

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

Claimant: [name]

Organization: Veterans Services Center
[regional office]
Veterans Benefits Administration
U.S. Department of Veterans Affairs
[city & State]

Claim: Back pay for time employed by
the Department of the Navy

Agency decision: N/A

OPM decision: Denied; Time barred

OPM file number: 08-0012

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

3/24/2008
Date

The claimant currently occupies a Veterans Service Representative, GS-996-10, position in the Veterans Services Center, [regional office], Veterans Benefits Administration, U.S. Department of Veterans Affairs (VA), in [city & State]. In her January 9, 2008, letter to the U.S. Office of Personnel Management (OPM), received by OPM's Center for Merit System Accountability on February 4, 2008, the claimant states she is submitting a claim for back pay with interest for the period October 1, 1995, to January 5, 1996, while employed with the Department of the Navy, Commander Submarine Pacific Fleet, in Honolulu, Hawaii. She states her previous employing agency, the U.S. Attorney's Office Southern District (USAOSD) of Texas, in Houston, Texas, processed and granted her back pay and interest "for the period 2001-2003," but that her servicing VA human resources (HR) office "refuses to pick up where the Department of Justice left off in 2004 and finish processing my back pay." She further asserts the USAOSD assured her that she would receive back pay and interest for the period at issue in this claim. For the reasons discussed herein, the claim is time barred and must be rejected.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave performed by OPM under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). Section 178.102(a)(3) of title 5, Code of Federal Regulations, requires that an employing agency already has reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. A claim must be submitted in writing and signed by the claimant (5 U.S.C. 3702(b)(1) and 5 CFR 178.102(a)). The burden of proof is on the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment (5 CFR 178.105). We find no record that the claimant received a written agency-level decision on the issues raised in her letters to OPM. However, we may render a decision on this matter based on jurisdictional grounds.

In accordance with the Barring Act, 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. *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 Office of Personnel Management 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.

The record includes copies of electronic mail (email) messages on the underlying issue of this claim. However, the claimant did not submit a written, signed claim on this matter until October 30, 2007, when she sent separate letters to the USAOD and her servicing VA HR office "disputing the back pay...for the period October 1, 1995-January 5, 1996, due to an unprocessed within grade increase while employed by the Department of the Navy." Thus, it is clear that the claimant filed her claim meeting the requirements of 5 U.S.C. 3702(b)(1) and 5 CFR 178.102(a) more than 12 years after it accrued; and the claim, therefore, is time barred. The USAOD's indication in July 31, 2003, and June 4, 2004, emails that back pay and interest would be forthcoming on the period of the claim conflict with express language of the Barring Act and has no force. Accordingly, the claim is time barred and must be rejected.

The previously cited USAOD July 31, 2003, email to the claimant states:

I told you last Wednesday that we would review your records to determine whether your salary had been set correctly when you started work here. I finalized the review yesterday afternoon....I had already determined that the Department of the Navy should have actually given you the within-grade increase to the GS-7/5 when you returned to duty and prior to your reassignment to the GS-6 position....You should have received the WGI to the GS-7/5 on 7/23/95....

It appears that when you were brought on in this agency, the HR Specialist who set your pay did not have your records available for review and a follow-up was not conducted when your personnel file was received from the Records Center. I do apologize and am glad that you brought this to our attention....As a result, we will be initiating action to correct your salary retroactive to 8/12/01

It appears USAOD made an *administrative determination* under the authority of the Back Pay Act (5 U.S.C. 5596(b)(4)), which allows back pay and interest for an unjustified or unwarranted personnel action. However, such corrective action may not begin more than six years prior “the date of the filing of a timely appeal or, absent such filing, the date of the administrative determination.” In this case, the administrative determination occurred no earlier than July 31, 2003, permitting the payment of back pay and interest no earlier than July 31, 1997. Therefore, the claimant was time barred under the Back Pay Act from receiving back pay and interest for the period October 1, 1995, to January 5, 1996.

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.