

Date: April 23, 2003
Claimant: [name]
File Number: 03-0002
OPM Contact: Deborah Y. McKissick

The claimant is employed as a [position] with the National Aeronautics and Space Administration (NASA). He requests that the agency pay the interest related to his military deposit to gain retirement credit under the Civil Service Retirement System (CSRS) for his 22 years of military service with the United States Air Force. The Office of Personnel Management (OPM) received the compensation claim on October 9, 2002, and the agency administrative report on December 26, 2002. OPM received the claimant's response to the agency administrative report on February 5, 2003. For the reasons discussed herein, the claim is denied.

Based on his belief that agency errors occurred, the claimant requested the agency to compute and pay the interest if he decided to make the military deposit, as allowed in Chapter 23 of the *CSRS and FERS Handbook for Personnel And Payroll Offices*. He stated that, during the hiring process on September 26, 1983, oral information was provided by the agency regarding the possible effect of military service on CSRS retirement. The claimant said he contacted the agency sometime in 1999 to obtain information about making a deposit for his post-1956 military service. On May 12, 1999, the claimant received a report from his agency that indicated the amount due and he was instructed to contact the agency's personnel office should he elect to make the military deposit toward his CSRS retirement. The claimant elected not to pay the deposit.

In the agency administrative report, the agency indicated that new employees with post-1956 military service are counseled to provide the agency with documentation of their basic pay as soon as possible and given instructions on how to obtain that information. New employees are also made aware of the interest free period, which begins on the date of employment, and are encouraged to contact the agency's Benefits Office "to further explore options and opportunities that may benefit them specifically with regard to re-deposits of refunds, deposits for temporary service, military deposits..." The agency explained that retired military employees were contacted in August 1994 to obtain the employees' desires to combine or keep separate civilian and military retirements. The claimant returned his correspondence indicating his desire to keep his retirements separate.

In November 1997, the claimant contacted the Benefits Office and requested retirement estimates for a possible retirement date of July 31, 1998. Annuity estimates were prepared, and

the claimant was instructed to request his military earnings. In April 1999, the claimant requested and received verification of his military earnings and requested that the agency's Benefits Office prepare an estimated deposit amount. The claimant received the estimated post-1956 military deposit in May 1999. The claimant was given an amount of deposit due as of September 30, 1999, so that he could avoid accruing additional interest charges by paying this deposit prior to the next interest accrual date of October 1, 1999. At that time, he was also directed to contact the Benefits Office should he desire to make the deposit so that the necessary forms could be prepared.

The period from September 26, 1983, to April 15, 1990, is considered time barred because the claim was not filed within six years after it first accrued. *See 5 CFR 178.104*. This determination is in accordance with the Barring Act, 31 U.S.C. 3702(b)(1), which states that every claim against the United States is barred unless such claim is received within six years after the date such claim first accrued. Accordingly, claim for payment of interest on military deposit prior to April 15, 1990 is barred from this claim. 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.

The claimant asserts that the agency gave him erroneous advice concerning payment of the military deposit and that the advice resulted in an accrual of interest on his deposit. The agency states that it is not aware of any provision authorizing the expenditure of its appropriated funds to pay, on behalf of the employee, the interest charges caused by its errors. We also are not aware of any statutory authority that would allow the agency to expend its appropriated funds on behalf of the claimant by paying the interest due on a deposit for his post-1956 military service. Accordingly, we concur in the agency's denial of the claimant's request to waive or pay the interest on his deposit. *See George W. Schlossnagle*, B-270151 (January 16, 1996).

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. Thus, where the written record presents an irreconcilable dispute of fact between a government agency and an individual claimant, the factual dispute is settled in favor of the agency, absent clear and convincing evidence to the contrary. 5 CFR 178.105; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982. Finally, the claimant's allegation that agency officials gave him inaccurate advice regarding his retirement contributions does not provide a basis for approving this claim. Payments of money from the Federal treasury are limited to those authorized by law, and erroneous advice or information provided by a government employee cannot bar the government from denying benefits that are not otherwise permitted by law. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 110 S. Ct. 2465, *rehearing denied*, 497 U.S. 1046, 111 S. Ct. 5 (1990). Accordingly, this claim is denied.

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.