

**U.S Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: U.S. District Court, Northern District
of New York
Utica, New York

Claim: Underpayment for accrued annual leave

Agency decision: Denied

OPM decision: Denied; Time barred

OPM file number: 13-0020

/s/ Linda Kazinetz for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Agency Compliance and Evaluation
Merit System Accountability and Compliance

11/5/13

Date

The claimant seeks an additional \$22,343.75 for 330 hours of annual leave left in her annual leave account as a result of her removal from the coverage of the Annual and Sick Leave Act of 1951 (Leave Act), codified in chapter 63 of title 5, United States Code (U.S.C.), effective August 20, 2002. The U.S. Office of Personnel Management (OPM) received the claim request on March 13, 2013, and the agency administrative report (AAR) on May 9, 2013. For the reasons discussed herein, the claim is time barred and must be rejected.

The record shows the claimant disagrees with her agency's payment of said leave at the 2002 pay rate (\$15,183.30) because she believes this action would "deprive [her] of the use of that money for more than 10 years." She asserts she should have been paid in accordance with her agency's lump sum payment policy in effect in 2002¹, that it is not equitable for her agency to compensate her in 2012 at her 2002 rate of pay, and that:

an appropriate measure of the underpayment is to quantify the loss of the use of \$15,183.30 from August 2002 to the present (ten and a half years). The loss of use of this amount for 10.5 years is valued at \$37,527.05 (based upon the New York State statutory interest rate of 9% compounded annually). Therefore, the underpayment to me was \$22,343.75 (\$37,527.05 minus \$15,183.30).

The claimant further asserts her claim is timely since her agency informed her of the oversight of the nonpayment of her lump sum for annual leave:

in December 2012, and so informed me at that time. December 2012 is the date of the unjustified or unwarranted personnel action (payment of accrued leave at a 2002 rate of pay). Therefore, my appeal, filed well within the six years period provided by the Back Pay Act, was timely. See 5 U.S.C. § 5596(b)(4)

In the AAR, the agency states the claimant has been a Federal judiciary employee since September 14, 1994, and when appointed as a law clerk in the chambers of U.S. District Judge David N. Hurd:

was covered under the provisions of the Leave Act. Subsequently, on August 19, 2001, at the discretion of Judge Hurd, she was removed from coverage of the Leave Act. This action is possible within the judiciary because under the authority of 28 U.S.C. §752a, a law clerk to a district judge is exempt from the provisions of the Leave Act, unless specifically included by the appointing judge or local rule of court.

The agency states a Record of Leave Data, Standard Form 1150 (SF 1150), should have been completed and submitted to the Administrative Office of the U.S. Courts for processing and issuance of a lump-sum payment for the annual leave in question when the claimant was removed from Leave Act coverage. The agency further states an SF 1150 "apparently was prepared" at that time, but was not submitted for payment. This was not discovered until the SF 1150 was found by the Courts human resources staff in October 2012. The agency states it made a lump-sum payment for 330 hours of annual leave in December 2012, and that "consistent

¹ The agency states in the AAR that its previous practice of making lump-sum annual leave payments at the time of separation was inconsistent with title 5, Code of Federal Regulations (CFR), section 550.1203(a)(3), and was subsequently changed.

with 5 CFR 550.1205(a), the payment was made using her rate of pay as of August 19, 2002 (the effective date of her removal from Leave Act coverage [i.e., \$46.01 per hour])." The agency further states:

The discovery of the lump-sum payment owed to [the claimant] was made some ten years after the removal of her position from the Leave Act. As such, the payment is not subject to section 5596(b)(4) of title 5, United States Code, because it involved a period beginning more than 6 years before the date of the administrative determination that the payment was owed. Due to the exclusion under 5596(b)(4), the requirement to pay interest established by 5596(b)(2)(A) is not applicable. However, while no payment was required under section 5596, it is our view that it was equitable and reasonable to provide [the claimant] the lump-sum payment owed her, at the rate she was receiving when she earned it.

OPM's authority to adjudicate Federal civilian employee compensation and leave claims under 31 U.S.C. § 3702(a)(2) is subject to the statute of limitations in 31 U.S.C. § 3702(b)(1), which states every claim against the United States is barred unless such claim is received within six years after the date such claim first accrued. 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. 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 File Number S9700855, May 28, 1998; OPM File Number 003505, September 9, 1999.

The Barring Act, as does any statute of limitations, starts to run when the claim first "accrues." The rule is that a claim first accrues on the date when all events have occurred which fix the liability, if any, of the United States, entitling the claimant to sue or to file a claim. See *Chevron U.S.A., Inc. v. United States*, 923 F.2d 830 (Fed. Cir. 1991), cert. denied, 112 S. Ct.167. *Lins v. United States*, 688 F.2d 784 (Ct. Cl. 1982), cert. denied, 459 U.S.1147; *Empire Institute of Tailoring, Inc. v. United States*, 161 F. Supp. 409(Ct. Cl. 1958); *Kinsey v. United States*, 13 Cl. Ct. 585 (1987), aff'd, 852 F.2d556 (Fed. Cir. 1988); 42 Comp. Gen. 622 (1963); 42 Comp. Gen. 337 (1963); OPM File Number S00285, May 4, 1999.

The record shows the agency denied the claim on January 31, 2013. The record includes two AO 75 TYPE OF APPOINTMENT AND LEAVE ACT CERTIFICATION CHECKLIST forms. The first, dated and signed on September 24, 1999, by both the claimant and Judge Hurd, indicates the claimant was covered by the Leave Act. The second, dated and signed on August 20, 2002, by the same two parties, indicates the claimant is not covered by the Leave Act. Thus, the claimant knew on August 20, 2002, that her Leave Act coverage status had changed effective that date. As such, that is the date when all events had occurred which fixed the liability of the United States.² It is well established that employees are charged with constructive knowledge of

² The January 31, 2013, agency claim denial states "I am in receipt of your claim," but does not state the date the claim was preserved. The claimant has not submitted any documentation establishing that she filed a signed, written claim with her agency preserving such claim within the six-year statute of limitations.

statutory provisions and of their implementing regulations. See B-213380, August 20, 1984. Here, the claimant was clearly aware of her change in Leave Act coverage status. Thus, we find the claim is time barred as it was filed more than 10 years after the lump-sum leave payment accrued and must be rejected.

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