



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO DISMISS DENIED: May 12, 2015

CBCA 4470-C(3772)

CROCKETT FACILITIES SERVICES, INC.,

Applicant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Eden Brown Gaines of Brown Gaines, LLC, White Plains, MD, counsel for Applicant.

Elyssa Tanenbaum, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **STERN**, **HYATT**, and **KULLBERG**.

STERN, Board Judge.

In accordance with a joint stipulation of settlement between Crockett Facilities Services, Inc. (Crockett or applicant) and the General Services Administration (respondent), the Board, by decision dated December 24, 2014, granted an appeal for the payment of certain invoices that respondent had not previously paid. *Crockett Facilities Services, Inc. v. General Services Administration*, CBCA 3772, 15-1 BCA ¶ 35,845 (2014). On

January 23, 2015, Crockett filed an application under the Equal Access to Justice Act (EAJA) for the payment of its fees and costs related to that claim. 5 U.S.C. § 504 (2012).

EAJA provides that an application for fees and costs must be filed within thirty days of final disposition of the underlying appeal. 5 U.S.C. § 504(a)(2). A decision is not final until the expiration of the 120-day period for a party to file an appeal to the United States Court of Appeals for the Federal Circuit. 41 U.S.C. § 7107(a)(1) (2012). An application filed before the expiration of the 120-day period is premature. *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 863-C(50), 07-2 BCA ¶ 33,705.

Respondent moves to dismiss Crockett's application on the basis that it was filed prior to the expiration of the 120-day period and is therefore premature. With respect to this argument, the Court of Appeals has adopted the guidance offered by Congress in the legislative history accompanying the 1985 reenactment of EAJA, to the effect that EAJA fee petitions that are filed before a "final" judgment, may be treated as if they were later filed. The court quoted the language used by Congress,

Fee petitions may be filed before a "final judgment". If the court determines that an award of interim fees is inappropriate the petition should be treated as if it were filed during the thirty-day period following the final decision. [An] overly technical approach . . . should be avoided.

Brewer v. American Battle Monuments Commission, 814 F.2d 1564, 1569-70 (Fed. Cir. 1987) (quoting H.R. Rep. No. 99-120, at 18 n.26, *reprinted in* 1985 U.S.C.C.A.N. 132, 146 n.26.). The Federal Circuit has further elaborated, "The purpose of the statutory requirement of finality is not to provide a basis for [a] fatal misguess as to when a judgment will be deemed 'final in the action': the purpose is to establish a reasonable procedure, avoiding piecemeal fee requests, yet serving the interest of justice." *Beta Systems, Inc. v. United States*, 866 F.2d 1404, 1406 (Fed. Cir. 1989); *accord Gonzalez v. United States*, 44 Fed. Cl. 764, 767-68 (1999) (Congress did not intend to proscribe EAJA petitions filed prior to the start of the final judgment limitations period.)

At this time, the 120-day appeal period has expired and there is no longer any possibility that one of the parties could timely appeal the Board's decision. Under the precedent set forth above, we may consider Crockett's application regardless of whether it was premature when filed. Thus, we conclude that we have jurisdiction over the application and need not determine whether it was premature when initially filed.

Decision

The motion to dismiss is **DENIED**. Respondent is to file any opposition to the application within thirty days of this order.

JAMES L. STERN
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

H. CHUCK KULLBERG
Board Judge