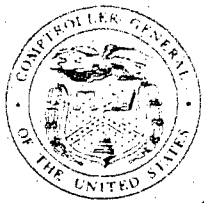


Gibson
PLM 1/4/82

DECISION



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

[Untimely Filing of Claim for Backpay]

FILE: B-199521

DATE: August 19, 1980

MATTER OF: Herbert M. Pollock

DIGEST: Social Security Administration employee filed with agency on December 26, 1978, a claim for backpay incident to extended detail to higher-grade position from May 14 to September 16, 1973. Claim was not received in General Accounting Office until September 12, 1979. Claim is barred for period before September 12, 1973, since 31 U.S.C. § 71a provides that every claim cognizable by GAO is barred forever unless it is received in GAO within 6 years after date claim accrued. Filing claim with administrative agency does not meet requirement of barring act even where delay at agency level is fault of agency, not employee.

This decision is in response to a request by Mr. Thomas S. McFee, Assistant Secretary for Personnel Administration, Department of Health and Human Services, for review of the action of the Social Security Administration (SSA) which informed Mr. Herbert M. Pollock that his claim for backpay incident to an extended detail to a higher-grade position was barred in substantial part because it was not timely filed with our Office.

On May 14, 1973, Mr. Pollock, then a grade GS-13 in SSA, was detailed by his supervisor to assume the duties of Supervisory Social Insurance Specialist, GS-14. Mr. Pollock performed the higher-level duties until he was officially promoted to grade GS-14 on September 16, 1973.

On December 26, 1978, Mr. Pollock filed a claim with SSA for a retroactive promotion and backpay for the period he was detailed to the GS-14 position. Due to an administrative oversight, SSA did not register the claim with our Office to toll the 6-year statute of limitations until September 12, 1979. On October 5, 1979, SSA determined that Mr. Pollock met the statutory and regulatory requirements for promotion and that his detail to the higher grade exceeded the 60-day period permissible under the SSA Headquarters Merit Promotion Plan. Although SSA granted Mr. Pollock a retroactive temporary promotion for the period September 12 through September 15, 1973, the agency disallowed his claim for the period July 13 through September 12, 1973, on the basis that this portion of the claim was time barred.

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Mr. McFee's request for action by our Office is based on his belief that it is unfair to penalize Mr. Pollock for the agency's failure to register the claim with our Office within the 6-year time limit prescribed by 31 U.S.C. § 71a. In this regard, Mr. McFee has forwarded to us a memorandum prepared by Mr. Pollock in which he asserts that the submission of his claim to SSA operated to toll the statute of limitations. In support of his position, Mr. Pollock argues that since our Office has delegated its claims settlement authority under 31 U.S.C. § 71 to administrative agencies by authorizing these agencies to determine employees' entitlement to back-pay, consistency requires that we construe 31 U.S.C. § 71a to allow tolling of the statute of limitations when the claim is filed with the adjudicating agency.

Section 71a of title 31, United States Code, explicitly bars claims which are not received in the General Accounting Office within 6 years after the date they first accrue. We have consistently held that the filing of a claim with another Federal agency does not satisfy the requirements of section 71a and does not stop the running of this barring act. Russell T. Burgess, B-195564, September 10, 1979; Donald B. Sylvain, B-190851, February 15, 1978. We have taken this position even where, as here, the delay at the agency level was the fault of the agency, not the employee. James C. Payne, B-191801, October 20, 1978; Freddie L. Baker, B-190841, February 15, 1978. Therefore, we agree with SSA that the 6-year bar must be applied from the time Mr. Pollock's claim was received here, September 12, 1979, not the date it was filed with SSA.

While we agree with Mr. Pollock that many claims against the United States are adjudicated by the administrative agencies, we point out that GAO still retains overall settlement authority. Our Office audits transactions after payment, settles accounts of accountable officers, and entertains claims filed directly by employees, as well as appeals following denial of claims by the agencies. See GAO Policy and Procedures Manual, title 4, chapter 1, section 3 (1978). This reservation of authority together with the specific language of 31 U.S.C. § 71a requiring the claim to be filed in the General Accounting Office and numerous decisions supporting this position (e.g., 53 Comp. Gen. 148, 154 (1973) and 42 Comp. Gen. 337, 339 (1963)) militate against a change of construction of 31 U.S.C. § 71a.

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Although we agree with the determination made by SSA, we note that the agency should have forwarded Mr. Pollock's claim to this Office in a more timely manner so that a portion thereof would not have been barred. In this regard, we refer to section 7.1 of title 4 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies which provides that claims which accrued 4 years prior to receipt by agencies should immediately be forwarded to this Office.



For the Comptroller General
of the United States