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DECISION



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

FILE: B-218902

DATE: August 1, 1985

MATTER OF: Lieutenant Colonel Oran S. Emrich, USAFR

DIGEST:

A retired service member requested by letter dated April 4, 1972, that payment of his retired pay be held in suspense until further notification. In 1984 he asked that the retired pay which was being held be paid to him. His claim was received in the General Accounting Office on March 2, 1984. The claim for the period March 3, 1978, through February 29, 1984, was paid but pay for the prior period must be denied since 31 U.S.C. § 3702(b)(1) bars payment of any claim not received in the General Accounting Office within 6 years from the date it accrues.

The issue is whether 31 U.S.C. § 3702(b), which precludes consideration of a claim not received by the Comptroller General within 6 years from the date it accrues, bars a retired service member's 1984 claim for military retired pay accruing from May 1, 1972, through March 2, 1978. We conclude that the payment is barred.

Lieutenant Colonel Oran S. Emrich, a retired member of the United States Air Force Reserve, requests reconsideration of his claim for retired pay accruing prior to March 3, 1978, which was denied by our Claims Group.

Colonel Emrich began receiving retired pay on March 21, 1971. On April 4, 1972, he asked the Air Force Accounting and Finance Center to hold his pay in abeyance until further notice. The Air Force withheld his pay from May 1, 1972, through February 29, 1984. Colonel Emrich requested disbursement of his accrued retired pay; when received by the Air Force the request was taken to and recorded in the General Accounting Office on March 2, 1984, because of the time limitations involved. The Air Force paid him \$46,534.27, after deductions, for the 1978 to 1984 period, but denied

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payment for the period prior to March 3, 1978, because the claim was not filed with the General Accounting Office within 6 years of the date it accrued. Our Claims Group affirmed this denial.

Colonel Emrich asserts his claim should be paid because he was assured that his backpay would be safe and he could draw it at any time. He contends that the Air Force should have notified him that 31 U.S.C. § 3702(b) would bar his 1972 to 1978 claim after 6 years. He also argues that denial of his claim is inconsistent with congressional intent in passing the statute.

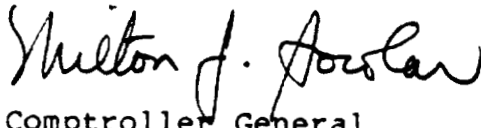
Subsection 3702(b)(1) of title 31, United States Code, provides that the Comptroller General must receive a claim within 6 years after the claim accrues. We have consistently held that compliance with the 6-year statute of limitations is a condition precedent to the right to have a claim considered. See Matter of Truong, 64 Comp. Gen. 155 (1984).

The purpose of the act is to relieve the Government of the need to retain and go back over old records for the purpose of settling old claims. No matter how meritorious a claim may be, we have no authority to waive the provisions of the statute or to make exceptions to the time limit. 32 Comp. Gen. 267 (1952). In this regard, we have held in cases very similar to this one where the retired member requested the finance office to hold his retired pay that the barring act applied. See B-159543, August 24, 1966, and B-176359, August 10, 1972.

Air Force personnel may have incorrectly assured Colonel Emrich that his pay could be claimed at any time. However, unfortunate as this may be, the United States is not liable for negligent or erroneous acts of its officers, agents, or employees, even if committed in the performance of their official duties. Federal Crop Insurance Corporation v. Merrill, 322 U.S. 380 (1947),

and Posey v. United States, 449 F.2d 228, 234 (1971). Colonel Emrich's lack of knowledge of the law does not affect its operation.

Military retired pay accrues daily. Thus, any claim for retired pay which accrued more than 6 years prior to the date Colonel Emrich's claim was received in this Office, March 2, 1984, may not be considered. Accordingly, the Claims Group settlement is sustained.

for 
Comptroller General
of the United States