

Date: April 29, 2004
Claimant: [name]
File Number: 04-0012
OPM Contact: Deborah Y. McKissick

The claimant, a former federal employee, is seeking back pay and interest for lost wages. The Office of Personnel Management (OPM) received the compensation claim on January 14, 2004. For the reasons stated below, we do not have the authority to settle this claim.

The claimant believes her claim “should be processed and paid to include 18% interest since May 1974.” The claimant stated that she utilized the “federal grievance process” of her agency which was only identified as a Department of Defense agency. She stated that she has written letters to the U.S. General Accounting Office (GAO) since the 1980s, but had not received any response until a September 30, 2003, letter from GAO instructing her to file her claim with OPM. In the September 30, 2003 letter, GAO explained that claims settlement and related functions were transferred to OPM on June 30, 1996.

The claimant’s submission of a grievance to her employing agency in 1974 did not stop the Barring Act’s six-year limitation period from running. In 1974, submission of a claim to the Comptroller General of the GAO was the only way to stop the six-year limitation period from running. *See Matter of John M. Nelson*, B-238379 (March 16, 1990); and OPM Decision, #S9700855, of May 28, 1998.

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 (attachment 5).

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 September 30, 2003 letter, from GAO to the claimant, does not show, or even suggest, that the claimant submitted a written claim, containing her signature and address, during the 1980s. There is nothing else in the claim file to indicate that she submitted such a claim before January 14, 2004. Even though the claimant may have filed a claim with the agency sometime from May 1974 to sometime in the 1980s, the six-year statute of limitations (Barring Act) continued to run because the claim was never filed with the Comptroller General of the General Accounting Office.

In view of this, the claim is time 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.