

Date: March 24, 2004  
Claimant: [name]  
File Number: 04-0006  
OPM Contact: Deborah Y. McKissick

The claimant is a former employee of the Border Patrol, Immigration and Naturalization Service, U.S. Department of Justice, in [city & State] from March 13, 1986 until November 26, 1986. The claimant is seeking payment for wages for November 1986 and accumulated sick leave. The Office of Personnel Management (OPM) received the compensation claim on November 6, 2003. An agency administrative report was not requested. For the reasons stated below, we do not have the authority to settle this claim.

The claimant filed a claim, dated August 28, 2003, with her former employing organization, now a component of the Department of Homeland Security, for payment for wages and sick leave for November 1986. On October 9, 2003, the agency denied the claim because it was untimely filed.

The claimant states that she filed a discrimination complaint against her former employing agency. Filing a discrimination complaint against the agency did not stop the Barring Act's six-year limitation period from running. A claim must be in writing, and include the signature and address of the claimant. Congress enacted the Barring Act in 1940, providing for a ten-year limitation period. *See* Ch. 788, section 1 (Pub. L. 76-820) (October 9, 1940). The Act stated:

[E]very claim . . . against the United States cognizable by the General Accounting Office . . . shall be forever barred unless such claim, *bearing the signature and address of the claimant* or of an authorized agency or attorney, *shall be received in said Office* . . . [Emphasis added.]

Congress later reduced the limitation period to six years. The pertinent GAO regulation (4 CFR 31.2) stated the requirement for a signature and address and also required that a claim must be in writing. *See* 4 CFR Part 31. The OPM regulation, 5 CFR 178.102(a), has the same requirements. The burden is on the claimant to prove that the claim was filed within the Barring Act's six-year limitation period, and to prove the liability of the United States. *See* 5 CFR 178.104(a), 178.105.

The October 9, 2003, letter from the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, does not show, or even suggest, that the claimant submitted a written claim, containing her signature and address, before August 28, 2003. In view of this, the claim is barred under the Barring Act. 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. Thus, the law precludes us from considering this claim.

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