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DECISION



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

PLM-1
BURTON

20141

FILE: B-204542 DATE: November 30, 1981

MATTER OF: Carlton L. Shepard, Jr. - Real Estate
Relocation Expenses -- Barring Act

DIGEST:

1. On October 26, 1973, a civilian technician employed by the Vermont Army National Guard filed claim with unit seeking reimbursement for real estate expenses incurred incident to change of permanent duty station on May 31, 1970. On December 20, 1973, unit advised him that it denied claim. Claimant took no further action until December 11, 1979, when he refiled claim with unit. On May 6, 1981, after administrative processing, the claim was received at GAO. Claim may not be allowed since Act of October 9, 1940, as amended, 31 U.S.C. § 71a, bars consideration of claims received in GAO more than 6 years after date claim first accrues. Filing claim with administrative office concerned does not toll the running of the statute.
2. GAO is without authority to waive or modify the application of 31 U.S.C. § 71a, even though (1) claimant may have been erroneously advised he was not entitled to reimbursement for real estate expense, and (2) claimant was reluctant to pursue claim for fear of jeopardizing his employment situation.

This decision is the result of an appeal from an action of our Claims Group. A claim for real estate expenses incurred incident to a permanent change of station by Mr. Carlton L. Shepard, Jr., an excepted technician, Vermont Army National Guard, was returned since it was not received in this Office within 6 years from the date it first accrued (Settlement Certificate Z-2831528, June 8, 1981).

For the reasons set forth below this action must be sustained.

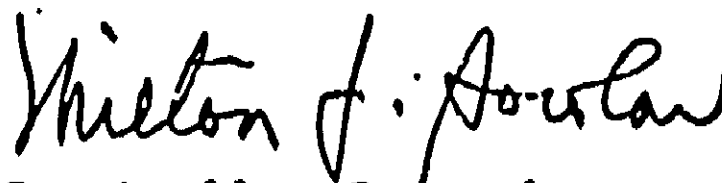
Early in 1970 Mr. Shepard received permanent change of station orders transferring him from a Vermont National Guard unit in Enosburg Falls to Camp Johnson located in Winooski, Vermont. Mr. Shepard seeks reimbursement of real estate expenses incurred incident to this change of duty station on May 31, 1970. The expenses claimed were incurred in July 1970, and June 1971. Mr. Shepard submitted his claim to his guard unit initially on October 26, 1973. He based the claim on his assertion that he had been erroneously advised by his supervisor that the real estate expenses he incurred were not reimbursable by the Government. On December 20, 1973, the guard unit advised him his claim was denied.

Mr. Shepard states that, since he did not want to jeopardize his employment situation, he decided to wait until his retirement before resubmitting his claim. On December 11, 1979, he resubmitted the claim to his guard unit. This time instead of denying the claim the unit forwarded the claim to the United States Army Finance and Accounting Center, Indianapolis. The Center forwarded it to the General Accounting Office as a doubtful claim. This request was dated May 4, 1981 and was received at our Office on May 6, 1981.

The Act of October 9, 1940, 54 Stat. 1061, as amended by section 801 of Public Law 93-604, approved January 2, 1975, 88 Stat. 1995, 31 U.S.C. § 71a, provides that every claim or demand against the United States cognizable by the General Accounting Office must be received in our Office within 6 years after the date it first accrued or be forever barred.

B-204542

Since Mr. Shepard's claim was received in this Office on May 6, 1981, more than 6 years from the date it first accrued, it is barred by the above-cited Act and may not be considered by this Office. The reasons why the claim was not submitted within 6 years of accrual and the substantive merits of the claim are irrelevant since we do not have authority to modify or waive the provisions of the Act or make any exceptions to the time limitations it imposes. B-196632, December 4, 1979. Further, we have consistently held that the filing of a claim with the administrative agency concerned does not toll the running of the statute. B-201936, April 21, 1981. Accordingly, the claim may not be allowed.

for 
Comptroller General
of the United States