



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: May 10, 2007

CBCA 617

ROBERT T. RAFFERTY,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Robert T. Rafferty, pro se, Patchogue, NY.

Judith A. Bonner, Office of Regional Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **STERN**, and **DRUMMOND**.

**DANIELS**, Board Judge.

By a contracting officer's final decision dated September 27, 2006, the General Services Administration (GSA) asserted a claim in the amount of \$855 against Robert T. Rafferty. Mr. Rafferty had been the high bidder on a boat being sold by GSA at auction. According to the decision, the agency was entitled to liquidated damages in the claimed amount because Mr. Rafferty did not comply with the auction requirement that he remove the boat from government premises within a prescribed period of time.

Mr. Rafferty filed a notice of appeal of the contracting officer's decision on January 24, 2007. GSA filed a motion to dismiss the appeal for lack of jurisdiction, and Mr. Rafferty responded to the motion. We grant the motion and dismiss the appeal.

### Discussion

The Contract Disputes Act of 1978, which governs the Board's review of contracting officer decisions, requires that an appeal of such a decision be filed "[w]ithin ninety days from the date of receipt of [the] decision." 41 U.S.C. § 606 (2000). This deadline for filing has been strictly construed by the Court of Appeals for the Federal Circuit because the authorization to make the filing is a waiver of sovereign immunity. A late filing divests the Board of jurisdiction to consider the case on its merits. *D. L. Braugher Co. v. West*, 127 F.3d 1476, 1480 (Fed. Cir. 1997); *Cosmic Construction Co. v. United States*, 697 F.2d 1389, 1390 (Fed. Cir. 1982); *Tiger Natural Gas, Inc. v. General Services Administration*, GSBCA 16039, 03-2 BCA ¶ 32,321, at 159,910-11.

The ninetieth day before Mr. Rafferty filed this appeal was October 26, 2006. Under the statute, as interpreted by the court, we may consider the case only if the appellant received the contracting officer's decision on or after that date.

"Receipt" of a contracting officer's decision, as that term is used in the Contract Disputes Act, means actual physical receipt of the decision by the contractor or its representative. *Riley & Ephriam Construction Co. v. United States*, 408 F.3d 1369, 1372 (Fed. Cir. 2005); *Borough of Alpine v. United States*, 923 F.2d 170, 172-73 (Fed. Cir. 1991). If the Government moves to dismiss a case for lack of jurisdiction, for the reason that the decision was received more than ninety days before the case was filed, the burden is on the Government to prove the early date of receipt. *Riley & Ephriam*, 408 F.3d at 1372; *Tyrone Shanks*, ASBCA 54538, 05-2 BCA ¶ 33,069, at 163,892.

GSA has provided a declaration in which the contracting officer states that she sent her decision to Mr. Rafferty by certified mail on or about September 28, 2006. The agency has also provided a copy of the return receipt for that letter, and the receipt shows a signature of Robert Rafferty and a date of delivery of October 3, 2006.

Mr. Rafferty has also presented information relating to receipt of the contracting officer's decision. He told us, "Please be advised that my work often necessitates travel. As such, I did not personally receive the decision . . . until October 29, 2006." We asked him to provide any documentation he might have which supports this assertion. He responded simply, "I cannot."

GSA has carried its burden of proving that the decision was received by Mr. Rafferty or his representative prior to October 26. The return receipt shows that the letter was accepted on October 3 by someone who signed the appellant's name on the receipt. Although Mr. Rafferty's statement that he did not personally receive the decision until

October 29 would seem to imply that the individual who signed his name was someone other than himself, he has not alleged that this is so. In addition, he has not provided evidence (such as receipts from places of lodging) which might indicate that he was away from home during the period in question.

Mr. Rafferty has said that an order the Board sent to him by certified mail was accepted at his address by his son while he was away. Even if the contracting officer's decision had the same fate, where the appellant is an individual and the envelope containing the decision is accepted by a close relative at the appellant's address, unless the appellant can show that the individual who accepted the letter had no authority to do so, the decision is considered to have been received and the appeal time begins to run when the letter is accepted. *See Ramos v. United States*, 683 F.2d 396 (Ct. Cl. 1982) (same rule regarding decision of Merit Systems Protection Board); *Pleasant Logging & Milling Co.*, AGBCA 79-172 CDA, 80-2 BCA ¶ 14,605; *M. D. Willner*, DOTCAB 73-9, 75-1 BCA ¶ 11,011 (1974); *cf.* Fed. R. Civ. P. 5(b)(2)(A)(iii) (service may be made by leaving a paper at a person's dwelling house with someone of suitable age and discretion residing there). We find that receipt occurred on October 3 -- more than ninety days before this appeal was filed. We therefore have no jurisdiction to hear the case.

#### Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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STEPHEN M. DANIELS  
Board Judge

We concur:

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JAMES L. STERN  
Board Judge

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JEROME M. DRUMMOND  
Board Judge