
Third Edition 1989

Civilian Personnel Law Manual

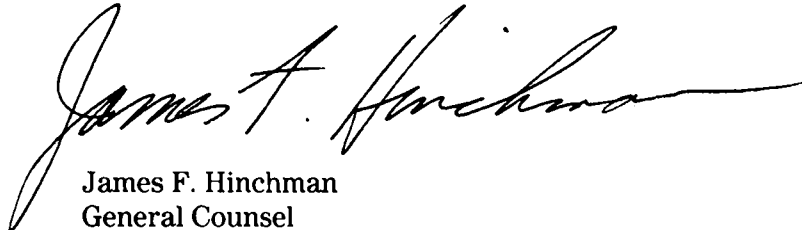
Introduction

United States General Accounting Office
Office of General Counsel

This is the Introduction to the GAO Civilian Personnel Law Manual (CPLM), third edition, which has five parts.

Part	Order No.	Availability
Introduction	GPO GAO/OGC/89-7	Fall 1989
Title I—Compensation	GPO xxxxx GAO/OGC/xx-x	Fall 1990
Title II—Leave	GPO xxxxx GAO/OGC/xx-x	Fall 1990
Title III—Travel	GPO GAO/OGC/89-8	Fall 1989
Title IV—Relocation	GPO GAO/OGC/89-9	Fall 1989

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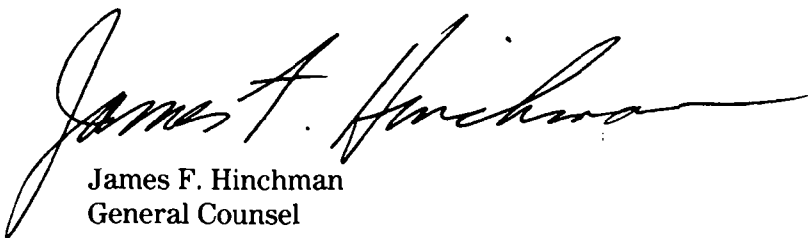
James F. Hinchman
General Counsel

Foreword

This is the Third Edition of the Civilian Personnel Law Manual. The Manual is prepared by the Office of General Counsel, U.S. General Accounting Office (GAO). The purpose of the Manual is to present the legal entitlements of federal employees, including an overview of the statutes and regulations which give rise to those entitlements, in the following areas: Title I— Compensation, Title II— Leave, Title III—Travel, and Title IV—Relocation. Revisions of Titles III and IV are being issued now. Revisions of Titles I and II will be issued at a later date.

This edition of the Civilian Personnel Law Manual is being published in loose leaf style with the introduction and four titles separately wrapped. The Manual generally reflects decisions of this Office issued through September 30, 1988. The material in the Manual is, of course, subject to revision by statute or through the decisionmaking process. Accordingly, this Manual should be considered as a general guide only and should not be cited as an independent source of legal authority. This Manual supersedes the Second Edition of the Civilian Personnel Law Manual which was published in June 1983 and the supplements published in 1984, 1985, and 1986.

We plan to issue regular supplements to be filed with this edition of the Civilian Personnel Law Manual. We have included an "Introduction" which follows immediately in two parts. Part I examines GAO's authority to issue decisions and settle claims and includes a discussion of a variety of issues on jurisdictional limitations and policy considerations. Part II explains the availability of additional research materials and facilities of the General Accounting Office. As always, we would welcome any comments that you may have regarding any aspect of the Manual.



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Abbreviations

AID	Agency for International Development
C.F.R.	Code of Federal Regulations
Comp. Gen.	Decisions of the Comptroller General of the United States (published volumes)
F.2d	Federal Reporter
FTR	Federal Travel Regulations
GAO	General Accounting Office
GAO	(in a citation) - General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies
MSPB	Merit Systems Protection Board
OPM	Office of Personnel Management
Pub. L. No.	Public Law number
S. Ct.	Supreme Court Reporter
Stat.	Statutes at Large
Supp.	supplement
TDY	temporary duty
U.S.	(in a citation) - United States Reports
U.S.C.	United States Code
USPHS	U.S. Public Health Service
§	section
§§	sections

Introduction

Part I

GAO Authority to Issue Decisions and Settle Claims

The General Accounting Office's authority in matters of civilian personnel law exists by virtue of the duties imposed upon our Office by the Congress with respect to expenditures of appropriated funds, which necessarily involve the determination of the legality of such expenditures. This authority is exercised when a question as to the legality of a proposed action is raised by an agency head, or an interested party, or by information coming to our attention in the course of our other operations. The General Accounting Office has consistently been recognized as the final administrative authority to rule on questions of the propriety of expenditures of appropriated funds. Skinner and Eddy Corp. v. McCarl, 275 U.S. 1, 4-5, note 2 (1927).

