UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

REQUEST TO INVOKE SMALL CLAIMS PROCEDURE
PURSUANT TO BOARD RULE 52 DENIED:
December 1, 2015

CBCA 5038, 5039

BRENT PACKER,

Appellant in CBCA 5038,

and

MYRNA PALASI,

Appellant in CBCA 5039,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

Brent Packer and Myrna Palasi, pro se, Olympia, WA.

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

LESTER, Board Judge.

ORDER

Dr. Brent Packer was a party to a Blanket Purchase Agreement (BPA) with the Social Security Administration (SSA) through which he was to provide medical consultant services.

Dr. Myrna Palasi held a separate BPA for similar medical consultant services with the SSA. By decisions dated September 16, 2015, the SSA contracting officer terminated for cause both BPAs and the call orders related to those BPAs, invoking the termination provision contained in 48 CFR 52.212-4(m) (2014). On October 22, 2015, both individuals challenged those termination decisions by filing appeals with the Board. In their notices of appeal, both appellants asked the Board to utilize the small claims procedure described in CBCA Rule 52, 48 CFR 6101.52, when resolving their appeals. For the reasons discussed below, we cannot apply the small claims procedure to these challenges to the terminations.

Discussion

The Contract Disputes Act (CDA) requires each board of contract appeals to include in its rules "a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is $50,000 or less, or in the case of a small business concern (as defined in the Small Business Act (15 U.S.C. 631 et seq.) and regulations under that Act), $150,000 or less." 41 U.S.C. § 7106(b)(1) (2012). Congress included this requirement in the CDA "to expedite the resolution of minor government contractor disputes." *Palmer v. Barram*, 184 F.3d 1373, 1377 (Fed. Cir. 1999). This Board complied with the statutory requirement by promulgating CBCA Rule 52, which creates a small claims procedure that is, consistent with the statutory language, "available solely at the appellant's election." Rule 52(a)(1); *see* 41 U.S.C. § 7106(b)(1). When an appellant invokes the procedure, a single judge (rather than a panel) will decide the appeal, *see* 41 U.S.C. § 7106(b)(2); Rule 52(b), and will do so, whenever possible, "within 120 calendar days from the Board's receipt of the election." Rule 52(d). A decision "reached under the small claims procedure is final and conclusive," 41 U.S.C. § 7106(b)(4), and the right to appeal an adverse decision to the Court of Appeals for the Federal Circuit is very narrow, limited to "cases of fraud" in the proceedings before the Board. *Palmer*, 184 F.3d at 1378 (quoting statutory language now found at 41 U.S.C. § 7106(b)(4)).

Implementing the statutory requirement, CBCA Rule 52 provides that an "appellant may elect this [small claims] procedure" only if "[t]here is a monetary amount in dispute." Rule 52(a)(1). This language requiring a monetary dispute mirrors the language of a rule that one of our predecessor boards, the General Services Board of Contract Appeals (GSBCA), created in 1993.[1] The GSBCA rule, like our Rule 52, expressly identified the need for a

[1] Although our other predecessor boards offered a small claims procedure, their rules did not include the specific wording of the GSBCA rule, which affirmatively stated that the procedure was available only if "there is a monetary amount in dispute." *See, e.g.*, (continued...)

"monetary amount in dispute" before an appellant could invoke the small claims procedure. 48 CFR 6102.2(a) (1997); 48 CFR 6101.13(a)(1) (1994); 58 Fed. Reg. 69,246, 69,258 (Dec. 30, 1993). The GSBCA interpreted its rule as precluding the use of the small claims procedure in appeals dealing only with non-monetary disputes, including challenges to default terminations that did not include a request for convenience termination settlement costs or a challenge to excess reprocurement costs. *See, e.g.*, *Cosmechem Co. v. General Services Administration*, GSBCA 12147, 93-3 BCA ¶ 26,057, at 129,523 ("Since the only claim before us is appellant's challenge to the termination for default, we cannot process the appeal under the small claims procedure."); *Marci Enterprises, Inc. v. General Services Administration*, GSBCA 12197 (Feb. 17, 1993) ("since the remaining issue in this appeal does not involve a monetary claim, the Board's small claims procedure, available to contractors seeking $10,000 [now $50,000] or less, cannot be invoked").

Here, there is no monetary amount in dispute. The appellants request that the Board review the contracting officer's terminations for cause and either reinstate the call orders or, at minimum, convert the terminations for cause into terminations for the convenience of the Government. They have not requested payment of any money or challenged any request for payment of money by the Government. Without any monetary dispute, there is no statutory basis for us to apply the small claims procedure or to limit the Government's right of appeal from any adverse decision.

