

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

Claimant: [name]

Organization: Communications and Electronics
Command (CECOM)
Department of the Army
Fort Monmouth, New Jersey

Claim: Proceeds From Stale-Dated
Treasury Checks

Agency decision: Denied

OPM decision: Denial; Time Barred

OPM file number: 07-0055

/s/ for

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

1/29/2008

Date

This claim was forwarded to the U.S. Office of Personnel Management (OPM) on behalf of the claimant by her former employing agency's payroll provider, the Defense Finance and Accounting Service (DFAS). The claimant seeks to have 12 checks, initially issued to her during the period 1987-1992, totaling \$6,945.06, reissued. We received the September 19, 2007, claim request on October 2, 2007. For the reasons discussed herein, the claim is time barred.

The record shows DFAS received a congressional inquiry on this matter on June 20, 2007. The inquiry states:

[Claimant] retired from CECOM in 1993. While going through some items, she discovered 12 uncashed U.S. Treasury payroll checks-some of which date back twenty years. She would like to know how she can go about getting them replaced.

The DFAS submission includes a statement from the claimant in which she indicates she "mistakenly put [the checks] away in a drawer and then proceeded to forget about them." The claimant states she retired from CECOM in April 1993, and telephoned her former servicing Civilian Personnel Office:

"[a] couple of years ago...to inquire as what must be done to get replacement checks. At the time I was told the checks were too old and the money had been put in the General Fund and hence replacement checks were no longer available through payroll sources. They were of no help in directing me to some other office and offered no suggestions in that regard. I was so discouraged by this brick wall of indifference that I stuck the checks back into the drawer.

In its forwarding memorandum, DFAS notes the Competitive Banking Act (CEBA) of 1987 has no effect on the underlying obligation of the United States for which a Treasury check was issued, but that CEBA established time limits on the payability of Treasury checks. DFAS, cites Department of Defense financial management regulations which state:

...since a claim on the underlying obligation is separate from a claim on the check [a claim on which is time barred unless the issuing agency receives a claim within one year of the issuance date], payment may still be made on the underlying obligation subject to the six-year statute of limitations in the Barring Act (31 U.S.C. 3702(b)).

Since the claim by [claimant] was made "approximately 13 years after the most recent check was issued," the Barring Act applies and DFAS denied the claim. DFAS stated it forwarded the claimant's request under the provisions of 5 CFR 178.102(b) "to the Office of Personnel Management for his/her [sic] consideration in waiving the statute of limitations of the Barring Act."

It appears the claimant misunderstood the information provided from her former servicing Civilian Personnel Office, believing that replacement checks would be forthcoming from some other office. DFAS's request for a waiver of the statute of limitations in the Barring Act is similarly misplaced. 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 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.