The GAO was created by the Budget and Accounting Act, 1921, 42 Stat. 23, 31 U.S.C. § 702. Since its creation, GAO, under the direction of the Comptroller General, has performed the functions of settling public accounts and of approving or disapproving payments made by the government:

"Except as provided in this chapter or another law, the Comptroller General shall settle all claims of or against the United States Government." (31 U.S.C. § 3702)

"On settling an account of the Government, the balance certified by the Comptroller General is conclusive on the executive branch of the Government. On the initiative of the Comptroller General or on request of an individual whose accounts are settled or the head of the agency to which the account relates, the Comptroller General may change the account within a year after settlement. The decision of the Comptroller General to change the account is conclusive on the executive branch." (31 U.S.C. § 3526)

Under 31 U.S.C. § 3529, a disbursing official or the head of an agency may apply to the Comptroller General for his decision upon any question involving a payment to be made by them. Also, under that section, certifying officers are granted the same right to obtain a decision on any question of law involved in a payment on any vouchers presented to them for certification. Thus, when a certifying officer has doubts about the legality of an expenditure which he has been asked to certify, he should request a decision from the

Comptroller General under 31 U.S.C. § 3529. See Matter of Responsibilities and Liabilities of Certifying Officers, 55 Comp. Gen. 297 (1975). The request should be accompanied by an original voucher, properly certified and approved. Where the record shows, however, that the certifying or disbursing officer does have a voucher before him, the question presented may be decided in order to expedite matters. 58 Comp. Gen. 612 (1979). Hypothetical or additional inquiries formulated by the certifying or disbursing officer are normally deferred for future consideration as they do not present questions of law involved in the payment of vouchers in accordance with 31 U.S.C. § 3529. See 61 Comp. Gen. 3 (1981).

Under 31 U.S.C. § 3711 the Comptroller General has authority to collect and compromise claims of the United States when the claim is referred for collection action.

Claims Settlement Procedures

Part 31, title 4, Code of Federal Regulations, prescribes general procedures applicable to claims against the United States which must be adjudicated in the General Accounting Office. Special procedures applicable to specified types or classes of claims against the United States are contained in the subsequent parts of this regulatory authority.

Statutory Time Limitations on Claims

31 U.S.C. § 3702(b) provides that every claim against the United States cognizable by the General Accounting Office must be received in this Office within 6 years from the date it first accrued or be forever barred. See 58 Comp. Gen. 3 (1978). The date of accrual of a claim for compensation, for the purpose of the act, is the day the services were performed, and such claim accrues on a daily basis. See 29 Comp. Gen. 517 (1950).

Special Notice: GAO's claims regulations in 4 C.F.R. Part 31 have been amended effective June 15, 1989, to provide that claims received by an agency within the 6-year period shall be treated as timely filed for purposes of the Barring Act, 31 U.S.C. § 3702(b). See 54 Fed. Reg. 25437, June 15, 1989.

Previously, claims filed with any other government agency did not satisfy the requirements of the act. B-203344, August 3, 1981, and B-195564, September 10, 1979. This is so even though the delay at

the agency level was the fault of the agency and not that of the employee. B-200699, March 2, 1981.

A former employee claimed entitlement to overtime compensation for the period January 1, 1970, through December 31, 1974. The claim was received by GAO on August 9, 1977. Under 31 U.S.C. § 3702(b)(1), that portion of the claim arising before August 9, 1971, was barred and could not be considered on its merits. Edward J. Reed, B-216359, March 5, 1985. See also Jack C. Smith, et al., 63 Comp. Gen. 594 (1984) and Mary J. Kampe and Martha R. Johnson, B-214245, July 23, 1984.

Administrative Basis of Claims Adjudications

Under 4 C.F.R. § 31.7, claims are settled on the basis of the facts as established by the government agency concerned and by evidence submitted by the claimant. Settlements are founded on a determination of the legal liability of the United States under the factual situations involved as established by the written record.

