

DECISION

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

7879

FILE: B-191388

DATE: October 3, 1978

MATTER OF: Richard C. Clough - Claim of Backpay for Detail
and Wrongful Classification

DIGEST: Employee of Federal Aviation Administration alleges he was detailed to a higher grade position from July 1968 to July 1969. Employee's claim is barred by the statute of limitation which precludes consideration of a claim not received in our Office within 6 years after the date first accrued. Claim accrues on the date services in question were performed, not on the date that Turner-Caldwell was decided.

This action concerns an appeal by Richard C. Clough from the denial by our Claims Division of his claim for a retroactive promotion and backpay between grades GS-14 and GS-15, from July 26, 1968, to July 7, 1969.

The record shows that Mr. Clough first filed claim for backpay with General Accounting Office (GAO) by letter dated May 28, 1976, received June 2, 1976. Our Claims Division denied this claim on the grounds that since it was not received in GAO within 6 years after the date it first accrued, the claim was barred by the statute of limitations of 31 U.S.C. 71a (Supp. V, 1975).

Mr. Clough requested reconsideration on the ground that his claim was timely filed because it first accrued on December 5, 1975, as the result of our decision in the Matter of Turner-Caldwell, 55 Comp. Gen. 539 (1975), and 34 Comp. Gen. 605 (1955). The Claims Division advised Mr. Clough that on reconsideration his claim was again denied as not timely filed.

Mr. Clough has appealed the settlement of the Claims Division, specifically requesting a decision as to the meaning of the phrase the "date the claim first accrued" with respect to a claim for backpay under 5 U.S.C. 5596 (1976). For the following reasons, we find that in this context, the "date the claim first accrued" refers to the date on which the work in question was performed.

In our decision, Matter of Marie Grant, 55 Comp. Gen. 785 (1976), we ruled that the Turner-Caldwell criteria for promotion and backpay applied retroactively to extended details to higher-grade positions, but only to claims filed within the 6-year period applicable to claims cognizable by

our Office, as specified in 31 U.S.C. 71a. In subsequent cases involving claims for retroactive promotion and backpay for details which took place prior to the date of the Turner-Caldwell case we have uniformly calculated the 6-year period, for the purposes of the running of the above-cited statute of limitation, from the date of the actual performance of the work. Moreover, in cases in which we have granted backpay pursuant to Turner-Caldwell, we excluded from computation that period of the detail which occurred more than six years prior to the date on which the claim was received in our Office. See Matter of Sam Friedman et al., B-189690, February 16, 1978; Matter of Freddie L. Baker, B-190841, February 15, 1978; and Matter of Donald B. Sylvain, B-190851, February 15, 1978.

It is apparent that in cases similar to that of Mr. Clough we consider the date of performance of the work to be the date of accrual of the claim. This interpretation is suggested by our decision in Marie Grant. If Mr. Clough's reasoning were correct, then all similar claims based on retroactive application received in our Office after Turner-Caldwell would accrue on December 5, 1975, and all would become barred on the same date, six years later. We did not so hold in the Marie Grant case, rather we stated simply that such claims would be subject to the usual 6-year statute of limitation.


Mr. Clough asserts that our decisions 50 Comp. Gen. 607, supra, and 34 id. 605 support his reasoning. In 50 Comp. Gen. 607, and 34 id. 605, we considered situations in which an agency determination of the validity of the claim was statutorily required in order for the claim to be payable. Under those circumstances, we held that the claim does not accrue, for purposes of the running of the statute of limitations, until a determination of the validity of the claim by a designated agency. Our decision in Turner-Caldwell, constitutes no such administrative determination of the validity of Mr. Clough's claim. Accordingly the holdings in 50 Comp. Gen. 607, and 34 id. 605, are not applicable to the circumstances in Mr. Clough's case.

In 29 Comp. Gen. 517 (1950) we held that for the purpose of computing the statute of limitations for claims filed in our office: "the date of accrual of the right which now is asserted * * * was the particular [day] on which the services for which extra compensation * * * is claimed were rendered." This interpretation rebuts the claimant's contention that the date of accrual did not occur until a later time, i.e., the day on

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which the government refused to pay for the services rendered. This reasoning obviously supports the position of the Claims Division in the instant case, and Mr. Clough's reliance on this case for support is misplaced.

Accordingly, the Claims Division properly determined that Mr. Clough's claim accrued on the dates of his detail. Since it was filed more than six years later, the claim is barred, and the action of the Claims Division is sustained.


Deputy Comptroller General
of the United States