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DECISION



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

FILE: B-214533

DATE: July 23, 1984

MATTER OF: Sherwood T. Rodrigues - Claim for
Overtime and Travel Expenses

DIGEST:

1. A former employee of the Federal Home Loan Bank Board claims entitlement to travel and other overtime compensation during calendar years 1969, 1970, and 1971. The claims, which were apparently filed with his agency in 1972, were not received in the General Accounting office until February 15, 1977. Therefore, that portion of the claims arising before February 15, 1971, may not be considered since 31 U.S.C. § 3702(b)(1) (1982) (formerly 31 U.S.C. § 71a), bars consideration of a claim presented to GAO more than 6 years after the date the claim accrued. Further, filing with an administrative office does not satisfy the requirement of the barring act. Frederick C. Welch, 62 Comp. Gen. 80 (1982).

2. A former employee of the Federal Home Loan Bank Board claims entitlement to travel and other overtime compensation for calendar year 1971. The claim which was received in the General Accounting Office on February 15, 1977, is not barred from consideration for the period after February 15, 1971. However, the claim is disallowed since, in the intervening period between the performance of the duty claimed and the date the claim was presented to GAO for consideration, the records necessary to establish or refute the claim have been lost or destroyed. In the absence of such government records, the burden of proof is on the claimant, and he has not furnished any documentation of his entitlement to payment.

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This decision is in response to a letter from Mr. Sherwood T. Rodrigues, appealing a settlement by our Claims Division which disallowed his claims for additional compensation for travel and other overtime during calendar years 1969 and 1970. The disallowance was based on the provisions of the barring act, as amended, 31 U.S.C. § 71a (1976).

Mr. Rodrigues did not specifically state in his letter the basis upon which his appeal is made. However, upon reviewing the entire file, it appears that his basis is the assertion that since he had filed his claims with his employing agency, the Federal Home Loan Bank Board, in 1972, the claims were timely filed for the purpose of the barring act. We disagree.

The law governing these matters is contained in 31 U.S.C. § 3702(a) (1982) (formerly 31 U.S.C. § 71), which provides that all claims against the United States shall be adjusted and settled in the General Accounting Office. In conjunction with that provision, 31 U.S.C. § 3702(b)(1) (1982) (formerly 31 U.S.C. § 71a), requires that every claim which is to come before this Office must be received here within 6 years after the date such claim first accrued.

Under these provisions, we have always considered receipt of a claim here as constituting a condition precedent to a claimant's right to have such claim considered on its merits by this Office. Furthermore, filing a claim with any other government agency does not satisfy the requirement of the act. Frederick C. Welch, 62 Comp. Gen. 80 (1982). With regard to what constitutes accrual of a claim on pay questions, we have held that such accrual is the date the service was rendered for which the compensation is claimed and that the claim accrues on a daily basis. 29 Comp. Gen. 517 (1950); and Burke and Mole, 62 Comp. Gen. 275 (1983). We are also without authority to waive or modify the application of 31 U.S.C. § 3702.

Our file shows that the earliest correspondence from Mr. Rodrigues concerning his claims for 1969 and 1970 was received here on February 15, 1977. Therefore, any claims which he had for unpaid compensation for travel or other

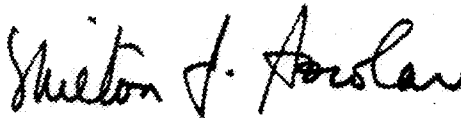
overtime prior to February 15, 1971, are forever barred from our consideration. The action of our Claims Division so barring those claims is sustained.

However, we noted on review of the file that the correspondence from Mr. Rodrigues received here on February 15, 1977, also referred to a claim for travel and other overtime compensation during calendar year 1971. Therefore, any claim which he might have for the period on and after February 15, 1971, would not be so barred.

Upon discovery of that claim for calendar year 1971, we wrote to the agency and requested all documents and records pertaining to the claim. By letter dated May 18, 1984, the agency advised that Mr. Rodrigues' last employment with the agency was in 1972, and that the agency does not maintain payroll records beyond 3 years. Further, the agency does not have any collateral documents relating to the overtime work claimed by Mr. Rodrigues, nor was the agency able to supply us with any relevant time and attendance records. Thus, it appears that since Mr. Rodrigues' employment terminated in 1972, such records as existed are no longer available for our examination.

The burden of proof as to the existence and nonpayment of a valid claim against the government is on the person asserting the claim. 4 C.F.R. § 31.7 (1984). Ordinarily, proof of the validity of a claim can be found in government records. However, in situations such as this where the records necessary to establish or refute a claim are no longer available and the claimant fails to provide proof of entitlement and nonpayment, we have no alternative but to disallow that claim. Richard B. Knight, B-187523, November 9, 1976.

Accordingly, that portion of Mr. Rodrigues' claim which is asserted for the period after February 15, 1971, is also denied.

for 
Comptroller General
of the United States