



The claimant was formerly employed as a Planner and Estimator (Mech.), PW-9, from November 5, 1956 to October 30, 1978, at the U.S. Naval Ship Repair Facility, Subic Bay, Republic of the Philippines. In his December 3, 2007, letter to the U.S. Office of Personnel Management (OPM), the claimant states that he seeks to follow up on a letter he sent November 8, 2006, regarding his claim for separation pay.

OPM has no record of having received the November 8, 2006, letter; and the claimant failed to provide a copy of that letter. Records in the claim file include a January 26, 2007, letter from the U.S. Government Accountability Office (formerly known as the General Accounting Office which also used the acronym of GAO), advising the claimant GAO was forwarding his claim for separation pay to OPM, which OPM received on February 14, 2007. As an enclosure, it includes a copy of the claimant's November 10, 2006, letter to GAO following up on a November 7, 1994, inquiry sent to GAO regarding a claim for separation pay. For the reasons discussed herein, the claim is time barred and denied for lack of jurisdiction due to *res judicata*.

The claimant's November 10, 2006, letter states he "received a reply from... [GAO] disregarding my claim for the simple reason of provision of the "Barring Act." The claimant states "this Barring Act is not applicable to all cases in particular my claim." This assertion appears to be based on his view that he was not advised how or where to file a claim and he resigned from Department of the Navy "by proxy" through his nephew since the claimant was already working in Kuwait.

The claimant's assertion that the Barring Act is not applicable to his case because of the circumstances of his claim must be rejected. The Barring Act, 31 U.S.C. 3702(b)(1), requires that a claim against the United States must be received within six years after the claim arises. GAO regulations in effect before June 15, 1989, required that, to stop the limitation period from running, a claim had to be received at GAO within six years after the claim arose. *John M. Nelson*, B-238379 (March 16, 1990); *Jerry L. Courson*, B-200699 (March 2, 1981). Filing a claim with any other Government agency at that time failed to satisfy the filing requirements of the Barring Act, and did not toll or stop the statutory six-year limitation period from running. *My Anh Company*, B-252872 (April 19, 1994); *Frederick C. Welch*, 62 Comp. Gen. 80 (1982). This was true even though failure to file with the GAO within the six-year period was the fault of the agency and not of the employee. *Sara Dyson*, B-260207.2 (November 6, 1995); *John M. Nelson*, *supra*; *Richard C. Bockus*, B-198085 (November 5, 1980); *James C. Payne*, B-191801 (October 20, 1978).

This claim accrued on October 30, 1978, the date he left employment with Department of the Navy, and fell under the previously described filing requirements. The claimant's November 10, 2006, letter to the GAO acknowledges that sometime before November 7, 1994, GAO had rejected his claim as being time barred under the Barring Act. Thus, it appears GAO determined the claimant had not preserved his claim with GAO timely under the previously cited governing regulations and was time barred by statute.

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. Neither GAO when it previously found the claim time barred nor OPM in this decision has any authority

to disregard the provisions of that Act or waive the time limitation it imposes. Neither GAO nor OPM has the authority to waive the application of the Act, or to make any exceptions to its provisions. Therefore, GAO's January 26, 2007, referral of the claim to OPM due to the transfer of claim settlement authority to OPM (*See* Sec. 211, Pub. L. 104-53, 109 Stat. 535 and Pub. L. 104-316, 110 Stat. 3826) was an administrative oversight since OPM clearly is precluded from considering a claim which GAO already had concluded was time barred some 13 years earlier.

Furthermore, as discussed in *Stearn v. Department of the Navy*, 280 F.3d 1376 (Fed. Cir 2002):

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2423 (1981) . . . The doctrine serves to "relieve parties of the cost and vexation of multiple law suits, conserve judicial resources, and . . . encourage reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94, 66 L.Ed. 2d308, 101 S.Ct. 411 (1980).

Since GAO rendered a judgment on the timeliness of this claim, the claim before us is also barred by res judicata, which precludes relitigation of issues that have already been decided by an administrative body of competent authority. Therefore, we may not decide this claim.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.