



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO DISMISS DENIED: May 25, 2010

CBCA 1852

GEO-IMAGING CONSULTING, INC.,

Appellant,

v.

ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

Rosemarie Onwukwe, President of Geo-Imaging Consulting, Inc., Washington, DC appearing for Appellant.

Sara E. McGraw, Office of General Counsel, Environmental Protection Agency, Washington, DC, counsel for Respondent.

Before Board Judges **HYATT**, **McCANN**, and **SHERIDAN**.

SHERIDAN, Board Judge.

Pending before the Board is a motion by the Environmental Protection Agency (EPA), respondent, to dismiss CBCA 1852 for failure to prosecute. After considering respondent's motion, the motion is denied.

Background

This appeal was docketed on January 6, 2010, and pleadings were filed. On April 21, 2010, appellant's counsel withdrew from the proceedings. A telephone conference was

conducted between the presiding judge, Rosemarie Onwukwe, and EPA counsel, on April 21, 2010.¹ Ms. Onwukwe represented herself as the president of Geo-Imaging Consulting, Inc. (Geo-Imaging). During that conference, Ms. Onwukwe was instructed to file a notice of appearance with the Board and was informed that, as per the Board's order of April 13, 2010, appellant's appeal file supplement was due on May 11, 2010.

On May 6, 2010, the Board received a facsimile transmission noting that Rosemarie Onwukwe would be the contact person for Geo-Imaging. It does not appear that Geo-Imaging provided this document to EPA. To this date, no appeal file supplement has been submitted to the Board. On May 12, 2010, EPA filed a motion to dismiss CBCA 1852 for failure to prosecute.

Discussion

Board Rule 33(c) provides:

When a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions may include:

....

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony;

....

(6) Dismissing the case or any part thereof;

...; or

(8) Imposing such other sanctions as the Board deems appropriate.

¹ Other individuals were involved in the telephone conference but are not pertinent to this decision.

48 CFR 6101.33(c) (2009).

This Board recently dismissed an appeal for an appellant's failure to prosecute in *CCJN & Co., Architects & Planners, P.C. v. General Services Administration*, where we noted that:

As [Rule 33(c)] makes clear, the Board has the power to dismiss a case for failure to prosecute. This sanction is reserved for egregious situations, where the party has repeatedly failed to comply with the tribunal's orders. Willful disobedience of orders and prejudice to the opposing party have generally been found to be sufficient reasons for dismissing a case for failure to prosecute. *Medtek, Inc. v. Department of Veterans Affairs*, CBCA 1544, 09-2 BCA ¶ 34,285 (citing *Griffin & Dickson v. United States*, 16 Cl. Ct. 347, 351-52 (1989); *Corners and Edges, Inc. v. Department of Health & Human Services*, CBCA 1322, 09-1 BCA ¶ 34,051; see also *Pacific Wildfire, LLC v. Department of Agriculture*, CBCA 664, 08-2 BCA ¶ 33,954.

CBCA 821, et al., slip op. at 6 (Apr. 21, 2010).

At this point, Geo-Imaging has not repeatedly failed to comply with the Board's orders and its failures have not risen to the level of an egregious situation. Given the facts, no sanctions are appropriate at this time.

Decision

EPA's motion to dismiss CBCA 1852 for failure to prosecute is **DENIED**.

PATRICIA J. SHERIDAN
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

R. ANTHONY McCANN
Board Judge