amended 31 U.S.C. § 3529(b) (Requests for Comptroller General decisions) to provide that a decision requested under section 3529 concerning a function transferred to the Director of OMB under section 211(a) of the Legislative Branch Appropriations Act of 1996 shall be issued by the Director of OMB or by the head of the agency to which the function was delegated. Thus, the Comptroller General's authority to issue decisions to government agencies and accountable officers on questions related to the transferred claims functions has also been transferred and no longer resides in the GAO. Requests for decisions concerning the transferred functions should be addressed to the agencies identified above for their respective delegated functions.

The Comptroller General, however, retains the authority under 31 U.S.C. § 3529 to issue decisions to disbursing or certifying officers and heads of agencies on matters involving the use of appropriated funds that do not specifically involve claims settlement or other functions transferred to OMB. The Comptroller General also retains the authority under 31 U.S.C. §§ 3527 and 3528 to grant relief to disbursing and certifying officers.

In addition, the General Accounting Office Act of 1996 transferred the GAO's authority to prescribe standards for and to make determinations concerning waivers of recovery of erroneous payments of pay and

allowances to federal civilian and military personnel to the Office of Management and Budget, effective December 18, 1996. Section 103(d) amended 5 U.S.C. § 5584 to provide that waiver determinations shall be made by the head of an agency with respect to legislative branch agencies or employees, and by the Director of OMB with respect to any other agency or employee. Section 105(b) amended 10 U.S.C. § 2774 to provide that waiver determinations shall be made by the Director of OMB with respect to members of the uniformed services. Finally, section 116 amended 32 U.S.C. § 716 to provide that waiver determinations shall be made by the Director of OMB with respect to National Guard personnel.

Section 101(a)(3) of the GAO Act of 1996 further provides that the Director of OMB may delegate any of the above functions to the director of any other agency or agencies.

By official determination, dated December 17, 1996, the Director of OMB delegated the transferred functions as follows:

The authority to waive collection of erroneous payments from civilian employees under 5 U.S.C. § 5584 is delegated to the Executive Branch agency that made the erroneous payment (within DOD, the authority has been assigned to the Defense Office of Hearings and Appeals (DOHA)). DOHA has agreed to provide advice to other agencies on waivers, upon request.

The authority to waive collection of erroneous payments from uniformed service members and members of the National Guard under 10 U.S.C. § 2774 and 32 U.S.C. § 716 is delegated to the Department of Defense (and assigned to the Defense Office of Hearings and Appeals).

The claims settlement authority, not otherwise transferred by section 202(n) of the GAO Act of 1996 to the Department of Defense, the Office of Personnel Management, or the General Services Administration, is delegated to the executive branch agency out of whose activity the claim arose.

The authority to render advance decisions concerning a function under § 211(a) of the 1995 law that was delegated by OMB has been transferred by section 204 of the 1996 law (amending 31 U.S.C. § 3529(b)) to the agency to which such function was delegated. Finally, the advance decision authority concerning claims not otherwise transferred by § 202 is also delegated to the executive branch agency out of whose activity the claim arose.

**Claims Settlement
Procedures**

Parts 30 and 31, title 4, Code of Federal Regulations (C.F.R.) (1996), prescribed general procedures applicable to claims against the United States which were required to be adjudicated in the General Accounting

Office. Special procedures applicable to specified types or classes of claims against the United States were contained in Parts 32 to 36 of this regulatory authority. The agency to which GAO's claim settlement authorities were transferred in 1996 have issued, or are issuing, regulations prescribing procedures to replace the GAO claims procedures.

Statutory Time Limitations on Claims

Section 3702(b) of Title 31, United States Code, (the so-called Barring Act) provides that claims against the United States, except as otherwise provided by law, are subject to a 6-year statute of limitations. The date of accrual of a claim for compensation, for the purpose of the act, is the day the services were performed, and such claim accrues on a daily basis. See 29 Comp. Gen. 517 (1950).

GAO's claims regulations in 4 C.F.R. Part 31 were amended effective June 15, 1989, to provide that claims received by the General Accounting Office, or by the department or agency out of whose activities the claim arose, within the 6-year period shall be treated as timely filed for purposes of the Barring Act, 31 U.S.C. § 3702(b). See 54 Fed. Reg. 35437, June 15, 1989. Previously, claims filed with any other government agency did not satisfy the requirements of the act.