In reviewing past decisions involving small claims procedures before the various boards, we discovered that, prior to its rule modification in 1993, the GSBCA (in unpublished decisions) occasionally utilized the small claims procedure when considering default termination challenges, even though no monetary demand accompanied the challenge. *See, e.g.*, *Kasler Electric Co.*, GSBCA 7391 (Mar. 25, 1985) (applying small claims procedures to default termination challenge that did not involve monetary request or excess reprocurement cost assessment); *ADW, Inc.*, GSBCA 7545 (Mar. 22, 1985) (same); *Taps*

---

[1](...continued)
Department of Agriculture Board of Contract Appeals Rule 12.1(a), 7 CFR 24.21 (1997) (permitting use of procedure if "amount in dispute is $50,000 or less"); Department of Energy Board of Contract Appeals Rules 6(b), 13(a), 10 CFR 1023.120 (1997); Department of Labor Board of Contract Appeals Rule 12(a), 41 CFR 29-60.212 (1997); Department of Transportation Board of Contract Appeals Rule 8(b), 48 CFR 6302.8(b) (1997); Department of Veterans Affairs Board of Contract Appeals Rule 12, 38 CFR 1.783(l)(1)(i) (1997). Because, in creating our rules, we elected to adopt the small claims procedure language from the GSBCA rules, we rely upon the GSBCA's interpretation of that language in interpreting our small claims procedure rule.

Warehouse, GSBCA 6251 (July 31, 1984) (same); *ABC Janitorial Service*, GSBCA 5428 (Feb. 29, 1980) (same); *see also Timber Rock Reforestation*, AGBCA 97-117-10, 97-2 BCA ¶ 29,122, at 144,892 (discussing prior decision in which Agriculture Board of Contract Appeals had overturned default termination using small claims procedure).[2] Prior to 1993, the GSBCA's rules were less clear about the circumstances in which the small claims procedure could be invoked and did not expressly identify the need for a "monetary amount in dispute." *See* 48 CFR 6101.13(b) (1992) (permitting use of small claims procedure "[i]n any appeal in which the amount in controversy is $10,000 or less"). Through its 1993 rule change, the GSBCA clarified that it interpreted the statutory language now codified at 41 U.S.C. § 7106 as requiring a monetary dispute before an appellant could invoke the small claims procedure and unilaterally elect to limit the Government's ability to appeal an adverse decision. 58 Fed. Reg. at 69,247 (1993 changes to small claims procedure were "intended to clarify and simplify the rules"). Through CBCA Rule 52, we have implemented the statutory requirement in the same way as the GSBCA did, making clear that the small claims procedure can apply only if there is a monetary dispute before the Board.

Our implementation of the small claims procedure is a permissible interpretation of the language in 41 U.S.C. § 7106. It is reasonable to believe that Congress, in stating that the small claims procedure should be available "where the amount in dispute is $50,000 or less," was indicating the need for an actual affirmative "amount in dispute." Because our interpretation of the language and intent of 41 U.S.C. § 7106 as limited to actual monetary claims is, at the very least, permissible, our implementation of the statutory language, which was promulgated through notice-and-comment rulemaking, is enforceable. *See Billings v.*

---

[2] Recently, in an unpublished decision, the Armed Services Board of Contract Appeals (ASBCA) considered and denied a challenge to a default termination using the small claims procedure, even though there was no monetary request at issue. *See TTF, L.L.C.*, ASBCA 58452, 15-1 BCA ¶ 35,848, at 175,287 (2014) (discussing previously issued, but unpublished, small claims procedure decision). It does not appear that the Government challenged the appellant's invocation of the small claims procedure there, so it is unclear how the ASBCA would have resolved the matter if it had been challenged. Nevertheless, the ASBCA's rule regarding invocation of the small claims procedure, ASBCA Rule 12.1(a), uses language similar to the pre-1993 GSBCA rule, *see* 48 CFR ch. 2, app. A, Rule 12.1(a) (permitting use of small claims procedure "[i]n appeals where the amount in dispute is $50,000 or less"), and, unlike our rule, does not use words expressly and clearly requiring that "[t]here [be] a monetary amount in dispute." If the ASBCA interprets the scope of the small claims procedure differently than we do, we are not bound by the ASBCA's interpretation. Through CBCA Rule 52, we have clearly set forth our interpretation of the statutory requirement.

United States, 322 F.3d 1328, 1333 (Fed. Cir. 2003) ("interpretations that are the products of notice-and-comment rulemaking promulgated in the exercise of authority delegated to the agency by Congress, are entitled to *Chevron* deference") (citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 848 (1984)). As a result, consistent with our rule, we cannot apply the small claims procedure to these appeals.

Despite the unavailability of the small claims procedure, the Board retains the ability to expedite proceedings (albeit in a manner that will not limit the unsuccessful party's right to appellate court review). CBCA Rule 51 permits the Board to change established procedures in an appeal if it will assist in "resolv[ing] fairly and expeditiously any dispute properly before the Board." Both parties have informed us that they do not currently see the need for any written discovery or depositions in these appeals. At this juncture, the appellants can elect, pursuant to CBCA Rule 19, to submit their cases for a decision on the written record. Alternatively, the appellants can seek summary relief pursuant to CBCA Rule 8(g) by filing a motion showing that, "based upon uncontested material facts, [they are] entitled to relief in whole or in part as a matter of law." Our rules require us to "make such rulings and issue such orders and directions as are necessary to secure the just, informal, expeditious, and inexpensive resolution of every case before the Board," CBCA Rule 1(d), and we will make every effort to expedite the resolution of these appeals in a manner that is fair to both the appellants and the Government.

Decision

For the foregoing reasons, we must **DENY** the appellants' request to invoke the small claims procedure identified in CBCA Rule 52.

_____

HAROLD D. LESTER, JR.
Board Judge