

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

**Claimant:** [name]

**Organization:** Operations Department  
Security Division  
Washington Navy Yard Branch  
Headquarters, Naval District  
Washington  
Department of the Navy  
Washington, DC

**Claim:** Request for Lump Sum Annual Leave

**Agency decision:** N/A

**OPM decision:** Denied; Time Barred

**OPM file number:** 08-0004

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

4/25/2008  
Date

The claimant resigned from his Guard, GS-085-5, position on March 29, 1986, with the Operations Department; Security Division, Washington Navy Yard Branch, Headquarters Naval District Washington. On or about December 13, 2007, the U.S. Office of Personnel Management (OPM) received a request dated December 10, 2007, seeking to file a pay claim for unused annual leave accrued during his period of employment in that position from June 22, 1985, through March 29, 1986.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave. Section 178.102 specifies the documentation accompanying a claim should include a copy of the final written agency denial of the claim (5 CFR 178(a)(3)). Paragraph (b) of that section states that when an agency forwards the claim to OPM, the claimant is responsible for ensuring that OPM receives all the information listed in 5 CFR 178(a) which includes the agency's denial of the claim. Therefore, the procedures for submitting a claim require that an employing agency has already reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. Although the record does not include an agency-level decision, we may render a decision on this claim based on jurisdictional grounds.

The claimant submitted a copy of a Notification of Personnel Action, Standard Form 50 (SF 50), documenting his resignation from the previously cited position on March 29, 1986. Block 37, Remarks on the SF-50 include: "LUMP-SUM PAYMENT TO BE MADE FOR UNUSED ANNUAL LEAVE. FORWARDING ADDRESS: [address]." Also attached is an NA Form 13056 from the National Archives and Records Administration dated November 29, 2007, as a reply to the claimant's inquiry sent to that agency with a box checked off next to the sentence: "Pay claims arising from Federal employment should be sent to the agency out of whose actions the claim arose." The claimant did not submit a copy of an agency claim decision; i.e., Department of the Navy. Instead, his claim request to OPM states:

I do not recall taking any leave or receiving any payment for the unused Leave [sic].

Please review your records and forward money due me for my unused Leave [sic].

As provided in 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. 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. *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 File Number S9700855, May 28, 1998; OPM File Number 003505, September 9, 1999.

The Barring Act, as does any statute of limitations, starts to run when the claim first "accrues." The rule is that a claim first accrues on the date when all events have occurred which fix the liability, if any, of the United States, entitling the claimant to sue or to file a claim. *See Chevron U.S.A., Inc. v. United States*, 923 F.2d 830 (Fed. Cir. 1991), cert. denied, 112 S. Ct.167. *Lins v. United States*, 688 F.2d 784 (Ct. Cl. 1982), cert. denied, 459 U.S.1147; *Empire Institute of*

*Tailoring, Inc. v. United States*, 161 F. Supp. 409(Ct. Cl. 1958); *Kinsey v. United States*, 13 Cl. Ct. 585 (1987), aff'd, 852 F.2d556 (Fed. Cir. 1988); 42 Comp. Gen. 622 (1963); 42 Comp. Gen. 337 (1963); OPM File Number S00285, May 4, 1999.

A claim does not accrue unless the claimant knew or should have known that the claim existed. See *Jones v. United States*, 801 F.2d 1334, 1335 (Fed.Cir.1986), *cert. denied*, U.S., 107 S.Ct. 1887, 95 L.Ed.2d 495 (1987). Section 178.105 of 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. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985; OPM File Number 01-0053, February 8, 2002; OPM File Number 01-0055, February 25, 2002. OPM's decision to request an agency administrative report on a claim is discretionary (5 CFR 178.102(c)).

Based on the information presented by the claimant, it is reasonable to conclude the claimant should have known that the claim existed when he resigned from his Guard, GS-085-5, position on March 29, 1986. Thus, the six-year statute of limitations expired on March 29, 1992. Accordingly, the claim is time barred and is rejected.

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.