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R. Neil Metcalf

Mil. Pers.

DECISION



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

FILE: B-187084

DATE: OCT 22 1976

MATTER OF: Sergeant Donald G. Leska, USA, Retired

DIGEST: Claim for retroactive adjustment of military retired pay received in the General Accounting Office on January 8, 1976, may not be considered for payment for the period prior to January 8, 1970, since act of October 9, 1940, as amended, prohibits consideration of any part of claim presented to this Office that accrued more than 6 years before the date the claim was first received here.

This action is in response to a letter dated July 6, 1976, from Sergeant Donald G. Leska, USA, Retired, which, in effect, requests reconsideration of a settlement dated May 13, 1976, by our Claims Division, which allowed retroactive adjustment in retired pay in the amount of \$12,884.58 for the period January 8, 1970, through January 31, 1976, but barred his claim for such pay for the period prior to January 8, 1970, pursuant to the provisions of the barring act.

The member contends that he should have been paid all unpaid retired pay entitlements for 10 years preceding March 31, 1975, the date of a request he received from the U.S. Army Finance Support Agency (now U.S. Army Finance and Accounting Center) to complete and return to that activity in order to establish his eligibility for adjustment of retired pay. He further contends that he is without fault for the delay resulting in his claim being received in the General Accounting Office subsequent to July 2, 1975, the effective date of the change from 10 to 6 years in the statute of limitations for bringing claims against the United States.

The record shows that on November 24, 1975, Sergeant Leska was notified by the United States Finance and Accounting Center, Indianapolis, Indiana, that an examination of his retired pay account revealed that he had been underpaid retired pay due to reduction in benefits from the Veterans Administration (VA) and

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that such underpayment had existed since June 2, 1953. Computation of the unpaid retired pay for the period June 2, 1953, through October 31, 1975, amounted to \$24,429.73. He was also notified therein that he could claim retired pay due by indorsing and returning the original of his notification letter with his claim to the Finance Center. His claim which was signed and dated November 29, 1975, was received by the Finance Center on December 2, 1975, but was not received in the General Accounting Office until January 8, 1976.

In the May 13, 1976 settlement, it was determined that the act of October 9, 1940, 54 Stat. 1061, 31 U.S.C. 71a, 237 (1970), as amended by Title VIII of Public Law 93-604, approved January 2, 1975, 88 Stat. 1965, was applicable to Sergeant Leska's claim, barring consideration of that portion of his claim which accrued prior to January 8, 1970.

That act provides in pertinent part:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued * * *" (Emphasis supplied.)

The limitation prescribed by the act of October 9, 1940, supra, upon the consideration of claims by this Office provides as a condition precedent to the right to have the claims considered by the General Accounting Office that such claims be "received in said office" within the 6-year period. This Office is without authority to waive any of the provisions of the act or make any exceptions to the time limitation imposed thereby. While it is evident that the member filed his claim with the Finance Center in November 1975, such filing does not in any way affect the operation of the 1940 act to claims against the Government which are to be adjusted and settled in this Office. See 32 Comp. Gen. 267 (1952) and 42 Comp. Gen. 337 (1963).

The record shows that the member's claim for retroactive retired pay was first received here January 8, 1976. Since military retired pay accrues from day to day, those portions

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which accrued more than 6 years prior to the date of the filing of his claim here are barred. Compare Gordon v. United States, 134 Ct. Cl. 840 (1956).

Accordingly, the action taken by our Claims Division is correct and is sustained.

R.F. KELLER

(Deputy) Comptroller General
of the United States