Editor's note: For purposes of the 6-year statute of limitations, the GAO Act of 1996, § 202(n), 110 Stat. 3844, amended 31 U.S.C. § 3702(b) to delete the provision that a claim must be received by the Comptroller General within 6 years after it accrues and to provide instead that the claim must be received within 6 years by the official responsible under section 3702(a) for settling the claim or by the agency that conducts the activity from which the claim arises.

Where an initial request for a decision concerning additional overtime compensation to individual union members was not accompanied by a signed representation authorization or claim over the signature of the individual claimants so as to toll the 6-year Barring Act, 31 U.S.C. § 3702(b) (1982), the claims were barred. The 6-year period of limitation in 31 U.S.C. § 3702(b) is a condition precedent to the right to have a claim considered by our Office, and our Office has no authority to waive or modify its application. Federal Firefighters, 68 Comp. Gen. 681 (1989), affirmed. Federal Firefighters–Overtime Pay–Application of Barring Act–Reconsideration, 69 Comp. Gen. 455 (1990).

Provisions of the Portal-to-Portal Act of 1947, as amended, 29 U.S.C. § 255(a), imposing a limitation period of 2 years (3 years for willful violations) on a “cause of action” under the Fair Labor Standards Act (FLSA) will be applied in the settlement of pending and future FLSA claims filed with GAO by federal employees. Section 255(a) constitutes an exception to 31 U.S.C. § 3702(b)(1), which establishes a 6-year limit on filing claims with GAO “except . . . as provided by . . . another law.” Prior GAO decisions that allowed a 6-year period for filing FLSA claims, Transportation Systems Center, 57 Comp. Gen. 441 (1978); Henry G. Tomkowiak, 67 Comp. Gen. 247 (1988); and Federal Firefighters, 68 Comp. Gen. 681 (1989); will no longer be followed. Joseph M. Ford, 73 Comp. Gen. 157 (1994). However, section 640, Pub. L. No. 103-329, September 30, 1994, requires that a 6-year statute of limitations be applied to FLSA claims filed before June 30, 1994.

Editor’s note: Section 640 in turn was amended by Pub. L. No. 104-52, November 19, 1995, to provide that the 6-year statute of limitations for FLSA claims “shall not apply to any claim where the employee has received any compensation for overtime hours worked during the period covered by the claim under any other provision of law, including, but not limited to, 5 U.S.C. § 5546(c), or to any claim for compensation for time spent commuting between the employee’s residence and duty station.”

Administrative Basis of Claims Adjudications

Under 4 C.F.R. § 31.7, claims were settled on the basis of the facts as established by the government agency concerned and by evidence submitted by the claimant. Settlements were founded on a determination of the legal liability of the United States under the factual situations involved as established by the written record.

- Burden of proof

There was no provision under our personnel claims procedures for our Office to conduct adversary hearings or to interview witnesses. All claims were considered on the basis of the written record only, and the burden of proof was on the claimants to establish the liability of the United States and the claimants’ right to payment. The burden was on the claimant to prove every element of his claim. B-198935, November 14, 1980. See also Josie W. Thomas, B-200460, July 10, 1984.

- Record retention

Where claims have been filed by or against the government, records must be retained without regard to record retention schedules until the claims are settled or the agency has received written approval from the General Accounting Office. See 44 U.S.C. § 3309. Retention of Time and Attendance Records, 62 Comp. Gen. 42 (1982).

Note that in Sherwood T. Rodrigues, B-214533, July 23, 1984, in the intervening period between the accrual of the claim and the date the claim was presented to GAO for consideration, the government records necessary to establish or refute the claim were lost or destroyed. The burden of proof is on the claimant. In the absence of these government records—or any other documentation substantiating the claim—the claim was disallowed.

- Dispute of fact

We decided claims on the basis of the written record presented to us by the parties. When disputed questions of fact arose between a claimant and the administrative officers of the government, it was the long established rule of accounting officers to accept the statements of facts furnished by the administrative officers, in the absence of convincing evidence to the contrary. B-185736, December 23, 1976. See also Benjamin C. Hail, B-216573, February 11, 1985.

