

Compensation Claim Decision
Under section 3702 of title 31 and section 5122 of title 38,
United States Code

Claimant: [name]

Organization: N/A

Claim: Proceeds From Cancelled
Veterans Benefit Checks

Agency decision: Denied

OPM decision: Denial; Time Barred

OPM contact: Robert D. Hendler

OPM file number: 06-0035

/s/ for

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

9/28/2006

Date

The claimant, representing the estate of his deceased father, requests the Office of Personnel Management (OPM) reverse the decision of the U.S. Department of Veterans Affairs (VA) declining to issue 14 replacement checks paying VA disability compensation benefits issued between November 1, 1985, and August 1, 1988. We received the claim request May 31, 2006, and the agency administrative report on July 5, 2006. For the reasons discussed herein, the claim is time barred.

The record shows a representative of the Bank of America, on behalf the claimant, requested reissue of the checks in an October 17, 2005, letter to VA, enclosing the original checks with the letter. In its January 6, 2006, letter, the VA stated:

Per title 31, USC 3328(c), section 3702(b)(1), which bars a claim against the government unless the claim is received within six years. These checks are over the six year time limit.

We regret the inconvenience, but we are unable to reissue these check(s) under the law.

Title 38, United States Code (U.S.C.), section 5122, states in part that a check received by a payee in payment of accrued benefits shall, if the payee died on or after the last day of the period covered by the check, be returned to the issuing office and canceled, unless negotiated by the payee or duly appointed representative of the payee's estate. The record before us shows that the claimant has been duly appointed to represent the estate of [claimant's father], deceased, under the laws of Colorado.

However, the Barring Act, at 31 U.S.C. 3702(b), specifies claims against the United States must be presented to the appropriate official or agency within six years after the claim accrues. *Matter of Robert O. Schultz*, B-261461 (November 27, 1995). 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). The underlying obligation liquidated by a Treasury check is subject to the Six year limitation imposed by the Barring Act. See *Payment of Unpaid Treasury Checks More Than 6 Years Old*, B-244431 and B-244431.2 (Sept. 13, 1994); OPM Case Number S9601661. Unless an individual submits a claim to the appropriate agency before the six year period elapses, the claim on the obligation is barred. 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 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. Moreover, the burden of proof is on the claimant to prove the liability of the Government and his or her right to payment. 5 CFR 178.105; *Matter of Jones and Short*, B-205282, June 15, 1982. We are required to settle claims only in accordance with the applicable laws and regulations, and we cannot waive or modify their provisions in individual cases. Therefore, we concur with the agency's decision this claim is time barred and must be denied.

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