



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION:
September 22, 2015

CBCA 4952

KRISTIN ALLRED,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Kristin Allred, pro se, Elgin, TX.

Tobias D. Hunziker, Office of General Counsel, Department of Veterans Affairs,
Austin, TX, counsel for Respondent.

Before Board Judges **WALTERS**, **ZISCHKAU**, and **LESTER**.

LESTER, Board Judge.

Respondent, the Department of Veterans Affairs (DVA), has filed a motion to dismiss this appeal for lack of jurisdiction, arguing that appellant, Kristin Allred, has not alleged any privity of contract with the Federal Government. Ms. Allred, in response, does not dispute that she has no contract with the DVA, but asks us to recaption this appeal to name Adams Communication and Engineering Technology (ACET), a government contractor that previously employed her, as the respondent in place of the DVA. Because we do not possess jurisdiction to entertain contract appeals from individuals who lack privity of contract with the Government or to entertain personnel disputes between private parties, we grant the Government's motion to dismiss.

Background

On August 28, 2015, Ms. Allred filed what she represented was an appeal of a “final decision” by a DVA employee on an issue arising under contract no. VA118-1006-0011 for National Service Desk help desk services under the Transformation Twenty-One Total Technology program. ACET is the prime contractor under that contract.

Ms. Allred alleges that, until recently, she was employed by ACET. She further alleges that, on July 17, 2015, two representatives of ACET informed her in a telephone conversation that ACET was terminating her employment. She asserts that the stated reason for the termination “was that the client – Veteran’s Administration – no longer wanted [her] on the job.” Accompanying her notice of appeal, filed August 28, 2015, is a letter dated July 17, 2015, from ACET’s Director of Human Resources to Ms. Allred, stating that Ms. Allred’s “employment with ACET is terminated effective today due to client request.” Ms. Allred asks that the Board award her lost wages from the date of termination until a future date upon which she finds new employment.

In response, the DVA has filed a motion to dismiss Ms. Allred’s appeal for lack of jurisdiction, arguing that Ms. Allred, as the former employee of a government contractor, lacks privity of contract with the DVA and, therefore, cannot seek relief before the Board.¹

Discussion

“The Board’s jurisdiction under the Contract Disputes Act” (CDA), 41 U.S.C. §§ 7101-7109 (2012), “is limited to hearing and deciding appeals by contractors of decisions issued by contracting officers on claims” by or against particular agencies of the Federal Government “under contracts for the procurement of property (other than real property in being); services; construction, alteration, repair, or maintenance of real property; or disposal of personal property.” *AMEC Construction Management, Inc. v. General Services Administration*, CBCA 389, et al., 07-1 BCA ¶ 33,505, at 166,039. Accordingly, to invoke the Board’s jurisdiction in a contract appeal under the CDA, the appellant must allege facts sufficient to show that, among other things, it is a “contractor” as that term is defined in the CDA. *See* 41 U.S.C. § 7104(a) (only a “contractor” may file an appeal of a contracting

¹ In the alternative, the DVA seeks dismissal because there is no evidence that Ms. Allred submitted a claim pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012), or that a DVA contracting officer ever issued a final decision on it, necessary prerequisites to a CDA appeal. In light of our disposition of the privity issue, we need not address this alternative argument.

officer's decision with a board of contract appeals); *Coastal Corp. v. United States*, 713 F.2d 728, 730 (Fed. Cir. 1983) (the CDA "deals with contractors") (quoting *United States v. John C. Grimberg, Inc.*, 702 F.2d 1362, 1368 (Fed. Cir. 1983)); *Parsons Brinckerhoff Quade & Douglas, Inc.*, DOT CAB 1299, 84-2 BCA ¶ 17,309, at 86,266 ("under the Contract Disputes Act this Board only has jurisdiction over 'contractors'"). If the appellant does not allege that it is a contractor in privity with the Federal Government, we lack jurisdiction to entertain its direct appeal under the CDA. *Eagle Peak Rock & Paving, Inc. v. Department of the Interior*, CBCA 2770, 12-2 BCA ¶ 35,146, at 172,521; *BPI Management Inc. v. Department of Housing and Urban Development*, CBCA 1894, 10-2 BCA ¶ 34,495, at 170,142; see *Southern California Federal Savings & Loan Association v. United States*, 422 F.3d 1319, 1328 (Fed. Cir. 2005) ("A plaintiff must be in privity with the United States to have standing to sue the sovereign on a contract claim.").

