

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

Claimant: [name]

Organization: Bureau of Land Management
U.S. Department of the Interior

Claim: Request for severance pay; waiver of
statute of limitations

Agency decision: Denied

OPM decision: Denied

OPM file number: 09-0035

//Judith A. Davis for

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

10/13/2009

Date

The claimant was formerly employed by the Bureau of Land Management (BLM), U.S. Department of the Interior. On June 3, 2009, we received documents from the claimant requesting assistance in applying for a waiver of the six-year statute of limitations applicable to his claim for \$21,210.77 in severance pay the BLM failed to pay him in 1997. We received additional information on this matter from the Department of the Treasury (Treasury) on August 14, 2009, which employed the claimant on a time-limited appointment subsequent to his involuntary separation from the BLM on June 6, 1997. For the reasons discussed herein, the claim is time barred and must be rejected.

A March 16, 2009, letter from BLM to the claimant, provided by Treasury at our request, states the letter was in response to an inquiry regarding a claim for severance pay related to the claimant's aforementioned involuntary removal from BLM. The letter states the claimant expressed his "concern that [he] never received the severance pay of \$33,817.47 to which [he] was entitled." BLM states the claimant received severance pay in the amount of \$12,606.70 for the period of June 8, 1997, through August 16, 1997. Claimant's severance pay was suspended when he accepted "a non-qualifying lime-limited appointment...with the Department of the Treasury on August 17, 1997." BLM states claimant's severance pay should have resumed when he resigned from Treasury on August 15, 1998, and claimant "should have received weekly severance pay beginning August 16, 1998, until December 12, 1998, for an additional total of \$22,210.77." The letter states Treasury was responsible for notifying BLM when claimant resigned from Treasury, but due to the length of time that has passed, BLM was unable to determine the circumstances surrounding why severance payments were not reinstated. BLM cites the six-year statute of limitations for monetary claims against the Government pursuant to 31 U.S.C. § 3702(b) and states:

Your initial letter to the Director [BLM, National Operations Center] is dated November 16, 2007, and the copy you forwarded to Secretary Kempthorne was received in the Secretary's office on October 20, 2008. Both of these dates are beyond the six-year statute of limitations, [sic] therefore, you are barred from filing a claim. While we sincerely apologize for not resuming your severance pay on August 16, 1998, we are prohibited by statute from doing so now.

In his March 21, 2009, letter to the Secretary of the Treasury, the claimant asserts Treasury failed to notify BLM in a timely manner of his renewed eligibility for severance pay when he resigned from Treasury on August 15, 1997. Claimant states "the statute of limitations notwithstanding," he was "unfairly and illegally denied money due" to him through no fault of his own, and asks the Secretary to "set aside the federal statute of limitations and direct your department to pay [him] the remaining severance pay to which [he] is entitled, but did not receive."

In its May 20, 2009, letter to the claimant, Treasury states records dating back to 1998 are no longer maintained by the Department and, thus, Treasury was unable to determine whether or not Treasury notified Department of the Interior about the claimant's August 15, 1998, resignation. Treasury states the Secretary "does not have the authority to waive the statutory limitation on monetary claims against the Government or to provide the remaining severance pay related to [his] involuntary separation of the Department of the Interior on June 6, 1997."

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. Federal agencies, including OPM, do 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.

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.

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.