- Burden of proof

There is no provision under our personnel claims procedures for our Office to conduct adversary hearings or to interview witnesses. All claims are considered on the basis of the written record only, and the burden of proof is on the claimants to establish the liability of the United States and the claimants' right to payment. The burden is on the claimant to prove every element of his claim.

B-198935, November 14, 1980. See also Josie W. Thomas, B-200460, July 10, 1984.

- Record retention

Where claims have been filed by or against the government, records must be retained without regard to record retention schedules until the claims are settled or the agency has received written approval from the General Accounting Office. See, 44 U.S.C. § 3309. Retention of Time and Attendance Records, 62 Comp. Gen. 42 (1982).

Note that in Sherwood T. Rodrigues, B-214533, July 23, 1984, in the intervening period between the accrual of the claim and the date the claim was presented to GAO for consideration, the government records necessary to establish or refute the claim were lost or destroyed. The burden of proof is on the claimant. In the absence of

these government records—or any other documentation substantiating the claim—the claim was disallowed.

- Dispute of fact

Claims are decided on the basis of the written record presented to us by the parties. When disputed questions of fact arise between a claimant and the administrative officers of the government, it is the long established rule of accounting officers to accept the statements of facts furnished by the administrative officers, in the absence of convincing evidence to the contrary. B-185736, December 23, 1976. See also Benjamin C. Hail, B-216573, February 11, 1985.

- Appeals to courts

Independent of the jurisdiction of our Office, the United States Claims Court and the United States District Courts have jurisdiction to consider certain claims against the government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501. Actions instituted in the Claims Court or District Courts pursuant to the above-cited statutory provisions are considered *de novo* (as new). The courts ordinarily will not require exhaustion of the employee's right to file a claim with the GAO.

- Hypothetical questions

The GAO generally will not consider hypothetical questions. Such questions are usually deferred for future consideration in the context of a specific claim. See Virginia M. Borzellere, B-214066, June 11, 1984.

Requests for Reconsideration as a Right of Appeal

Our procedures for review and reconsideration of claims settlements are set forth in Part 31 of title 4, Code of Federal Regulations, which provides that claims settlements made pursuant to 31 U.S.C. § 3702 will be reviewed: (a) In the discretion of the Comptroller General upon the written application of (1) a claimant whose claim has been settled or (2) the head of the department or government establishment to which the claim or account relates, or (b) upon motion of the Comptroller General at any time. Applications for review of claims settlements should state the errors which the applicant believes have been made in the settlement and which

form the basis of his request for reconsideration. Thus under this authority the Comptroller General will review, reconsider and render a decision on any matter on appeal. However, correspondence which contains no such evidence and merely repeats previous statements, allegations, or simply questions a previous ruling, ordinarily will not be viewed as furnishing the basis for further consideration of a claim.

In order to obtain a reversal of a prior decision, a material mistake of law or fact must be proven. The claimant raised no new arguments in support of his claim for real estate expenses that were not considered in the prior decision. Mere disagreement with the previous decision is not a proper basis for reversal of a decision upon reconsideration. Phillip M. Napier, B-216938, November 12, 1985.

Procedures for Decisions Involving Agencies and Labor Organizations

Part 22, title 4, Code of Federal Regulations, sets forth the procedures which govern requests for decisions concerning the legality of appropriated fund expenditures on matters of mutual concern to federal agencies and labor organizations participating in the labor-management program established pursuant to 5 U.S.C. Chapter 71, and other federal sector labor-management programs. It gives labor organizations and federal agencies equal access to GAO on any matter of mutual concern involving the expenditure of appropriated funds, and extends the right to request an advisory opinion on such matters to arbitrators and other neutral parties. It also provides guidance as to when GAO will defer to procedures established pursuant to 5 U.S.C. Chapter 71.

In accordance with Part 22.5(a) only arbitrators and other neutral parties authorized to administer 5 U.S.C. Chapter 71 may request advisory opinions on matters involving the expenditure of appropriated funds which are of mutual concern to federal agencies and labor organizations. Moreover, under Part 22.7(b) the Comptroller General will not issue a decision or comment on the merits of a matter which is subject to a negotiated grievance procedure authorized by 5 U.S.C. § 7121, except upon the request of an agency and labor organization. Requests are considered joint for purposes of this subsection when the other party has been served pursuant to Part 22.4 and has not objected to submission of the matter to this Office. However, the Comptroller General ordinarily will not issue a decision on (a) any matter which the Comptroller General finds is more properly within the jurisdiction of the Federal Labor Relations

Authority or other administrative body or court of competent jurisdiction, or (b) on a matter which the Comptroller General finds is unduly speculative or otherwise not appropriate for decision.

