

Compensation and Leave Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: Retired from
National Weather Service
National Oceanographic and
Atmospheric Administration
United States Department of Commerce

Claim: Back Pay for Post Differential,
45-Day Annual Leave Ceiling,
Home Leave, and Vacation Leave

Agency decision: Denied

OPM decision: Denied; Time Barred

OPM file number: 07-0010

/s/ for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

11/9/2007

Date

The claimant is a retired Federal employee who was previously employed with the National Weather Service, National Oceanographic and Atmospheric Administration (NOAA), U.S. Department of Commerce. He requests reconsideration of the denial of his claim for back pay for post differential, a 45-day annual leave accumulation, home leave, and vacation travel (commonly called "PL-737"). The U.S. Office of Personnel Management (OPM) received the claim on December 7, 2006. For the reasons discussed below, the claim is denied.

The claimant was stationed on Oahu, Hawaii, from August 1975 to December 1976 and from January 1978 through June 1982; he was stationed on Kauai, Hawaii, from November 1984 through December 1993. He is claiming back pay for post differential, home leave, a 45-day annual leave ceiling and vacation travel benefits for the period of time stationed in Hawaii.

The record is not clear as to the date the claimant preserved his claim with NOAA. It contains a November 8, 2005, letter to OPM forwarded to OPM by the claimant's congressional representative's office on November 14, 2006, by email. OPM's policy component, the Strategic Human Resources Policy Division (SHRP), responded in a November 29, 2005, letter advising the claimant of his ineligibility for post differential and the requested leave and travel benefits. It appears the claimant did not receive this letter, but it was forwarded to him by email from SHRP on March 7, 2005. OPM's Human Capital Leadership and Merit System Accountability Division (HCLMSA) received the claimant's March 8, 2006, letter seeking to file a claim on March 13, 2006. HCLMSA's March 17, 2006, response advised the claimant OPM could not accept the claim since the claim had not been denied by his agency; i.e., NOAA, which was required before he could file a claim with OPM (5 CFR 178.102(a)(3) and (b)). The claimant subsequently filed a claim for back pay with NOAA. However, NOAA's October 18, 2006, claim denial does not show the date the agency received his claim. The claimant's November 7, 2006, claim request to OPM on November 20, 2006, was received on December 7, 2006.

According to section 178.104(a) of title 5, Code of Federal Regulations, all claims against the United States Government are subject to the six-year statute of limitations contained in 31 U.S.C. 3702(b). To satisfy the statutory limitation, a written claim must be received by the department or agency out of whose activities the claim arose or by OPM, within six years from the date the claim accrued. Matter of Robert O. Schultz, B-261461 (November 27, 1995). A claimant is responsible for proving when the claim was received by the agency or by OPM. The claim must be in writing and must be signed by the claimant or their designated representative (5 CFR 178.102(a)). The Barring Act does not merely establish administrative guidelines; it specifically prescribes the time within which a claim must be received in order for it to be considered on its merits. Matter of Nguyen Thi Hao, B-253096, (August 11, 1995). OPM does not have any authority to disregard the provisions of the Barring Act, make exceptions to its provisions, or waive the time limitation that it imposes. See Matter of Nguyen Thi Hao, supra; Matter of Jackie A. Murphy, B-251301 (April 23, 1993); Matter of Alfred L. Lillie, B-209955, May 31, 1983.

The record shows the claimant raised the substance of his claim with his servicing administrative office (Western Administration Service Center) sometime before July 4, 2005, since his letter of that date refers to a determination he was not eligible for home leave and 45-day leave ceiling in American Samoa. The claimant indicates he discussed post differential, home leave, 45-day leave ceiling, and "PL-737" during his November 1984 orientation, and raised the issue in a letter to his servicing "personnel manager" in or around January 1985, but received a telephone call rather than a written reply. The claimant did not provide a copy of his letter or any documentation to show that the agency had received this letter or, indeed, that the letter constituted a claim against the Government. The record contains a July 29, 2005, email reply to the claimant's July 4, 2005, letter denying his claim request. Therefore, we conclude the claim was preserved no earlier than July 4, 2005, for back pay for benefits accrued during the years 1975 through 1993. This claim clearly exceeds the six-year statute of limitations and his claim period would have expired no later than July 4, 1999. Therefore, the claim is barred from our consideration and may not be allowed.

We note, however, OPM's policy component addressed the underlying merits of the claim in correspondence with the claimant. In its November 29, 2005, letter, OPM advised it has never established a post differential for any of the islands in the State of Hawaii and, as indicated, the claimant was not eligible for post differential back pay for the period he was stationed on Oahu and Kauai. OPM also stated he did not meet the requirements specified in sections 6301 and 6304(b), title 5, U.S.C., for the 45-day annual leave ceiling, and associated home leave, because they limit coverage to employees stationed outside the 50 United States and the District of Columbia. Because he was stationed on Hawaiian islands, OPM informed the claimant he was not covered by section 5728(a), title 5, U.S.C., which authorizes pay for vacation travel for Federal employees and their dependents who are stationed outside the 50 States and the District of Columbia.

The claimant notes that other employees in situations he considers similar to his own have been authorized these benefits. However, we must decide a compensation case by comparing the facts in that case to the criteria in Federal law, regulations and other Federal guidelines. Therefore, we cannot compare the claimant's situation to others as a basis for deciding his claim. In adjudicating this claim, our responsibility is to make our own independent decision about whether or not the claimant is entitled to the benefits claimed. Therefore we have considered the claimant's statements only as they are relevant to making that decision.

The claimant makes several allegations concerning being misinformed and misled by personnel managers regarding his claims and suggests discrimination against him. OPM's claims adjudication authority, set forth in 31 U.S.C. 3702(a)(2), is narrow and limited to adjudication of compensation and leave claims. Section 3702 does not include any authority to decide discrimination complaints which are under the purview of the Equal Employment Opportunity Commission. OPM's claim settlement authority is limited to claims for compensation and leave. Title 31, United States Code (U.S.C.), section 3702(a)(3) provides that claims against the United States Government involving

expenses for official travel and transportation and for relocation expenses incident to transfers of official duty station are settled by the Civilian Board of Contract Appeals. This claims settlement decision therefore, does not apply to travel expenses.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States court.