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**DECISION**



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

**FILE: B-191693**

**DATE: May 15, 1978**

**MATTER OF: Joe N. Brown - Combat pay**

**DIGEST:** This claim is subject to the 10-year limitation of the act of October 9, 1940, 31 U.S.C. 71a. Since the member was discharged from the Army on October 2, 1952, and since the claim was not presented to the General Accounting Office until June 1, 1964, it is barred.

This action is in response to a letter from Joe N. Brown, 34 Stevens Street, Buffalo, New York 14215, requesting reconsideration of a settlement by our Claims Division dated June 19, 1964, which disallowed his claim for combat pay believed due incident to his service in the United States Army during the Korean War.

The record indicates that Mr. Brown's claim for additional combat pay was first received in the General Accounting Office on June 1, 1964, more than 10 years after his discharge from the Army on October 2, 1952. On June 19, 1964, a settlement was issued by the Claims Division of this Office informing the claimant that since his claim was first received in the General Accounting Office more than 10 years after it first accrued, it was barred by the act of October 9, 1940, 54 Stat. 1061, and that we are therefore, not authorized to take any further action thereon. Further inquiry about Mr. Brown's claim was made on July 10, 1967, by the Disabled American Veterans, to which the Claims Division responded on July 26, 1967. Mr. Brown wrote to the Army Finance and Accounting Center on October 31, 1977, in further reference to his claim, which letter was forwarded to us for consideration.

The act of October 9, 1940, c. 788, 54 Stat. 1061, 31 U.S.C. 71a (1970) provided in pertinent part that every claim or demand against the United States cognizable by the General Accounting Office (with certain exceptions not applicable here) must be received in the General Accounting Office within 10 full years after the date it first accrues, or it is forever barred. The limitation was reduced to 6 years by the act of January 2, 1975, Pub. L. 93-604, 88 Stat. 1965. In that connection it is noted that section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, October 17, 1940, ch. 888, 54 Stat. 1181, as amended,

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50 U.S.C. App. 525 (1970), excludes periods of military service in computing any period of limitations provided by law for filing claims against the Government. Thus, the limitation in 31 U.S.C. 71a begins to run against service members on the day of separation from the service with respect to claims which arose during military service.

The barring act, 31 U.S.C. 71a, *supra*, further provides that whenever any claim so barred shall be received in the General Accounting Office, it shall be returned to the claimant, with a copy of the act, and such action shall be a complete response without further communication. It can be seen that the above-cited statute limits the action this Office is authorized to take in connection with such claims.

While Mr. Brown has furnished copies of letters showing that he filed a claim with the Department of the Army prior to the expiration of the 10-year period such filing may not be considered as compliance with the above-cited act, which requires that claims must be timely filed in the General Accounting Office. The filing of a claim with the Army did not constitute compliance with the filing requirements of the barring act.

Additionally, it is noted that over 10 years have elapsed since the last inquiry was made on this matter. The file discloses that a letter dated July 10, 1967, was received from the Disabled American Veterans on the claimant's behalf inquiring about the claim. This Office responded to that correspondence on July 26, 1967. No further inquiry was had until claimant's letter of October 31, 1977. While the burden of proof as to the validity of a claim against the United States, generally, is on the person asserting such claim, information as to its existence is usually found in records maintained by the Government. However, it has been long established that where, as in the present case, a claimant has failed to make inquiry concerning a claim for a protracted period of time, the General Accounting Office has uniformly disallowed the claim. See B-187523, November 9, 1976, and B-190599, December 9, 1977.

Accordingly, the action previously taken by our Claims Division disallowing the claim is sustained.

  
Deputy Comptroller General  
of the United States