For a discussion of jurisdictional policies GAO will follow under its claims procedures at 4 C.F.R. Part 22, and the interrelationship of our jurisdiction under 4 C.F.R. Part 31, see these decisions: Gerald M. Hegarty, 60 Comp. Gen. 578 (1981); Schoen and Dedant, 61 Comp. Gen. 15 (1981); Samuel R. Jones, 61 Comp. Gen. 20 (1981); Linda A. Vaccariello, 61 Comp. Gen. 274 (1982); Bowie & Zarriello, B-200002, April 2, 1982; Beachley & Davis, 61 Comp. Gen. 403 (1982); and Albert W. Lurz, 61 Comp. Gen. 492 (1982). See also National Federation of Federal Employees, Local 1437, B-220119, December 9, 1985; and Robert D. Healy, B-217172, June 12, 1985.

Jurisdictional Limitation and Policy Considerations

- Constitutionality questions

A federal employee who was a member of the National Guard could not transfer 10 days of military leave from calendar year 1980 to fiscal year 1981 when legislation changed the method of granting military leave from a calendar year to a fiscal year basis. The employee suggested that the retroactivity of that legislation divested him of the 10 days' leave in contravention of his rights under the United States Constitution. It did not appear that the retroactivity of the statute divested the employee of any right, and in any event, it is the policy of the Comptroller General not to question the constitutionality of a statute enacted by the Congress. Laurie M. Brown, B-217565, June 27, 1985.

- Statutory construction

A provision of the United States Code authorizes military leave at the rate of 15 days per year for federal employees who are members of Reserve components of the Armed Forces. On October 10, 1980, that provision was amended to change the method of granting annual military leave from a calendar year to a fiscal year basis. The amending legislation provided that it was to "take effect October 1, 1980," that is, on the first day of fiscal year 1981, or 10 days earlier than its date of enactment. The amendment must be given retroactive effect, since amending legislation may not be construed as being only prospective in its operation if it contains

express language requiring retrospective application. Laurie M. Brown, B-217565, June 27, 1985.

- Criminal conflict of interest statutes

The Comptroller General has no authority to issue formal opinions concerning the application of criminal conflict of interest statutes. No proper basis exists, however, for generally excluding federal retirees from obtaining government contracts, and a dentist was not barred by conflict of interest considerations from providing services under contract to the Coast Guard simply because he was a retired officer of the Public Health Service. Dr. Edward Kugma, USPHS (Retired), B-215651, March 15, 1985.

- Final decisions of the Merit Systems Protection Board

A Navy employee who was terminated upon being advised that he was an alien was subsequently reinstated as a result of a final decision of the MSPB which ordered the cancellation of the employee's separation. The Navy asked whether its payment of backpay and continued salary to the employee incident to his reinstatement was proper. The payments were proper, since the MSPB is a "proper authority" to determine that an employee has been affected by an unjustified or unwarranted personnel action justifying backpay, and GAO does not review a final decision of the MSPB. Pepe Iata, B-216285, January 24, 1985.

- Unfair labor practices

An employee claimed that his agency's refusal to allow him to perform two TDY assignments constituted an unfair labor practice under 5 U.S.C. § 7116, and that he was entitled to the per diem, overtime compensation, and holiday premium pay he would have received had he performed the assignments. The GAO may not consider allegations concerning unfair labor practices, since the Federal Labor Relations Authority has exclusive jurisdiction to decide such complaints. Emery J. Sedlock, B-199104, February 6, 1985.

- Civil service retirement annuity

A retired civil service employee requested that the time of his voluntary retirement be backdated from January 8 to January 3, 1983, so that he would be allowed an annuity payment for the

month of January 1983. The employee suggested that his selection of January 8th as the retirement date resulted from a mistake or ignorance of the law. The OPM is vested with exclusive authority to adjudicate civil service retirement annuity claims. Regarding the amount of pay already paid to the claimant, there is no basis to change the employee's status as an employee on duty and on leave based on the claimant's assertion that he was not aware of the requirements of existing law. Antoni Sniadach, 64 Comp. Gen. 301 (1985).

