



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

Office of the General Counsel

B-193927

June 12, 1987

Dear [redacted] :

This is in response to your letter of May 19, 1987, seeking advice on several questions relating to judgments under Title VII of the Civil Rights Act of 1964, as amended.

You first refer to one of our decisions, 59 Comp. Gen. 259 (1980), concerning post-judgment interest. To fully understand what we were saying, that decision should be read in conjunction with a 1978 decision, 58 Comp. Gen. 67. Both decisions construe a statute which restricts interest on certain judgments against the United States to cases in which the United States has appealed, and then only from the date the plaintiff files a copy of the judgment with the General Accounting Office to the "mandate of affirmance." At the time of our decisions, the statute was found at 31 U.S.C. § 724a. Title 31 of the United States Code was recodified in 1982, and the interest provision is now found at 31 U.S.C. § 1304(b).

Both cited decisions recognized that the purpose of the interest provision is to compensate a successful plaintiff for delay in receiving payment occasioned by an appeal by the United States. Consistent with this purpose, the 1978 decision held that the requirement for a "mandate of affirmance" is satisfied where an appeal by the United States is withdrawn or dismissed. The 1980 decision took this one step further and held that the appeal, for purposes of what is now 31 U.S.C. § 1304(b)(1), did not have to be an appeal from the merits of the underlying judgment, but could be an appeal on a collateral issue.

The statutes governing interest on judgments against the United States were revised somewhat in 1982. However, the provision discussed above did not at the time of your case nor, as the courts have held, does it now, apply to judgments under Title VII of the Civil Rights Act. In a recent case, Thompson v. Kennickell, 797 F.2d 1015 (D.C. Cir. 1986), the Court of Appeals for the District of Columbia Circuit reviewed the interest statutes both before and after the 1982 amendments, and held that there is no authority to

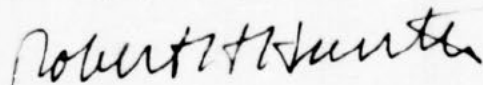
award interest on a Title VII judgment against the United States. A related case is the Supreme Court's decision in Library of Congress v. Shaw, U.S. , 54 U.S.L.W. 4951 (1986), in which the Court held that there is no authority for interest on an award of attorney's fees against the United States under Title VII. Both cases started from the long-established rule that interest may not be recovered against the United States unless it has been expressly authorized, and found that the required statutory authority did not exist.

Since the United States is not liable for interest unless expressly authorized, and since the requisite authority does not exist with respect to Title VII actions, it would make no difference whether we are talking about an administrative award paid directly by the employing agency or a judicial award paid on certification by the General Accounting Office. The time period covered by the award would also have no bearing.

Your final question is whether a Title VII monetary award may be designated as damages rather than back pay. The simple answer is yes, and we have seen this done on occasion. As to possible tax consequences, you may be interested in a 1975 decision of the United States Tax Court, Hodge v. Commissioner, 64 T.C. 616.

For convenience, we are enclosing copies of the various decisions cited in this letter. We hope this information is helpful.

Sincerely yours,



Robert H. Hunter
Assistant General Counsel

Enclosures