"The term 'contractor' means a party to a Federal Government contract other than the Federal Government." *Magwood Services, Inc. v. Department of Transportation*, CBCA 3630, 14-1 BCA ¶ 35,605, at 174,413 (quoting 41 U.S.C. § 7101(7)). Ms. Allred does not meet that definition. She was an employee of a government contractor, and she is challenging that government contractor's decision to terminate her employment. Although her employer has a contract with the Federal Government that is covered by the CDA, she herself does not. Her status as an employee, or former employee, of a government contractor does not make her a "contractor" under the CDA or provide her with the privity necessary to maintain a direct appeal to the Board against the Federal Government. See, e.g., *S.R. Weinstock & Associates, Inc. v. United States*, 223 Ct. Cl. 677, 680 (1980) (corporate officers and sole shareholders lack privity to sue on corporation's contract with Federal Government); *Bolin v. United States*, 221 Ct. Cl. 947, 948 (1979) (employees of a government contractor "have no contractual relationship with the Government and therefore cannot maintain a suit against the United States"); *John C. Thompson*, HUD BCA 79-427-C45, 80-2 BCA ¶ 14,722, at 72,594 (corporate employees lack privity to appeal). Accordingly, we lack jurisdiction to entertain Ms. Allred's appeal.

Ms. Allred's allegation that the DVA may have asked ACET to terminate her employment does not create privity or a right of action cognizable before this Board. Although it is conceivable that a subcontractor might be able to establish privity with the Federal Government in certain limited circumstances if "the prime contractor is a mere government agent" that, in performing its prime contract, is acting as the Federal Government's alter ego, *United States v. Johnson Controls, Inc.*, 713 F.2d 1541, 1551 (Fed. Cir. 1983), Ms. Allred has not made, or alleged facts supporting, such an argument. See *Parsons Brinckerhoff*, 84-2 BCA at 86,266 ("a very tough standard must be met before [an entity] can recover under this theory"). Even if the DVA had great control over the prime contractor's actions and dealings with its subcontractors and employees, the Federal Circuit's

decision in *Johnson Controls* suggests that it would be insufficient to create a “direct contractual relationship” between a particular subcontractor or employee and the DVA. *Johnson Controls*, 713 F.2d at 1553; see *Doug Wiggs d/b/a Sloan Welding & Construction Co. v. Environmental Protection Agency*, GSBCA 16817-EPA, 06-1 BCA ¶ 33,246, at 164,776. The DVA’s mere request to ACET to terminate Ms. Allred’s employment, if that is what the DVA did, does not create the necessary type of agency relationship; to the contrary, the nature of the alleged request indicates that ACET retained its own discretionary decision-making authority in considering whether to honor the DVA’s desire and that the DVA was not controlling ACET’s actions. In any event, the CDA does not encompass the type of personnel disputes about which Ms. Allred is complaining here. See, e.g., *Innovative (PBX) Telephone Systems, Inc. v. Department of Veterans Affairs*, CBCA 12, 07-2 BCA ¶ 33,685, at 166,765 (Board lacks jurisdiction to review the “propriety of personnel actions”); *Four-Phase Systems, Inc.*, ASBCA 26794, et al., 86-2 BCA ¶ 18,924, at 95,451 (“It is not the Board’s function to review the propriety of the adverse personnel action that was taken.”). To the extent that Ms. Allred believes that the DVA’s request to ACET constituted some type of tort that harmed her, we lack jurisdiction to entertain pure tort claims. *National Gypsum Co.*, ASBCA 53259, et al., 03-1 BCA ¶ 32,054, at 158,455 & n.2 (2002).

Ms. Allred has requested that we recaption this appeal to substitute her former employer, ACET, as the respondent in place of the DVA. We have no jurisdiction over personnel disputes between private parties. See *Employers Mutual Casualty Co.*, GSBCA 11003, 92-1 BCA ¶ 24,442, at 121,962 (1991) (“This Board, as an adjudicative tribunal within the executive branch of Government, does not sit to resolve disputes between private parties.”). Further, in contract dispute cases, only executive agencies of the Federal Government may be respondents before the boards of contract appeals. See 41 U.S.C. §§ 7101(8), 7105. Accordingly, we must deny Ms. Allred’s request.

Decision

For the foregoing reasons, Ms. Allred’s appeal is **DISMISSED FOR LACK OF JURISDICTION**.

HAROLD D. LESTER, JR.
Board Judge

We concur:

RICHARD C. WALTERS
Board Judge

JONATHAN D. ZISCHKAU
Board Judge