In view of the statutory and regulatory provisions discussed above relating to our decisionmaking authority, formal rulings and decisions of the Comptroller General are usually rendered only to heads of departments and agencies, disbursing and certifying officers, or to claimants who have filed monetary claims with our Office. In addition there are certain areas which are outside of the GAO jurisdiction as the result of applicable statutory and regulatory considerations. The following examples are deemed illustrative though not exhaustive:

- Federal income tax consequences of claims settlement

In our decision B-202201, December 23, 1981, we held that while the General Accounting Office has jurisdiction to decide questions related to the correction of errors in federal employees' payroll records and the waiver under 5 U.S.C. § 5584 of overpayments resulting from the errors, our Office has no jurisdiction to issue revenue rulings, and the income tax consequences of actions taken to correct payroll errors are primarily matters for consideration and determination by the Internal Revenue Service.

- Matters pending before other forums

In our decision 58 Comp. Gen. 282 (1979), we were asked to rule on an issue presented by the Department of Defense which was the subject of litigation in a United States District Court. We stated that it is a longstanding rule that this Office will not act on matters which are in the courts during pendency of litigation, since the eventual outcome of the litigation may fully resolve the first question submitted.

- Agency grievance procedures

The General Accounting Office normally will not inquire into matters relative to a grievance. We stated that matters relating to grievances are within the jurisdiction of the agency and the Office of Personnel Management and normally will not be reviewed by the General Accounting Office. 5 C.F.R. § 771. See also B-203622, January 19, 1982, and B-202098, April 22, 1982.

- Claims involving the Federal Tort Claims Act

The Federal Tort Claims Act, 28 U.S.C. § 1346(b) and §§ 2671-2680, determines those instances in which the government is liable for torts committed by government employees. In essence, the government's potential liability extends to claims for money damages for property damage or loss or personal injury caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Under these statutory provisions, our Office has no jurisdiction over claims other than GAO employees for damages in a tort action, and therefore, no authority to consider claims under the Federal Tort Claims Act. See for example B-201773, March 4, 1981; and B-207342, June 14, 1982.

- Claims involving the United States Postal Service

The United States Postal Service, as an independent establishment in the executive branch of the federal government, has the statutory authority to settle and compromise claims by or against it. 39 U.S.C. § 401(8). Further, the Postal Service is authorized to make final settlement of all claims and litigation by or against it. 39 U.S.C. § 2008(c).

- Military Personnel and Civilian Employees' Claims Act

In B-201417, January 23, 1981, we addressed the claim of an employee concerning the loss of personal property in connection

with his employment with the United States Secret Service, Department of the Treasury. We held, in effect, that the General Accounting Office is without jurisdiction to consider the claims of employees of other agencies for the loss of, or damage to, personal property under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 3721. See also 47 Comp. Gen. 316 (1967), for a decision involving civilian employees of the Department of Defense.

- Compensation for work injuries sustained by employees

The authority for payment of medical expenses of an employee injured while in the performance of duty is found at 5 U.S.C. § 8103 (1982). The Secretary of Labor under the provisions of 5 U.S.C. § 8149, is authorized to prescribe the rules and regulations for the administration and enforcement of Subchapter I of Chapter 81, concerning compensation for work injuries. Thus, by law there is no basis under which the General Accounting Office would have jurisdiction over medical expense claims. See for example B-204324, April 27, 1982.

- Claims for civilian disability retirement

In our decision B-199913, June 30, 1981, we indicated that the question of whether an employee is entitled to disability retirement is within the jurisdiction of the Office of Personnel Management (OPM) which has sole responsibility for the administration of the civil service retirement system, including the authority to determine questions of disability and to adjudicate all claims arising under the retirement system. See 5 U.S.C. § 8347(a), (b), and (c). Accordingly, we have no jurisdiction to make determinations with respect to annuity entitlements as that is a matter for consideration by the OPM. In the adjudication of claims arising under Subchapter III, Chapter 83 of Title 5, United States Code, OPM will consider and take appropriate action on counterclaims filed by the government as set-offs against amounts in the Civil Service Retirement and Disability Fund.

