



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: October 21, 2014

CBCA 4117

EHR DOCTORS, INC.,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

Gerard Reeder, President of EHR Doctors, Inc., Pompano Beach, FL, appearing for Appellant.

Dorothy M. Guy and Lucinda E. Davis, Office of the General Counsel, Social Security Administration, Baltimore, MD, counsel for Respondent.

Before Board Judges **SOMERS**, **VERGILIO**, and **STEEL**.

**SOMERS**, Board Judge.

EHR Doctors, Inc. (EHR) submitted a certified claim for \$248,461.79 to the contracting officer on January 14, 2014, seeking additional expenses allegedly resulting from a change in the scope of the contract requirements. The contracting officer denied the claim by decision dated March 11, 2014, a copy of which was provided by e-mail to the president of EHR on that same date.

As the contracting officer correctly noted in the decision, the Contract Disputes Act (CDA), 41 U.S.C. § 7104(a) (2012), under which the Board reviews contracting officers' decisions, requires that an appeal of such a decision to a board of contract

appeals be filed “[w]ithin ninety days from the date of receipt of [the] decision.” Alternatively, within twelve months from the date of the contractor’s receipt of the contracting officer’s decision, a contractor may file an appeal with the United States Court of Federal Claims. 41 U.S.C. § 7104(b). These deadlines have been strictly construed by the Court of Appeals for the Federal Circuit because the authorization to make a filing is a waiver of sovereign immunity. Failure to file an appeal within the ninety-day deadline precludes the Board from taking jurisdiction to consider the case on its merits. *Cosmic Construction Co. v. United States*, 697 F.2d 1389, 1390 (Fed. Cir. 1982); *Treasure Valley Forest Products v. Department of Agriculture*, CBCA 3604, 14-1 BCA ¶ 35,549; *Soto Construction Co. v. Department of Agriculture*, CBCA 3210, 13 BCA ¶ 35,301.

In this case, given that the contractor received the decision on March 11, 2014, the statute requires that the appeal be filed no later than June 9, 2014. The Board received EHR’s notice of appeal on September 8, 2014, which is 180 days from the contractor’s receipt of the contracting officer’s decision. From the face of it, the appeal has been filed outside of the statutory ninety-day deadline.

By order dated September 16, 2014, the Board requested appellant to explain why the appeal should not be dismissed for lack of jurisdiction. Appellant does not dispute that it received the contracting officer’s decision on March 11, 2014, and failed to appeal within the ninety-day time period.

Instead, EHR asserts that it believed the second claim that formed the basis for this appeal to be part and parcel of a claim pending before the Board (CBCA 3522). However, EHR acknowledges that it submitted the second claim to the Social Security Administration because “it was obvious that additional amount was not formally included in the first claim, and Appellant did not want to delay the Second Claim from continuing.” In addition, EHR says that it did not promptly appeal the March 11, 2014, contracting officer’s decision because:

Making such a notice of appeal did not seem logical, as the Appellant had already notified the Board of its intent to pursue and appeal the Second Claim with the CBCA by virtue of its incorporation into its pleading for CBCA 3522. In addition, Appellant has only the utmost respect for the Boards’ [sic] time, and felt it would be an exploitation of the Board’s resources to file a duplicative request for appeal when the facts and amounts as asserted in the Second Claim were already under consideration by the Board . . . .

Appellant misses the point. Upon receipt of the Government's motion to dismiss the second claim in CBCA 3522, we evaluated that claim for the sole purpose of determining whether we possessed jurisdiction to hear it. Ultimately concluding that we could not entertain the claim, we dismissed it from CBCA 3522. Merely evaluating a claim for the purpose of determining whether we possess jurisdiction does not mean that we have jurisdiction to resolve the claim. Rather, as noted previously, the statute requires appellant to submit the claim to the contracting officer and then to appeal the contracting officer's decision on a timely basis (*i.e.*, within ninety days of receipt of the decision if appealed to a board and one year if a claim is filed at the Court of Federal Claims) if it wishes to challenge the decision. Simply raising the second claim in a complaint to the Board is not enough to fulfill the statutory requirements set forth in the CDA.

In response to the show cause order, EHR also requests that we reconsider our June 11, 2014, decision granting the Government's motion to dismiss the second claim. We decline to do so. The Board's rules provide that "a motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed within 30 calendar days after the date the moving party receives the decision or order." Rule 26(c) (48 CFR 6101.26(c) (2013)). We issued our order on June 11, 2014, serving the parties by facsimile on that date. EHR submitted its request for reconsideration on September 22, 2014, more than thirty calendar days after receipt of our order. Reconsideration of our decision dismissing the portion of EHR's complaint that set forth the second claim is precluded under the Board's rules.

### Decision

Having considered all of the points presented by EHR in response to our order to show cause, we conclude that we do not possess jurisdiction to entertain the claim presented in CBCA 4117 because EHR did not appeal the contracting officer's decision within ninety days from the date of receipt of that decision. Accordingly, the appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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JERI KAYLENE SOMERS  
Board Judge

We concur:

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JOSEPH A. VERGILIO  
Board Judge

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CANDIDA A. STEEL  
Board Judge