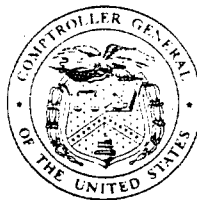


DECISION

J. J. Mitchell
THE COMPTROLLER GENERAL *PKM II*
OF THE UNITED STATES
WASHINGTON, D.C. 20548 *6AD pp 412*

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FILE: B-190841

DATE: December 27, 1978

MATTER OF: Freddie L. Baker - [Claim for retroactive compensation]

DIGEST: Claim for retroactive compensation by employee was not timely forwarded to this Office by the agency and as a result was barred from consideration under 31 U.S.C. 71a since it was not received in this Office within 6 years from the date it first accrued. Failure of the agency to forward the claim to this Office may not be construed as an unjustified or unwarranted personnel action under 5 U.S.C. 5596, so as to give rise to a new claim which would not be barred by 31 U.S.C. 71a.

This action is in response to a letter from the Controller of the Veterans Administration, which in effect requests reconsideration of our decision B-190841, February 15, 1978. We affirm that decision for the following reasons.

On June 22, 1976, Mr. Freddie L. Baker filed a claim addressed to the General Accounting Office with the Veterans Administration for backpay incident to an extended detail from a GS-9 position to GS-11 position during the period October 10, 1969, to January 31, 1971. Mr. Baker's claim was held in the agency and was not received in this Office until May 23, 1977.

The act of October 9, 1940, 54 Stat. 1061, as amended by section 801 of the General Accounting Office Act of 1974, approved January 2, 1975, Public Law 93-604, 31 U.S.C. 71a, precludes the consideration of any claim not received in that Office within 6 years after the date that claim first accrued. Thus, Mr. Baker's claim was barred from consideration since no part of the period involved in the claim was received in the General Accounting Office within 6 years.

In the decision of February 15, 1978, we pointed out that the filing of a claim with an administrative office does not meet the requirements of the act. We also noted the General Accounting Office is without authority to waive or modify the provisions of 31 U.S.C. 71a.

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The Controller of the Veterans Administration now requests reconsideration of the decision basing his request on the view that action of the Veterans Administration in not forwarding Mr. Baker's claim to this Office in a timely fashion constituted an unwarranted or unjustified personnel action which justifies backpay.

Presumably, the above reference to unwarranted or unjustified personnel action contemplates remedial action under 5 U.S.C. 5596 (1976), the Back Pay Act, and therefore would provide a basis for paying Mr. Baker's claim because of the failure of the Veterans Administration to forward his claim in a timely fashion to this Office.

The Back Pay Act, 5 U.S.C. 5596, authorizes the payment of any pay, allowances, or differentials lost by an employee during a period covered by an unjustified or unwarranted personnel action. However, the employee must be found to have undergone the unjustified or unwarranted personnel action on the basis of an administrative determination or timely appeal by an appropriate authority.

Regulations promulgated by the Civil Service Commission in connection with the Back Pay Act are found at 5 C.F.R. 550.801, et seq. Subsection 550.802(c) defines an unjustified or unwarranted personnel action as follows:

"(c) 'An unjustified or unwarranted personnel action' means an act of commission (i.e., an action taken under authority granted to an authorized official) or of omission (i.e., nonexercise of proper authority by an authorized official) which it is subsequently determined violated or improperly applied the requirements of a nondiscretionary provision, as defined herein, and thereby resulted in the withdrawal, reduction, or denial of all or any part of the pay, allowances, or differential, as used here, otherwise due an employee. The words 'personnel action' include personnel actions and pay actions (alone or in combination)."

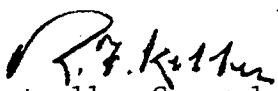
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As can be seen the failure of an agency to forward a claim to this Office was not intended to be construed as an "unjustified or unwarranted personnel action" under the law or the regulations, nor does this Office construe such action to be a personnel action.

Any claim for backpay that Mr. Baker had concerning the detail to a higher graded position began to accrue at the time his detail exceeded the limitations prescribed in the regulations. The failure to forward his claim to this Office by the agency does not give rise to any new claim which would not be barred by 31 U.S.C. 71a.

While we can appreciate the concern of the Veterans Administration for the interests of its employees, this Office has no authority to waive or modify the provisions of 31 U.S.C. 71a.

Accordingly, we must affirm the decision of February 15, 1978.


Acting Comptroller General
of the United States