

DECISION

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

FILE: B-209955

DATE: May 31, 1983

MATTER OF: Alfred L. Lillie - Back Pay
Entitlement - Barring Act**DIGEST:**

An intermittent Federal employee failed to receive within-grade increases due to administrative error. Upon discovery, the employing agency took corrective action under 5 U.S.C. § 5596, but submitted the back pay award claim here because the period covered spanned 19 years. Portion of claim arising before July 7, 1976, is barred since 31 U.S.C. § 71a (now 31 U.S.C. § 3702(b)(1)) limits recovery to 6-year period prior to receipt of claim here, and this Office does not have the authority to waive or modify its application. The accrual of a claim for underpayment of compensation found due pursuant to employing agency determination for services rendered is the date of performance and a new claim accrues on each day such services are rendered. 29 Comp. Gen. 517 (1950).

This decision is in response to an appeal by a civilian employee of the Department of the Interior, from a settlement by our Claims Group which disallowed, in part, his entitlement to back pay under 5 U.S.C. § 5596. The disallowance was based on the provisions of the Barring Act, as amended, 31 U.S.C. § 71a.

The issue presented is whether the provisions of the Barring Act limits recovery of back pay where the employing agency made its determination, takes corrective action, and where the employee was without knowledge of the error. For the reasons that follow, we sustain our Claims Group's settlement.

Mr. Alfred L. Lillie, an employee of the Department of the Interior, was promoted and held a full time position with that agency in December 1960, as a grade GS-9, step 1. On September 3, 1961, he became an intermittent employee with the agency in the same grade and step. From then until 1975, he received no within-grade increases, although it has recently been determined that but for administrative error

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he would have received them. In 1975, he was promoted to grade GS-11, step 1. However, had he received the appropriate within-grade increases between 1961 and 1975, he would have been placed in step 2 of grade GS-11 in 1975. At present, he is apparently being correctly paid as a grade GS-11, step 5.

It was determined by the agency that Mr. Lillie performed the requisite satisfactory service in his position and that the only reason he did not receive his within-grade increases was due to administrative error. Based on available records, Mr. Lillie's underpayment of pay found due from the beginning of calendar year 1963 through Pay Period 4 of fiscal year 1982 was computed to be \$7,768.97.

Mr. Lillie asserts that, as a General Schedule intermittent employee, he was not aware of the regulations governing within-grade step increases for individuals in his category. Further, as an employee stationed a considerable distance from his agency's personnel office, with few reasons to contact them, he relied on that office to correctly maintain his employment records. Additionally, he suggests that since the earlier administrative actions in his case have been established to be clearly unjustified, in view of the make whole provisions of the Back Pay Act, his recovery should not be limited only to the last 6 years preceding the discovery of error and presentation of a claim here.

In Mr. Lillie's case it was determined that his failure to receive his proper within-grade increases, which are statutorily authorized for the performance of satisfactory service (5 U.S.C. § 5335), was due solely to administrative error. However, since the period for which the underpayment was determined to have occurred spanned more than 19 years, the matter of pay entitlement pursuant to the agency's corrective action was submitted here for consideration. See 31 U.S.C. § 71, now codified as 31 U.S.C. § 3702(a) by Public Law 97-258, approved September 13, 1982, 96 Stat. 877, 970, and Section 5.1 of Title 4 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies.

In connection with the foregoing provisions, 31 U.S.C. § 71a (now also codified by Public Law 97-258, supra, as 31 U.S.C. § 3702(b)(1)) requires that every claim which is to come before this Office must be received here within 6 years after the date such claim first accrued. Under these provisions we have always considered receipt of a claim here as constituting a condition precedent of a claimant's right to have such claim considered on its merits by this Office.

Fredrick C. Welch, B-206105, December 8, 1982, 62 Comp. Gen. _____. With regard to that which constitutes accrual of a claim on pay questions, we have held that such accrual is the date the service was rendered for which the extra compensation is claimed and that the claim accrues on a daily basis. 29 Comp. Gen. 517 (1950). Leverette C. Burke and James E. Mole, B-208480, March 28, 1983. We are also without authority to waive or modify the application of 31 U.S.C. § 71a. Fredrick C. Welch, above.

In view of the fact that the earliest correspondence from Mr. Lillie concerning these matters was received here on July 7, 1982, the action taken by our Claims Group to limit recovery to the period on and after July 7, 1976, is correct, and is sustained.

for 
Comptroller General
of the United States