

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

Claimant: [name]

Organization: [agency component]
Department of the Army
Rochefort, France

Claim: Claim grade of GS-9 and the monetary
benefits thereof

Agency decision: Denied

OPM decision: Denied; Time barred

OPM file number: 11-0018

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

8/10/2011

Date

The claimant seeks “to claim grade of GS-9 and monetary benefits there of [sic].” The U.S. Office of Personnel Management (OPM) received his claim request dated January 26, 2011 on April 21, 2011. For the reasons discussed herein, the claim is time barred and must be denied.

The claimant states he “was awarded with approved application for Federal Civil Service employment position when [he] was selected by the U.S. Board of Examiners at Rochefort, France.” He states his “problem is at date line from 03-63 to 07-67” in his “DARCOM [Department of the Army] CAREER EMPLOYEE RECORD” because “[g]rade listed as G07 [sic] instead of G09 [sic] as awarded by contract agreement between DOA [Department of the Army]” and himself. He states his “contract agreement begins with [his] Application as Supply Specialist” and asserts that the position he “applied for and was appointed to, called for grade GS9 [sic].” The claimant states he corrected various Federal documents he provided with his claim to reflect the GS-9 grade: “As you notice I changed listed grade G07[sic] to G09 [sic] to agree with the Contract Agreement, based on my rights under space: EMPLOYEE COMMENTS” [sic].

The claimant states that on the day he was scheduled for entrance on duty, the office that maintained his personnel folder:

suddenly lost or misplaced all records of my contract that I remembered signing February 6, 1963. At the time, I had no records to inforce [sic] a complaint; four days after I had been on my new assignment I received a copy of a Standard Form 50, dated 3/13/63, assigning me to another position with job title: “Supply Supervisor, grade GS7 [sic].”

Section 178.102(a) of title 5, Code of Federal Regulations (CFR), indicates that the claimant’s employing agency must review and issue a written decision on a claim before it is submitted to OPM for adjudication. The claimant is responsible for preserving the claim period, proving the signed, written claim was filed within the applicable statute of limitations. *See* 5 CFR 178.104. The information provided by the claimant with his request does not show he has filed a signed, written claim with a Department of the Army component authorized to issue an agency-level decision or that he has received such a decision. Nevertheless, we may render a decision due to the claim being time barred.

As provided in the Barring Act, codified at 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. In pay cases, the claim first accrues when the pay should have been paid to the employee. *McConnell v. United States*, 5 Cl. Ct. 785, 789 (1984), *aff’d*, 763 F.2d 414 (Fed. Cir. 1985); *see also Flack G. Milner*, 29 Comp.Gen. 517 (June 26, 1950). 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. OPM File Number S9700855, May 28, 1998; OPM File Number 003505, September 9, 1999. *See also Matter of Nguyen Thi Hao*, B-253096, (August 11, 1995); *Matter of Jackie A. Murphy*, B-251301 (April 23, 1993); *Matter of Alfred L. Lillie*, B-209955, May 31, 1983.

Section 178.105 of title 5, Code of Federal Regulations (5 CFR) states:

The burden is upon the claimant to establish ... the liability of the United States, and the claimant's right to payment. The settlement of claims is based upon the written record only, which will include the submissions by the claimant and the agency. OPM will accept the facts asserted by the agency, absent clear and convincing evidence to the contrary.

Furthermore, 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, if requested. 5 CFR 178.105; OPM File Number 01-0053, February 8, 2002; OPM File Number 01-0055, February 25, 2002. See also *Matter of John B. Tucker*, B-215346, March 29, 1985.

The claimant seeks to excuse his tardiness in filing his claim, first by stating that his location in Rochefort “was over 100 miles South of [his] employing Agent and at a different U.S. Army HEADQUARTERS, Port Area Command APO 21,” he was not aware of certain DARCOM records and did not “have knowledge of obtaining copies of [his] lost employment records from the National Archives,” and he was “only recently ... able to obtain records listed in this contract from [the] NATIONAL ARCHIVES RECORDS ADMINISTRATION, St. LOUIS, MO and from DOA U.S. ARMY HUMAN RESOURCES COMMAND, ! [sic] RESERVE WAY, ST. LOUIS, MO.”

The fact that the claimant might have been unaware of his legal rights, and thus the limitation on when those rights could be asserted, does not help him here. “Ignorance of claim accrual does not automatically toll the running of a statute of limitations.” *Chevron U.S.A., Inc. v. United States*, 923 F. 2d 830, 834 (Fed. Cir. 1991). Rather, the statute commences to run when claimants know or should know of their potential claims. *Id. at 834*. Based on the information presented by the claimant, it is clear the claimant knew or should have known his claim existed when he received his first paycheck in 1963 paying him at the GS-7 salary rate. Additionally, he also should have known his claim existed when he received the Standard Form (SF) 50 in March 1963 appointing him to a Supply Supervisor, GS-2001-7, position effective March 13, 1963. Accordingly, the claim is time barred and is denied.

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.