Compensation Claim Decision Under section 3702 of title 31 and section 5583 of title 5, United States Code

Claimant: [name]

Organization: N/A

Claim: Proceeds from uncurrent checks

Agency decision: N/A

OPM decision: Denied; Time Barred

OPM file number: 09-0028

//Judith A. Davis for

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

4/22/2009

Date

The claimant represents the estate of her deceased son. Claimant's congressional representative requests the U.S. Office of Personnel Management (OPM) reissue three checks the claimant found in her son's room after his death so the claimant may distribute them properly. The congressional representative based his request on a February 19, 2009, letter from the Defense Finance and Accounting Service stating the OPM's Office of Merit System Oversight and Effectiveness (now the Center for Merit System Accountability (CMSA)) was the "office of primary responsibility for reissuing Treasury checks" and advised that the claimant "must submit her claim in writing...to have the checks reissued." We received the claim request on March 27, 2009. For the reasons discussed herein, the claim is time barred.

The record contains a consent form signed by the claimant on December 2, 2008, authorizing the claimant's congressional representative to act on behalf of the claimant in obtaining reissuance of the checks at issue in this claim. The three checks submitted with the request and issued by Department of the Navy on May 6, 1993, are: Check No. 5189-08009552 in the amount of \$4446.42; Check No. 5189-08009553 in the amount of \$9999.99; and Check No. 5189-08009554 in the amount of \$9637.51.

Section 5583 of title 5, United States Code (U.S.C.), vests the Director of OPM with the authority to issue regulations to prescribe the method for settlement of accounts of deceased employees. Implementing regulations in section 178.207(b)(3) of title 5, Code of Federal Regulations (CFR) state that disputed claims for money due deceased employees of the Federal Government will be submitted to the responsible OPM component in accordance with 5 CFR 178.102. Such claims include uncurrent checks (unnegotiated and/or undelivered checks) for money due the decedent which have not been paid by the end of fiscal year after the fiscal year in which the checks were issued. Under 5 CFR 178.102, a final agency-level denial must be issued before it is submitted to the OPM for adjudication with the information. Although the record does not contain such a denial by Navy or DFAS, we may still render a decision since the claim is time barred.

The Barring Act, at 31 U.S.C. 3702(b), specifies claims against the United States must be presented to the appropriate official or agency within six years after the claim accrues. *Matter of* Robert O. Schultz, B-261461 (November 27, 1995). 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). The underlying obligation liquidated by a Treasury check is subject to the 6-year limitation imposed by the Barring Act. See Payment of Unpaid Treasury Checks More Than 6 Years Old, B-244431 and B-244431.2 (Sept. 13, 1994); OPM Case Number S9601661; OPM file number 06-0035, September 29, 2006. Unless an individual submits a claim to the appropriate agency before the 6-year period elapses, the claim on the obligation is barred. Therefore, any entitlement to reissuance of these checks expired on May 6, 1999, due to the running of the 6-year statute of limitations, and the claimant would have been required to file the claim before that date. In this case, the request for reissuance of the unpaid Treasury checks was not submitted to DFAS on behalf of the claimant until on or after December 2, 2008, and, thus, is time barred. 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.

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the Government agency involved in the claim. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. Moreover, the burden of proof is on the claimant to prove the liability of the Government and his or her right to payment. 5 CFR 178.105; *Matter of Jones and Short*, B-205282, June 15, 1982. Based on the information before us, this claim is time barred and must be denied.

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.