

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1861  
Conference Calendar

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DAVID P. GARCIA,

Plaintiff-Appellant,

versus

U.S. DEPARTMENT OF VETERANS AFFAIRS,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 1:92-CV-003-C  
- - - - -

May 6, 1993

Before POLITZ, Chief Judge,  
HIGGINBOTHAM, and DEMOSS, Circuit Judges.

PER CURIAM:\*

David P. Garcia argues the district court erred by dismissing his claim as outside the statute of limitations. He is incorrect.

Title 28 U.S.C. § 2401(b) states: "A tort claim against the United States shall be barred forever . . . unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented." Garcia's failure to file a

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

lawsuit within six months after the date of mailing of the denial by the Department of Veterans Affairs (VA) bars his suit.

Childers v. United States, 442 F.2d 1299, 1303 (5th Cir.), cert. denied, 404 U.S. 857 (1971).

The denial notice was mailed to Garcia on 8 February 1991. A second notice, also sent certified mail, was mailed to Garcia on 8 March 1991. Even assuming that the limitations period did not begin running until 9 March 1991, the January 1992 filing by Garcia was not timely.

Garcia's counsel wrote a letter to the VA on 27 July 1990, reporting that Garcia's address had changed from 5470 Braesvalley, Houston, Texas, to P.O. Box 174, Loraine, Texas. Garcia explains that he left a forwarding address, but argues that he "was not informed of all of the legal rights that were his." The VA sent notice by certified mail to Garcia's last known address, attempting to inform him of the denial of his claim. The six-month limitations period began running at the time of mailing of the notices. See Scott v. United States Veterans Administration, 929 F.2d 146, 147 (5th Cir. 1991).

The decision of the district court is AFFIRMED.