- Position classification issues

Because statutory authority to establish appropriate classification standards and to allocate positions subject to the General Schedule

rests with the agency concerned and OPM, this Office has no authority to settle claims on any basis other than the agency or OPM classification. B-181303, June 2, 1975. And since OPM determinations on classification appeals are binding on this Office under 5 U.S.C. § 5112(a), this Office has no authority to modify such actions. B-183120, February 21, 1975. See also B-196824, May 12, 1980. See also William A. Lewis, B-216575, March 26, 1985.

- Discrimination complaints

Generally, where an employee alleges unequal treatment with respect to personnel entitlements between themselves and other agency employees, we have advised that complaints alleging discrimination are for resolution under the agency's procedures for Equal Employment Opportunity cases rather than by the Comptroller General. See B-196019, April 23, 1980; and B-193834, June 13, 1979. See also Albert D. Parker, 64 Comp. Gen. 349 (1985).

Moreover, we have stated that, with respect to the allegation of discrimination, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16, governs the claims of civilian employees of the United States who believe they are the victims of illegal discriminatory employment practices. Brown v. General Services Administration, 425 U.S. 820 (1976). It is not within the jurisdiction of this Office to conduct investigations into and render decisions on allegations of discrimination in employment law. See B-206919, April 15, 1982; and B-198571, April 6, 1982.

- Res judicata

An employee sought a Comptroller General decision on his entitlement to salary retention. The General Accounting Office adheres to the doctrine of res judicata to the effect that the valid judgment of a court on a matter is a bar to a subsequent action on that same matter before the General Accounting Office. 47 Comp. Gen. 573 (1968). Since in William C. Ragland v. Internal Revenue Service, Appeal No. 55-81 (C.A.F.C. November 1, 1982), it was previously decided that the employee was not entitled to saved pay benefits; the General Accounting Office did not consider his claim for salary retention. William C. Ragland, B-204409, May 23, 1983.

- Foreign Service Grievance Board

An employee of the Agency for International Development (AID) filed a grievance with the Foreign Service Grievance Board under former 22 U.S.C. § 1037a, for credit of unused sick leave earned while he was employed by a United Nations agency. The Board found for the employee. An AID certifying officer thereafter submitted the case to the General Accounting Office for review and decision. Under former 22 U.S.C. § 1037a(13), such decisions of the Board are final, subject only to judicial review in the District Courts of the United States. Therefore, the General Accounting Office is without jurisdiction to review the Board's decision in this case. Pierre L. Sales, 62 Comp. Gen. 671 (1983). The Foreign Service Act of 1980, Pub. L. No. 96-465, § 2205(1), 94 Stat. 2071, 2159 (1980), repealed these provisions effective February 15, 1981.

Other Substantive
Jurisdictional Issues

- "De minimus" claims

On July 14, 1976, we issued a letter to the heads of departments and agencies, disbursing and certifying officers. That letter is as follows:

"Under existing law disbursing officers and certifying officers may apply for and obtain a decision by the Comptroller General of the United States upon any question involving a payment to be made by them or a payment on any voucher presented for certification. 31 U.S.C. 74, id. 82d.

"In order to obtain the protection afforded by the cited statutory provisions numerous questions involving minor amounts are presented for decision by the Comptroller General. The General Accounting Office and the agencies involved incur inordinate administrative costs in processing these requests for decision and the necessity for dealing with them serves to delay attention to questions involving more significant amounts and subjects.

"Therefore, in lieu of requesting a decision by the Comptroller General for items of \$25 or less, disbursing and certifying officers may hereafter rely upon written advice from an agency official designated by the head of each department or agency. A copy of the document containing such advice should be attached to the voucher and the propriety of any such payment will be considered conclusive on the General Accounting Office in its settlement of the accounts involved."

Payment of Interest on Claims

It is well settled that the payment of interest by the government on its unpaid accounts or claims may not be made except when interest is stipulated for in legal and proper contracts, or when allowance of interest is specifically directed by statute. See for example, Fitzgerald v. Staats, 578 F.2d 435 (D.C. Cir. 1978). For a comprehensive discussion of the payment of interest in regard to employee claims, see Chapter 11 of the Principles of Federal Appropriations Law, June 1982, published by the General Government Matters Division, Office of General Counsel, United States General Accounting Office. However, the Back Pay Act, as amended by Pub. L. No. 100-202, now provides for the payment of interest on awards under that Act. See 5 U.S.C. § 5596(b)(2) (West Supp. 1988).