- Appeals to courts

Independent of 31 U.S.C. § 3702, the United States Court of Federal Claims and the United States district courts have jurisdiction to consider certain claims against the government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501. Actions instituted in the Court of Federal Claims or district courts pursuant to the above-cited statutory provisions are considered de novo (as new). The courts ordinarily have not required exhaustion of the employee's previous right to file a claim with GAO.

- Hypothetical questions

The GAO generally would not consider hypothetical questions. Such questions were usually deferred for future consideration in the context of a specific claim. See Virginia M. Borzellere, B-214066, June 11, 1984.

Procedures for Decisions Involving Agencies and Labor Organizations

Judicial decisions have held that, under the comprehensive scheme created by Congress in the Civil Service Reform Act of 1978, matters which are covered by negotiated grievance procedures should not be heard in another forum, except for matters specifically excluded from such procedures by the collective bargaining agreement or matters otherwise provided for by the act. See Carter v. Gibbs, 909 F.2d 1452 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 46 (1990); Harris v. United States, 841 F.2d 1097 (Fed. Cir. 1988); Adams v. United States, 20 Cl. Ct. 542 (1990); Adkins v. United States, 16 Cl. Ct. 294 (1989). These judicial decisions rely on the so-called “exclusivity” provision of the Civil Service Reform Act, 5 U.S.C. § 7121(a)(1), which provides that collective bargaining agreements shall include procedures for the settlement of grievances, and, with certain exceptions, these procedures shall be the exclusive procedures for resolving grievances which fall within their coverage. See Federal Register, July 14, 1992, at 57 Fed. Reg. 31272.

Comptroller General decisions and our regulations in 4 C.F.R. Part 22, which pre-dated the judicial decisions cited above, identified circumstances in which we would exercise jurisdiction over claims involving matters subject to negotiated grievance procedures, pursuant to our authority in 31 U.S.C. § 3529 to issue decisions to federal agency heads and accountable officers and our general claims settlement authority in 31 U.S.C. § 3702. However, in Cecil E. Riggs, et al., 71 Comp. Gen. 374 (1992), we held that the reasoning of Carter v. Gibbs, and the other judicial decisions cited above, applied equally with respect to GAO’s authority under 31 U.S.C. §§ 3702 and 3529.

Thus, Riggs overruled several of our prior decisions and recognized that changes were required in our regulations since we concluded therein that the negotiated grievance procedures under 5 U.S.C. § 7121(a) provide the exclusive remedy for members of a collective bargaining unit with respect to matters covered by the collective bargaining agreement. Since the effect of Riggs was to take away our jurisdiction to decide most labor relations cases arising under 4 C.F.R. Part 22, Part 22 was repealed (57 Fed. Reg. 31272, July 14, 1992).

Jurisdictional Limitation and Policy Considerations

- Constitutionality questions

A federal employee who was a member of the National Guard could not transfer 10 days of military leave from calendar year 1980 to fiscal year 1981 when legislation changed the method of granting military leave from

a calendar year to a fiscal year basis. The employee suggested that the retroactivity of that legislation divested him of the 10 days' leave in contravention of his rights under the United States Constitution. It did not appear that the retroactivity of the statute divested the employee of any right, and in any event, it is the policy of the Comptroller General not to question the constitutionality of a statute enacted by the Congress. Laurie M. Brown, B-217565, June 27, 1985.

- Statutory construction

A provision of the United States Code authorizes military leave at the rate of 15 days per year for federal employees who are members of Reserve components of the Armed Forces. On October 10, 1980, that provision was amended to change the method of granting annual military leave from a calendar year to a fiscal year basis. The amending legislation provided that it was to "take effect October 1, 1980," that is, on the first day of fiscal year 1981, or 10 days earlier than its date of enactment. The amendment must be given retroactive effect, since amending legislation may not be construed as being only prospective in its operation if it contains express language requiring retrospective application. Laurie M. Brown, B-217565, June 27, 1985.

- Criminal conflict of interest statutes

While the Comptroller General had no authority to issue formal opinions concerning the application of criminal conflict of interest statutes, no proper basis was found for generally excluding federal retirees from obtaining government contracts. Therefore, it was held that a dentist was not barred by conflict of interest considerations from providing services under contract to the Coast Guard simply because he was a retired officer of the Public Health Service. Dr. Edward Kugma, USPHS (Retired), B-215651, March 15, 1985.

