



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Royelynn Warren, et al. - Per Diem and Mileage
Claims - Six-Year Barring Act

File: B-232309

Date: August 14, 1989

DIGEST

1. Seven employees of the Forest Service claim per diem and other temporary duty expenses based on our decision in Mason E. Richwine, B-224811, Sept. 25, 1987. Since these seven claims were first received here on August 16, 1988, they are time-barred with respect to the period prior to August 16, 1982. 31 U.S.C. § 3702(b) (1982).

2. Erroneous payments of per diem and mileage allowances to eight other Forest Service employees for periods more than 6 years prior to the date their claims were received by the General Accounting Office may be subject to waiver. See 5 U.S.C. § 5584 (Supp. IV 1986).

DECISION

This decision is in response to a request from the Forest Service, U.S. Department of Agriculture, concerning the claims of seven employees for per diem, mileage, and miscellaneous expenses.^{1/} For the reasons that follow, we hold that these claims are limited to a period of 6 years prior to the date received in our Office.

The claims of these seven employees are based upon our decision in Mason E. Richwine, B-224811, Sept. 25, 1987, where we allowed per diem and other expenses to a Forest Service employee who worked at two remote, seasonal worksites 6 months of every year. However, we limited Mr. Richwine's claim to the period 6 years prior to the

^{1/} The request was submitted by Edgar B. Brannon, Jr., Forest Supervisor, Flathead National Forest, Kalispell, Montana. The seven employees are Royelynn Warren, Michael G. Ablutz, Frederick A. Flint, Geraldene O. Bergerson, Susan E. Johnson, R. Keith Granrud, and Donald A. Bennett.

date his claim was received in the General Accounting Office. After our decision was rendered, the Forest Service paid eight other employees whose duties were similar to Mr. Richwine's and who signed a memorandum dated May 9, 1985, which was included in the resubmission of Mr. Richwine's claim to our Office claiming these expenses.

In the present case these seven employees did not sign the memorandum submitted by Mr. Richwine and their claims were not received in our Office until August 16, 1988. They contend that they were not informed of the necessity to file claims to toll the running of the Barring Act of October 9, 1940, now codified in 31 U.S.C. § 3702(b) (1982), and they seek payment of their claims on the same terms as Mr. Richwine and the other eight employees who signed Mr. Richwine's letter, for the period from October 8, 1979, to June 1, 1985, when the Forest Service began authorizing per diem for this temporary duty.

OPINION

The Barring Act provides that every claim or demand against the United States presented to the General Accounting Office (GAO) must be received within 6 years from the date the claim first accrued. 31 U.S.C. § 3702(b) (1982). Prior to June 15, 1989, all claims cognizable by this Office were required to be filed here in order to toll the running of the 6-year period. This rule was applied even if the claim had previously been filed with the agency when it arose. Nancy E. Howell, B-203344, Aug. 3, 1981; Russell T. Burgess, B-195564, Sept. 10, 1979. See also Frederick C. Welch, 62 Comp. Gen. 80 (1982); Jerry L. Courson, B-200699, Mar. 2, 1981.^{2/}

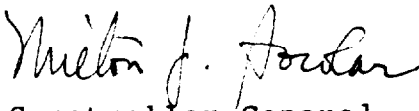
The claims of these seven employees were not received in our Office until August 16, 1988. In accordance with the above discussion, that portion of their claims which accrued prior to August 16, 1982, is barred. The agency may pay these seven employees per diem and mileage expenses pursuant to the Richwine decision beginning August 16, 1982, if otherwise proper.

The seven claimants contend that eight other employees were paid per diem and mileage allowances from October 8, 1979, based on our decision in Richwine, supra. The record and

^{2/} Effective June 15, 1989, we amended our claims regulations in 4 C.F.R. Part 31 to permit claims to be filed with the agency where the claim arose. 54 Fed. Reg. 25,437 (June 15, 1989).

our informal contact with Forest Service officials indicate that a memorandum signed by those eight employees was first received in our Office on September 29, 1986. Therefore, the eight employees are entitled to payment of per diem and mileage allowances only from September 29, 1980, 6 years prior to the date their claims were received by GAO.

If the Forest Service paid the other eight employees travel expenses on the basis of our decision in Richwine for periods prior to September 29, 1980, such payments would be erroneous but may be subject to waiver under the provisions of 5 U.S.C. § 5584, as amended (Supp. IV 1986). Accordingly, we remand this matter to the agency for its consideration under our waiver procedures set forth at 4 C.F.R. Part 91 (1988).


Acting Comptroller General
of the United States