Waiver of Claims of U.S. For Erroneous Payments

Certain claims of the United States involving erroneous payments may be waived under the following provisions of 5 U.S.C. § 5584:

“§ 5584. Claims for overpayment of pay and allowances, and of travel, transportation and relocation expenses and allowances

“(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances made on or after July 1, 1960, or arising out of an erroneous payment of travel, transportation or relocation expenses and allowances, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by—

“(1) The Comptroller General of the United States; or

“(2) the head of the agency when—

“(A) the claim is in an amount aggregating not more than \$500;”

In addition to the waiver authority, under section 952(b) of the Federal Claims Collection Act of 1966, 31 U.S.C. § 3701, the head of an agency is authorized to compromise a claim or to terminate or suspend collection action under certain prescribed conditions. However, where there is a present or prospective ability to pay on the debt, such as continued employment, collection where the individual is employed by the government and the overpayment may be collected by salary offset as prescribed by the Debt Collection Act of 1982, Pub. L. No. 97-365, October 25, 1982, 96 Stat. 1749-1758.

A travel advance outstanding and not liquidated at the time of a former employee's retirement is not an overpayment of pay or allowances and, therefore, could not be considered for waiver under the authority of 5 U.S.C. § 5705, and given the government's right as a creditor to use moneys due the individual to reduce or extinguish a debt due the government, expenses due the former employee for invitational travel performed subsequent to his retirement were subject to setoff against indebtedness for his unliquidated travel advance. Charles E. Clark, B-207355, October 7, 1982.

Erroneous Advice and Authorization

It is unfortunate when employees receive erroneous advice or are erroneously authorized certain allowances which in fact are not reimbursable. However, it is a well settled rule of law that the government is not estopped from repudiating erroneous advice and authorizations of its officials, and any payments made on the basis of such erroneous advice or authorizations are recoverable by the government. 56 Comp. Gen. 131 (1976) and cases cited therein. Thus, the fact that agency personnel may have been responsible for the erroneous certification of a voucher does not provide a basis to relieve a claimant from the obligation to refund the amount overpaid. This follows from the fact the government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations. See 54 Comp. Gen. 747 (1975) and case precedents cited therein.

The above rule cannot be circumvented by invoking principles of contract law. Since federal employees are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply. See 56 Comp. Gen. 85 (1976) and decisions cited therein. See also B-195654, November 27, 1979, involving a claim for backpay in connection with an appointment action wherein we stated that employee's alternative claim for contractual delay damages is denied since an offer to public employment does not give rise to a contractual relationship in the conventional sense. See also Riva Fralick, et al., 64 Comp. Gen. 472 (1985); and Herman Rosado and Sonia M. Terron, B-216343, March 4, 1985.

Estoppel Against the Government

In 56 Comp. Gen. 85, cited above, we rejected the claimant's arguments that the doctrine of equitable estoppel applied to the circumstances of his travel and transportation claim.

The well-established principle that the government cannot be estopped by the erroneous advice of its employees was recently affirmed by the Supreme Court in Schweiker v. Hansen, 101 S. Ct. 1468 (1981). In that decision the Supreme Court admonished all courts to observe the conditions defined by Congress for charging the public treasury. See also Dorcas Terrien, B-218675, October 31, 1985, and Jay L. Haas, B-215154, November 29, 1984.

Part II

GAO Research Materials • GAO Civilian Personnel Law Manual and Facilities

GAO's Civilian Personnel Law Manual provides an overview of all decisions of the Comptroller General in the area of civilian personnel law. It includes citations to published and unpublished decisions.

- GAO telephone research service

If a copy of the Manual is not available, or the cases discussed in the Manual are not responsive to the issue or problem, you may call our telephone research at 275-5028. GAO research assistants will provide information and citations to relevant GAO cases at no charge. They can also tell you if a particular case has been cited or overruled by subsequent cases.

- GAO research facilities

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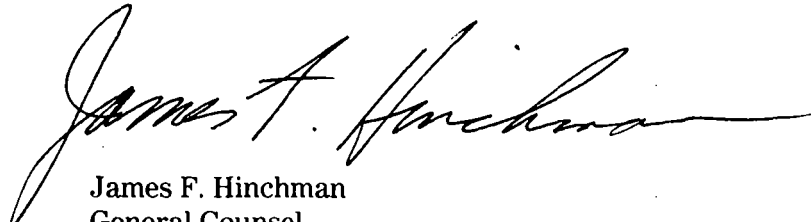
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