

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-214975

DATE: December 26, 1984

MATTER OF: Horace T. Morelli - Environmental
Differential Pay - Barring Act

DIGEST:

1. Effective July 2, 1975, the time for filing claims against the United States with the Comptroller General of the United States was changed from 10 years to 6 years. See Public Law 93-604, now codified at 31 U.S.C. § 3702(b) (1982). A claim filed by an employee of the National Park Service, Department of the Interior, for the period from 1970 to 1981 is governed by the 6-year limitation period. The Comptroller General is without authority to waive or modify the provisions of 31 U.S.C. § 3702(b).
2. An employee filed a claim on July 24, 1981, with his employing agency for retroactive environmental differential pay. The claim was paid by the agency on October 13, 1982, for the 6-year period beginning July 24, 1976, but the claim was not received in the General Accounting Office (GAO) until December 7, 1982. Where the claim has not been recorded at GAO, the agency may pay the claim for a period of 6 years only from the date of payment, not from the date the agency received the claim. The erroneous payment for the period prior to October 13, 1976, may be considered for waiver under 5 U.S.C. § 5584 (1982).

This decision is in response to a request by the National Association of Government Employees (NAGE), on behalf of Mr. Horace T. Morelli, an employee of the National Park Service, United States Department of

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the Interior, for payment of additional environmental differential pay. This decision has been handled as a labor-relations matter under our procedures contained in 4 C.F.R. Part 22 (1984). Pursuant to our regulations, the National Park Service has been served with a copy of the documents submitted to this Office by NAGE, but the agency declined to file a written response with this Office. 4 C.F.R. § 22.4(c) (1984).

The National Park Service has agreed that Mr. Morelli performed compensable hazardous duty during the period 1970 to 1981. Mr. Morelli filed a claim for environmental differential pay with the agency on July 24, 1981, and the Park Service paid Mr. Morelli retroactive environmental differential pay for the period from July 24, 1975, to August 31, 1981. The issue now presented is whether Mr. Morelli may be paid environmental differential pay for the additional 4 years of hazardous duty which he performed during the period July 24, 1971, to July 23, 1975. For the reasons stated below, we hold that the additional environmental differential pay may not be paid.

At the time the Park Service received Mr. Morelli's claim, the agency initially advised him that he would be paid retroactive environmental differential pay for the prior 10-year period. Subsequently, the agency discovered that the 10-year statute of limitations period had been reduced to 6 years under section 801 of Public Law 93-604, 88 Stat. 1965, January 2, 1975, now codified at 31 U.S.C. § 3702(b) (1982). The agency then paid Mr. Morelli only for the 6-year period beginning on July 24, 1975.

The NAGE, on behalf of Mr. Morelli, disagrees with the agency's interpretation of the effect of section 801 of Public Law 93-604. Section 801 amended the Barring Act of October 9, 1940, by reducing the period from 10 years to 6 years during which a claim or demand against the United States must be received by the Comptroller General of the United States. The union argues that the amendment should be construed prospectively and not retrospectively, and the union cites the decision in Union Pacific Railroad Co. v. Laramie Stock Yards Co., 231 U.S. 190 (1913), and other court decisions as establishing the proposition that legislation shall be interpreted to address the future and not the past. The NAGE states that neither the Act, section 801 of Public Law 93-604, nor its legislative history, indicates that the amendment was meant to apply to claims against the United States which had already accrued and that the new statutory period was only meant to apply to claims

which arose after the effective date of the Act. Therefore, since Mr. Morelli's claim accrued under the 10-year statute of limitations, it should be subject to the prior 10-year limitation and not the amended 6-year statutory period.

The NAGE also states that at the time the 6-year statute of limitations went into effect in 1975, Mr. Morelli was unaware of his right to receive environmental differential pay. The union contends that the agency should be held responsible for knowing and informing its employees of changes in all applicable laws and regulations. Therefore, even if the 6-year statute of limitations is the appropriate statutory period, the NAGE argues that Mr. Morelli's case should be held exempt from the 6-year limitation because of the unique circumstances involved in his case.

Our decisions have held that under Public Law 93-604, effective July 2, 1975, which changed the time limit for filing claims against the United States with the Comptroller General of the United States from 10 years to 6 years, any claims received by the Comptroller General on July 2, 1975, or thereafter, are governed by the 6-year limitation period. Frederick C. Welch, 62 Comp. Gen. 80 (1982); Wesley L. Goecker, 58 Comp. Gen. 738 (1979) (claim received by the Comptroller General on July 2, 1975, the effective date of Public Law 93-604); William C. Scott, B-200852, June 24, 1981; Freddie L. Baker, B-190841, February 15, 1978, affirmed December 27, 1978; and Joan J. Shapira, B-188023, July 1, 1977.

We note that while section 801 of Public Law 93-604 substituted the 6-year period for the 10-year period, section 802 of that law specified the effective date of this amendment (July 2, 1975) and stated that the amendment "will have no effect on claims received in the General Accounting Office before that time." It is our interpretation that unless a claim was received in our Office prior to July 2, 1975, the claim is governed by the 6-year statute of limitations.

The legislative history of Public Law 93-604, as provided by the union, does not contradict that interpretation but rather enforces it. As stated in Senate Report No. 93-1514, section 802 of the law makes it clear that the enactment of the new time limit will not affect claims filed before such enactment.^{1/} We believe it is clear that only

^{1/} S. Rep. No. 93-1514, 93rd Cong., 2nd Sess., reprinted in 1974 U.S. Code Cong. & Ad. News 7147, 7152.

those claims which were received by the Comptroller General prior to July 2, 1975, are unaffected by the change in the limitation period. We are unpersuaded by the argument of the union that the amendment should apply only to those claims which arose after July 2, 1975.

We also disagree with the contention by the NAGE that Mr. Morelli's claim should be exempt from the 6-year limitation because of the unique circumstances involved in his case. This Office has repeatedly held that the Comptroller General is without authority to waive or modify the provisions of 31 U.S.C. § 3702(b). See Welch, Goecker, Scott, and Baker, cited above.

Finally, we note that 31 U.S.C. § 3702(b) refers to claims "received by the Comptroller General within 6 years after the claim accrues * * *." As we stated in Welch, cited above, the claims must be received in this Office, and filing a claim with another agency does not satisfy the requirements of the Barring Act. In this case, Mr. Morelli filed his claim with his employing agency on July 24, 1981, but his claim was not received in our Office until December 7, 1982. We have also been advised that Mr. Morelli's claim was paid by the agency on or about October 13, 1982, prior to his filing a claim with our Office.

Where the agency has received a nondoubtful claim but has not referred the claim to our Office for recording, the agency may pay only that portion of the claim which accrued not more than 6 years from the date of payment, not 6 years from the date the agency received the claim. Kampe and Johnson, B-214245, July 23, 1984. Therefore, assuming the date of payment was October 13, 1982, Mr. Morelli is entitled only to that portion of his claim beginning October 13, 1976, and any payment made for the period prior to that latter date is erroneous. Kampe and Johnson, cited above. Such an erroneous payment is subject to waiver under 5 U.S.C. § 5584 (1982) and 4 C.F.R. Parts 91-93 (1984).

Accordingly, we hold that Mr. Morelli's claim for the period prior to July 24, 1975, may not be paid. The erroneous overpayment for the period before October 13, 1976, may be considered for waiver.

Milton J. Aorolan
for
Comptroller General
of the United States