

**U.S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: [agency component]
U.S. Forest Service
U.S. Department of Agriculture
[city & State]

Claim: Payment of wages for pay period 11
in 2003

Agency decision: N/A

OPM decision: Denied; Time barred

OPM file number: 11-0022

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

8/17/11

Date

The claimant seeks pay for pay period 11 of 2003 which she states she did not receive from her employing agency. The U.S. Office of Personnel Management (OPM) received her claim request on April 25, 2011, and additional information from the agency on May 2, 2011. For the reasons discussed herein, the claim is time barred and must be denied.

The claimant states she has not been paid for pay period 11 in 2003. The claimant states her employing agency, the U.S. Forest Service (FS), has denied her claim for back pay “based on a statute of limitations.” The claimant states:

I maintain that my claim for back pay falls under the discovery rule, which states, in part, that a cause of action may accrue when the victim, exercising reasonable diligence, discovers the harm. I maintain that the Forest Service pay system is faulty and there is no indemnity for mandatory electronic pay deposits.

I want to exhaust all my administrative remedies prior to entering into civil litigation for failure to pay wages earned.

Section 3702(b)(1) of title 31, United States Code (U.S.C.), states that a claim against the United States “must contain the signature and address of the claimant or an authorized representative.” Implementing this statutory provision, section 178.102(a) of title 5, Code of Federal Regulations (CFR), indicates that the claimant’s employing agency must review and issue a written decision on a claim before it is submitted to OPM for adjudication. The claimant is responsible for preserving the claim period, proving the signed, written claim was filed within the applicable statute of limitations. *See* 5 CFR 178.104. The information provided by the claimant with her request does not show she has filed a signed, written claim with a FS component authorized to issue an agency-level decision or that she has received such a decision.¹ Nevertheless, we may render a decision due to the claim being time barred.

As provided in the Barring Act, codified at 31 U.S.C. § 3702(b)(1), every claim against the United States is barred unless such claim is received within six years after the date such claim first accrued. In pay cases, the claim first accrues when the pay should have been paid to the employee. *McConnell v. United States*, 5 Cl. Ct. 785, 789 (1984), *aff’d*, 763 F.2d 414 (Fed. Cir. 1985); *see also Flack G. Milner*, 29 Comp.Gen. 517 (June 26, 1950). 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. 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. OPM File Number S9700855, May 28, 1998; OPM File Number 003505, September 9, 1999. *See also Matter of Nguyen Thi Hao*, B-253096, (August 11, 1995); *Matter of Jackie A. Murphy*, B-251301 (April 23, 1993); *Matter of Alfred L. Lillie*, B-209955, May 31, 1983.

¹ The copies of the emails the claimant exchanged with her servicing FS human resources office which the claimant provided with her claim request do not satisfy these statutory and regulatory requirements.

Section 178.105 of title 5, Code of Federal Regulations (5 CFR), states:

The burden is upon the claimant to establish . . . the liability of the United States, and the claimant's right to payment. The settlement of claims is based upon the written record only, which will include the submissions by the claimant and the agency. OPM will accept the facts asserted by the agency, absent clear and convincing evidence to the contrary.

Furthermore, 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, if requested. 5 CFR 178.105; OPM File Number 01-0053, February 8, 2002; OPM File Number 01-0055, February 25, 2002; *see also Matter of John B. Tucker*, B-215346, March 29, 1985.

The claimant seeks to excuse her tardiness in filing her claim by stating that she keeps “a significant amount of money in [her] checking account and [does] not always check to see that [she has] been paid bi-weekly.” She states that “last year” she noticed a decrease in her bank balance and checked her bank statement:

only to discover I hadn't been paid for pay period 15 in July 2010. This occurred again for pay period 4 in February 2011. Both times my time and attendance reports had been submitted and approved timely and Human resources did not require me to resubmit the reports to pay me. The error was made by Human Resources pay system.

I decided to check my Employee Personal Page and review all my pay statements back as far as the system maintained records, which was pay period 26 in December 2002. I started work with the Forest Service in April 2002, so the system did not allow me to check to see whether or not I was paid for nine months in 2002. I discovered I hadn't been paid for pay period 11 in 2003, and the error had not been detected by Forest Service pay personnel and no alert or warning had been sent to me that my pay had not been deposited in my bank account.

The fact that the claimant might have been unaware of her legal rights, and thus the limitation on when those rights could be asserted, does not help her here. “Ignorance of claim accrual does not automatically toll the running of a statute of limitations.” *Chevron U.S.A., Inc. v. United States*, 923 F. 2d 830, 834 (Fed. Cir. 1991). Rather, the statute commences to run when claimants know or should know of their potential claims. *Id. at 834*.

Federal employees are expected to review leave and earnings statements provided by the employing agency and documentation from financial institutions, such as monthly bank statements, to ensure their time and attendance was entered into their agency payroll system correctly and the proper pay was deposited. See B-173565, October 27, 1971 and B-252830, June 25, 1993. The claimant admits she started to work for FS in April 2002, but did not check her Employee Personal Page and review all her pay statements until “[I]ast year.” She also states she does not always check her checking account to see if she has been paid bi-weekly. Had the claimant acted in a reasonable and prudent manner and reviewed this readily available information, she would have known this claim existed shortly after she had not been paid for pay period 11 in 2003. The claimant did not preserve her claim until it was received by OPM on

April 25, 2011, more than six years after the claim accrued. Accordingly, the claim is time barred and is denied.

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