- Final decisions of the Merit Systems Protection Board

A Navy employee whose employment was terminated upon being advised that he was an alien was subsequently reinstated as a result of a final decision of the Merit Systems Protection Board which ordered the cancellation of the employee's separation. The Navy asked whether its payment of backpay and continued salary to the employee incident to his reinstatement was proper. The payments were proper, since the Merit Systems Protection Board is a "proper authority" to determine that an

employee has been affected by an unjustified or unwarranted personnel action justifying backpay, and GAO would not review a final decision of the Merit Systems Protection Board. Pepe Iata, B-216285, January 24, 1985.

- Unfair labor practices

An employee claimed that his agency's refusal to allow him to perform two temporary duty assignments constituted an unfair labor practice under 5 U.S.C. § 7116, and that he was entitled to the per diem, overtime compensation, and holiday premium pay he would have received had he performed the assignments. Since the Federal Labor Relations Authority has exclusive jurisdiction to decide unfair labor practice complaints, GAO would not consider this employee's complaints. Emery J. Sedlock, B-199104, February 6, 1985.

- Civil service retirement annuity

A retired civil service employee requested that the time of his voluntary retirement be backdated from January 8 to January 3, 1983, so that he would be allowed an annuity payment for the month of January 1983. The employee suggested that his selection of January 8th as the retirement date resulted from a mistake or ignorance of the law. The Office of Personnel Management is vested with exclusive authority to adjudicate civil service retirement annuity claims. Regarding the amount of pay already paid to the claimant, there was no basis to change the employee's status as an employee on duty and on leave based on the claimant's assertion that he was not aware of the requirements of existing law. Antoni Sniadach, 64 Comp. Gen. 301 (1985).

In view of the statutory and regulatory provisions discussed above relating to our decision-making authority, formal rulings and decisions of the Comptroller General usually have been rendered only to heads of departments and agencies, disbursing and certifying officers, or to claimants who filed monetary claims with our Office. In addition there are certain areas which we held were outside of the GAO jurisdiction as the result of applicable statutory and regulatory considerations. The following examples are deemed illustrative though not exhaustive:

- Federal income tax consequences of claims settlement

In our decision B-202201, December 23, 1981, we held that while the General Accounting Office had jurisdiction to decide questions related to

the correction of errors in federal employees' payroll records and the waiver under 5 U.S.C. § 5584 of overpayments resulting from the errors, our Office has no jurisdiction to issue revenue rulings, and the income tax consequences of actions taken to correct payroll errors are primarily matters for consideration and determination by the Internal Revenue Service.

- Matters pending before other forums

In our decision 58 Comp. Gen. 282 (1979), we were asked to rule on an issue presented by the Department of Defense which was the subject of litigation in a United States district court. We stated that it is a longstanding rule that this Office will not act on matters which are in the courts during pendency of litigation, since the eventual outcome of the litigation may fully resolve the first question submitted.

- Agency grievance procedures

The General Accounting Office normally would not inquire into matters relative to an administrative grievance. We stated that matters relating to such grievances are within the jurisdiction of the agency and the Office of Personnel Management and normally would not be reviewed by the General Accounting Office. 5 C.F.R. § 771. See also B-203622, January 19, 1982; and B-202098, April 22, 1982.

- Claims involving the Federal Tort Claims Act

The Federal Tort Claims Act, 28 U.S.C. § 1346(b) and §§ 2671-2680, determines those instances in which the government is liable for torts committed by government employees. In essence, the government's potential liability extends to claims for money damages for property damage or loss or personal injury caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his employment under circumstances where the United States, if it were a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Under these statutory provisions, our Office has no jurisdiction over claims against other agencies for damages in a tort action, and therefore, no authority to consider claims under the Federal Tort Claims Act. See for example B-201773, March 4, 1981; and B-207342, June 14, 1982.

- Claims involving the United States Postal Service

The United States Postal Service, as an independent establishment in the executive branch of the federal government, has the statutory authority to settle and compromise claims by or against it. 39 U.S.C. § 401(8). Further, the Postal Service is authorized to make final settlement of all claims and litigation by or against it. 39 U.S.C. § 2008(c).

