

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

Claimant: [name]

Organization: Naval Public Workers Center
Subic Bay, Republic of the Philippines

Claim: Overtime pay

Agency decision: Denied

OPM decision: Denied; Time barred

OPM file number: 13-0018

/s/ Judith A. Davis for

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

6/11/13

Date

The claimant seeks pay for overtime he asserts he worked from 1983 through 1985 while employed as a General Foreman, WS-14, for the Department of the Navy (Navy) at Subic Bay in the Republic of the Philippines. He asks that the pay take into consideration his “10% differential, and premium pay for Sunday and holiday time.” The U.S. Office of Personnel Management’s (OPM) Office of the General Counsel (OGC), which previously adjudicated Federal civilian compensation and leave claims under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.), received the claim request on or around August 19, 1999. For the reasons discussed herein, the claim is time barred and must be rejected.

The record contains a February 27, 1999, letter from the claimant to former Senator Wayne Allard of Colorado requesting his “help to collect overtime owed [him] by the U.S. Navy while employed by Public [sic] Works Center [PWC], Subic Bay, but stationed at Naval Communication Station, San Miguel, as Public Works Director, from 1981-1985.” The claimant states he: (1) kept a log of the overtime he worked, (2) reported it as soon as possible to his supervisors, who were 30 miles away at Subic Bay, “usually within 24 hours,” (3) “was not required to request overtime in advance,” and, (4) was “told not to worry about overtime – just get the job done and report it later.” The claimant asserts his “position description stated [he] must be available seven days a week, 24 hours a day.” He further asserts “[t]he problem began in May, 1983” after his return from home leave as a result of a reorganization, which occurred in his absence, that resulted in him being placed on a new position description, gave him the “duty of Transportation Director [Transportation, Code 700]” in addition to his role as head of Maintenance (Code 500). As such, he states he “ended up with 4 supervisors stationed in Subic under Code 500 (Maintenance) and Code 700 (Transportation).” He states: “When I started questioning why my overtime pay was not being paid they said they were trying to figure out whose funding it should come out of so Code 700 suggested I start keeping a log until they got it straight.” He asserts that:

BEofre [sic] I left the PWC Command in March, 1985, I submitted my log to my bosses because I wanted to get this cleared up before I left. No one ever questioned whether or not I did the work. They knew it was done but still hadn’t “figured Out [sic]” how to pay me. So I was not paid before I left. After my return to CONUS I submitted the log to COMNAVTELCOM. A few weeks later they wrote denying payment on the grounds that the overtime work “was not submitted in a timely manner.”

* * * * *

I have let this go for 14 years and figure that is enough patience. They owe me money and I should be paid... Not one time was I ever told not to work overtime, my orders were to just get the job done regardless, so I did.

The record includes an April 7, 1999, letter to Senator Allard from Navy headquarters responding to the Senator’s March 16, 1999, letter on the claimant’s behalf seeking “587 hours of overtime pay [the claimant] believes he is due for the period from May 1983 to January 1985.” The agency states 31 U.S.C. § 3702(b) provides that every claim against the United States Government must be received within 6 years from the date it first accrued or forever be barred, and that the documents included with the claimant’s letter do not indicate this requirement was met. Navy states he “must first show that he submitted a claim in writing to his employing activity” and that “he must submit copies of his time cards including the amounts of

overtime he claims for the period of time in question.” The agency states its policy for employees, such as the claimant, who are exempt from the provisions of the Fair Labor Standards Act is that overtime must be ordered or approved in order for overtime to be paid and that although the claimant] “has submitted a log of overtime hours he claims to have worked, there is nothing to indicate that the overtime was ordered or approved.”

This letter was forwarded by the Senator’s office to the claimant on April 12, 1999. In his June 3, 1999, letter to the Senator, the claimant states: “Claims were filed throughout 1983-1985 in the form of overtime worked reported to my supervisors. “ The claimant reiterated he “filed” for two years overtime work before he left the PWC in 1985 and with COMNAVTELCOM upon his return to the United States. The claimant asserts:

No one ever questioned the fact that this was a valid request. This was certainly reported – which constitutes a claim for pay for work done in less than the six years as stated in the Navy letter. The claim was submitted in writing.

* * * * *

3rd para: My overtime work was ordered and approved. My position description stated that I must be available seven days a week, 24 hours a day. My direct orders from my supervisors were to work whatever overtime I had to and report it to them They did not want to be bothered all hours of the day and night like I was. So I not only had prior approval, I was ordered to do it.

The file includes statements from four former co-workers and two neighbors attesting to the claimant routinely working beyond his normal work hours and/or being called back to work after his normal work hours.

The “filing” referred to by the claimant consists of 19 “Overtime Request and Authorization, PHILGEN 5330/1 (4/62)” forms “from” the claimant with the “to” block left blank. The form states: “It is requested that authorization be given for the following employees to perform work as indicated;” the “overtime” and the “compensatory time” boxes in that block are blank. None of the forms are dated or signed by an authorized approving official.

As discussed in the Principles of Federal Appropriations Law, Volume III, Second Edition, 1994 (GAO/OGC-94-33) on claim filing requirements:

While a simple letter format will generally do the job, it must be clear that a claim is being asserted. The receiving agency should not be expected to engage in interpretation to divine the letter’s intent. A letter making an inquiry or requesting information is not sufficient. B-150008, October 12, 1962.

The claimant’s alleged “filing” with Navy fails to meet these basic requirements. Rather than a claim against the Government, the “forms” submitted by the claimant reflect requests for overtime authorization with no signatures authorizing the requested overtime. While the claimant states he “again filed the request thru COMNAVTELCOM [Commander, Naval Telecommunications Command]” when he returned to the continental United States and states he

received a reply that “the overtime had not been reported in a timely manner,” he has not provided copies of these documents. 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.” Notwithstanding his failure to substantiate his alleged “filing” with NAVTELCOM, the claimant’s resubmission of these same unsigned forms would fail to preserve his claim for the reasons previously discussed.¹

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. Liberally construing Senator Allard’s March 16, 1999, letter on the claimant’s behalf to Navy seeking “587 hours of overtime pay [the claimant] believes he is due for the period from May 1983 to January 1985,” as a claim filed on the claimant’s behalf by his authorized representative, we find the claimant did not preserve his claim until on or after March 16, 1999. Thus, we find the claim is time barred as it was filed fourteen or more years after each claimed period of overtime accrued and must be 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.

¹ It is unclear why the claimant would have corresponded with NAVTELCOM when he was employed and paid by another Navy component, the Naval Facilities Engineering Command, and thus NAVTELCOM would presumably have neither the authority to approve his overtime nor respond to any claim filed by him.