

**Compensation Claim Decision**  
**Under section 3702 of title 31, United States Code**

**Claimant:** [name]

**Organization:** Academic Department  
Command Language School  
John F. Kennedy Center for  
Military Assistance  
Department of the Army  
Fort Bragg, North Carolina

**Claim:** Request for Severance Pay

**Agency decision:** Denied

**OPM decision:** Denied; Time Barred

**OPM contact:** Robert D. Hendler

**OPM file number:** 05-0020

/s/ for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Center for Merit System Accountability  
Human Capital Leadership  
and Merit System Accountability

6/19/2006

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Date

The claimant was separated through a reduction-in-force on July 4, 1981, from a [position] with Academic Department, Command Language School, John F. Kennedy Center for Military Assistance, Department of the Army, at Fort Bragg, North Carolina. On March 15, 2005, we received documents from him appearing to request the Office of Personnel Management (OPM) direct his former agency to provide him with \$2,104.44 in severance pay. For the reasons discussed herein, the claim is time barred and must be rejected.

The claimant submitted a copy of a letter from OPM dated November 22, 2004, responding to a September 22, 2004, congressional inquiry on his behalf on this matter. He also submitted a copy of a March 31, 2004, agency letter “which responds to your [the claimant’s] request for information about severance pay entitlement s for the reduction in force action effective July 4, 1981.” The letter does not indicate the date of the claimant’s request or when the request was received by the agency. The claimant also submitted an annotated copy of a July 12, 2004, agency letter on this issue stating:

Since over 20 years has passed since you became entitled to severance pay...[the activity human resources office] was unable to locate documents to support your claim or dispute it. However, the more important issue is that your claim for payment of severance pay appears to exceed the 6-year limitation set forth by the Barring Act, 31 U.S.C. 3702(b)(1) to consider such requests. For this reason, they had to deny your claim.

The claimant annotated this letter, stating:

The separation date is July 4, 1981. I was informed about my severance pay in 2004. You measure the time from 2004. This is the basis for the claim.

The appellant included a copy of a Standard Form (SF) 50, dated July 4, 1981, documenting his separation effective that date. Remarks on the SF-50 include:

Entitled to \$2,104.44 severance pay fund to be paid at a rate of \$369.20 per week for 5 weeks, plus last payment of \$258.44 beginning 07-05-81  
[forwarding address]

The agency administrative report states there are no records available to either document receipt or nonreceipt of severance payments. It further states:

The claimant has not provided the agency with pertinent documents from 1981 that support his claim. A copy of individual retirement record indicates that his unpaid annual leave check was issued on 19 August 1981. The notation “undeliverable” is not checked. The lump sum leave payment was sent to the claimant’s forwarding address, [address]. This is the address the finance office was provided when they received the payroll copy of the SF-50, Notification of Personnel Action, and effective 4 July 1981. This is the personnel action that separated the claimant from federal service and documented his entitlement to severance pay.

As provided in 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. 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.

A claim does not accrue unless the claimant knew or should have known that the claim existed. *See Jones v. United States*, 801 F.2d 1334, 1335 (Fed.Cir.1986), cert. denied, U.S., 107 S.Ct. 1887, 95 L.Ed.2d 495 (1987). 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. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985; OPM File Number 01-0053, February 8, 2002; OPM File Number 01-0055, February 25, 2002.

Based on the information presented by the agency and quoted previously, it is reasonable to conclude the claimant should have known that the claim existed when he separated by a reduction-in-force. Contrary to the claimant’s assertions that his claim accrued in 2004 when he “learned” about his severance pay, his claim for severance pay accrued the date of his separation by reduction in force; i.e., July 4, 1981. Accordingly, the claim is time barred and is 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.