- Military Personnel and Civilian Employees' Claims Act

In B-201417, January 23, 1981, we addressed the claim of an employee concerning the loss of personal property in connection with his employment with the United States Secret Service, Department of the Treasury. We held, in effect, that the General Accounting Office is without jurisdiction to consider the claims of employees of other agencies for the loss of, or damage to, personal property under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 3721. See also 47 Comp. Gen. 316 (1967), for a decision involving civilian employees of the Department of Defense.

- Compensation for work injuries sustained by employees

The authority for payment of medical expenses of an employee injured while in the performance of duty is found at 5 U.S.C. § 8103 (1982). The Secretary of Labor, under the provisions of 5 U.S.C. § 8149, is authorized to prescribe the rules and regulations for the administration and enforcement of Subchapter I of Chapter 81, concerning compensation for work injuries. Thus, by law there is no basis under which the General Accounting Office would have jurisdiction over medical expense claims. See for example B-204324, April 27, 1982.

- Claims for civilian disability retirement

In our decision B-199913, June 30, 1981, we held that the question of whether an employee is entitled to disability retirement is within the jurisdiction of the Office of Personnel Management (OPM) which has sole responsibility for the administration of the civil service retirement system, including the authority to determine questions of disability and to adjudicate all claims arising under the retirement system. See 5 U.S.C. § 8347(a), (b), and (c). Accordingly, we had no jurisdiction to make determinations with respect to annuity entitlements as that is a matter for consideration by the OPM. In the adjudication of claims arising under

Subchapter III, Chapter 83 of Title 5, United States Code, OPM will consider and take appropriate action on counterclaims filed by the government as setoffs against amounts in the Civil Service Retirement and Disability Fund.

- Position classification issues

Because statutory authority to establish appropriate classification standards and to allocate positions subject to the General Schedule rests with the agency concerned and OPM, we held that GAO has no authority to settle claims on any basis other than the agency or OPM classification. B-181303, June 2, 1975. And, we held that since OPM determinations on classification appeals are binding on all accounting officials under 5 U.S.C. § 5112(a), GAO has no authority to modify such actions. B-183120, February 21, 1975. See also B-196824, May 12, 1980. See also William A. Lewis, B-216575, March 26, 1985.

- Discrimination complaints

Where employees alleged unequal treatment with respect to personnel entitlements between themselves and other agency employees, we held that complaints alleging discrimination are for resolution under the agency's procedures for Equal Employment Opportunity cases rather than by the Comptroller General. See B-196019, April 23, 1980; and B-193834, June 13, 1979. See also Albert D. Parker, 64 Comp. Gen. 349 (1985).

Moreover, we have stated that, with respect to the allegation of discrimination, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16, governs the claims of civilian employees of the United States who believe they are the victims of illegal discriminatory employment practices. It is not within GAO's jurisdiction to conduct investigations into and render decisions on allegations of discrimination in employment. See B-206919, April 15, 1982; and B-198571, April 6, 1982. See also, Brown v. General Services Administration, 425 U.S. 820 (1976).

- Res judicata

An employee sought a Comptroller General decision on his entitlement to salary retention. The General Accounting Office adheres to the doctrine of res judicata to the effect that the valid judgment of a court on a matter is a bar to a subsequent action on that same matter before the General Accounting Office. 47 Comp. Gen. 573 (1968). Since a court had previously

decided that the employee was not entitled to saved pay benefits, the General Accounting Office would not consider his claim for salary retention. William C. Ragland, 62 Comp. Gen. 399 (1983).

- Foreign Service Grievance Board

An employee of the Agency for International Development (AID) filed a grievance with the Foreign Service Grievance Board under former 22 U.S.C. § 1037a, for credit of unused sick leave earned while he was employed by a United Nations agency. The Board found for the employee. An AID certifying officer thereafter submitted the case to the General Accounting Office for review and decision. Under former 22 U.S.C. § 1037a(13), the decisions of the Board are final, subject only to judicial review in the District Courts of the United States. Therefore, the General Accounting Office had no jurisdiction to review the Board's decision. Pierre L. Sales, 62 Comp. Gen. 671 (1983). Although the Foreign Service Act of 1980, Pub. L. No. 96-465, § 2205(1), 94 Stat. 2071, 2159 (1980), repealed these provisions effective February 15, 1981, similar provisions now are in 22 U.S.C. §§ 4135-4137.

Payment of Interest on Claims

The payment of interest by the government on its unpaid accounts or claims may not be made except when interest is stipulated for in legal and proper contracts, or when allowance of interest is specifically directed by statute. See for example, Fitzgerald v. Staats, 578 F.2d 435 (D.C. Cir. 1978). For a comprehensive discussion of the payment of interest in regard to employee claims, see Principles of Federal Appropriations Law, Second Edition, published by the Office of General Counsel, United States General Accounting Office. However, the Back Pay Act, as amended by Pub. L. No. 100-202, now provides for the payment of interest on awards under that act. See 5 U.S.C. § 5596(b)(2).

Estoppel Against the Government

It is unfortunate when employees receive erroneous advice or are erroneously authorized certain allowances which in fact are not reimbursable. However, it is a well settled rule of law that the government is not estopped from repudiating erroneous advice and authorizations of its officials, and any payments made on the basis of such erroneous advice or authorizations are recoverable by the government. 56 Comp. Gen. 131 (1976) and cases cited therein. Thus, the fact that agency personnel may have been responsible for the erroneous certification of a voucher does not provide a basis to relieve a claimant from the obligation to refund the

amount overpaid. This follows from the fact the government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations. See 54 Comp. Gen. 747 (1975) and case precedents cited therein.

The above rule cannot be circumvented by invoking principles of contract law. Since federal employees are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply. See 56 Comp. Gen. 85 (1976) and decisions cited therein. See also B-195654, November 27, 1979, involving a claim for backpay in connection with an appointment action wherein we stated that employee's alternative claim for contractual delay damages is denied since an offer of public employment does not give rise to a contractual relationship in the conventional sense. See also Riva Fralick, et al., 64 Comp. Gen. 472 (1985); and Herman Rosado and Sonia M. Terron, B-216343, March 4, 1985.

In 56 Comp. Gen. 85, cited above, we rejected the claimant's arguments that the doctrine of equitable estoppel applied to the circumstances of his travel and transportation claim.

The well-established principle that the government cannot be estopped by the erroneous advice of its employees was affirmed by the Supreme Court in Schweiker v. Hansen, 450 U.S. 785 (1981). In that decision the Supreme Court admonished all courts to observe the conditions defined by Congress for charging the public treasury. See also Dorcas Terrien, B-218675, October 31, 1985; and Jay L. Haas, B-215154, November 29, 1984. This principle was reaffirmed by the Supreme Court in Office of Personnel Management v. Charles Richmond, 496 U.S. 414 (1990).

Waiver of Claims of the United States Arising Out of Erroneous Payments

Certain claims of the United States arising out of erroneous payments of pay and allowances or travel, transportation or relocation expenses and allowances may be waived under the provisions of 5 U.S.C. § 5584 when collection would be against equity and good conscience and not in the best interests of the United States. Effective December 18, 1996, the Comptroller General's authority under this statute to prescribe standards for waiver and make determinations on requests for waiver was transferred pursuant to section 103, Public Law 104-316, in most cases to the agency that made the erroneous payment. [For a discussion of this transfer of authority, see the editor's note regarding "Decisions and

Waivers” under “GAO’s Authority to Issue Decisions and Settle Claims,” on page —.]

Part II

GAO Research Materials and Facilities

- GAO Civilian Personnel Law Manual

GAO’s Civilian Personnel Law Manual provides an overview of the decisions of the Comptroller General in the area of civilian personnel law.

- GAO research facilities

Full-text decisions, from which the Civilian Personnel Law Manual is derived, are maintained in manuscript volumes in the GAO Law Library at GAO Headquarters. A citator system for all published and unpublished decisions of the Comptroller General, through September 1994, is also located in the law library.

- Comptroller General decisions

To obtain copies of decisions, call (202) 512-6000, TDD (202) 512-2537 [or fax requests to (301) 258-4066]. Copies will be mailed or may be picked up at Room 1100, GAO Headquarters, 700 4th Street, N.W., Washington, D.C. 20548.

Unpublished decisions are cited by both the B-number and the date, e.g., B-255066, September 30, 1993. Published decisions are cited by volume and page, e.g., 73 Comp. Gen. 338 (1994).

Comptroller General decisions may be researched on several electronic research systems, including the government’s FLITE system, and the commercial Westlaw and Lexis systems.

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000 or by using fax number (202) 512-6061, or TDD (202) 512-2537.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

<http://www.gao.gov>

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested

