



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

ORDER DENYING MOTION TO STRIKE:
July 13, 2018

CBCA 6031

WOOLERY TIMBER MANAGEMENT INC.,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Charlotte Woolery, President of Woolery Timber Management Inc., Tuolumne, CA, appearing for Appellant.

Elisabeth L. Esposito, Office of the General Counsel, Department of Agriculture, San Francisco, CA, counsel for Respondent.

LESTER, Board Judge.

ORDER

Because this appeal is proceeding under the small claims procedure set forth in Board Rule 52 (48 CFR 6101.52 (2017)), the Board issued a schedule of proceedings on May 23, 2018, to allow for expedited consideration of this case, including the imposition of a deadline for the submission of dispositive motions. Respondent, the Department of Agriculture (the Department), has filed a motion seeking to strike a motion for summary relief that appellant, Woolery Timber Management Inc. (Woolery), has submitted to the Board or, in the alternative, for leave to respond to Woolery's summary relief motion. The Department

asserts that, pursuant to the Board's May 23 order, any dispositive motions had to be filed by July 9, 2018. Because Woolery's motion was filed after 4:30 p.m. Eastern Daylight Time (EDT) on July 9, 2018, the Department argues, the motion was untimely and should be stricken.

Under Board Rule 1(b)(5)(iii), a filing submitted to the Board by electronic mail, like Woolery's motion for summary relief, "will be considered to be filed on" the working day that it was submitted to the Board if it is "received by 4:30 p.m. Eastern Time." That rule further provides that "[e]mail filings received after that time will be considered to be filed on the next working day." Rule 1(b)(5)(iii); *see Estes Brothers Construction, Inc. v. Department of Transportation*, CBCA 4963, 15-1 BCA ¶36,166, at 176,479 ("A filing which is submitted by e-mail is received on the day of its transmission only if it is received by 4:30 p.m., Eastern Time, on that day."). Accordingly, Woolery's motion, which the Board received through its email address at 8:54 p.m. EDT on July 9, 2018, is considered to have been filed on July 10, 2018. Because the Board's May 23 order required all dispositive motions to be filed by July 9, 2018, the Department is correct that Woolery's motion was filed one day late.

Notwithstanding that the motion was technically late, we see no reason in the circumstances here to strike it or decline to consider it. Woolery is not being represented by an attorney, and, although we may not necessarily give a corporate representative handling a corporation's appeal the same kind of procedural latitude and leniency as we would a pro se appellant representing his or her own personal interests, *see I-A Construction & Fire, LLP v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913, at 175,552 & 175,564 n.3, we recognize that a corporate representative is less likely than an attorney to be fully versed in the Board's rules and procedures. Woolery has no history of late or untimely filings,¹ a

¹ The Department incorrectly asserts, as support for its motion to strike, that Woolery has a history of late submissions. The agency cites to a requirement in the Board's May 23 order that all written discovery requests be provided to the opposing side no later than May 30, 2018. According to the Department, Woolery did not serve its discovery requests until 11:10 p.m. EDT on May 30, 2018, and the Department argues that service was late under Rule 1(b)(5)(iii) because it occurred after 4:30 p.m. EDT. The Department is wrong. The 4:30 p.m. deadline in Rule 1(b)(5) only applies to actual *filings* with the Board. A filing is a document that is submitted to and "received by the Office of the Clerk of the Board." Rule 1(b)(5)(i). Although a written discovery request must be *served* on the opposing party, Rule 14, meaning that there must be "[a]ctual delivery of the [written discovery request] to the person [or party] to whom it is directed," *Black's Law Dictionary* 1327 (10th ed. 2014), nothing in our rules requires the written discovery request to be *filed*

written discussion of the facts and evidence applicable to this case is of assistance to the Board in an expedited appeal like this one, and the Department does not identify any realistic prejudice from Woolery's four-and-a-half-hour delay in filing beyond the Board's 4:30 p.m. EDT cutoff. We exercise our broad discretion to accept Woolery's motion for summary relief, which we deem filed effective July 10, 2018.

The Department's motion to strike is **DENIED**. Although the Department has, in the alternative to its motion to strike, requested leave to file a response to Woolery's motion for summary relief, the Board indicated in its May 23 order that it would "review any [dispositive] motions filed before setting a schedule for the opposing side to respond to such motions (if responses are deemed necessary)." To the extent that the Board desires a response to the motion in this expedited case, or a response by Woolery to the Department's pending motion for summary relief, it will request it in due course.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

with the Board to be effective. In fact, the Board's May 23 order specifically indicated that "[s]uch requests do not need to be filed with the Board." Accordingly, the deadline in Rule 1(b)(5)(iii) does not apply to Woolery's written discovery requests, which were, under the Department's own description of them, timely served, having been not only sent by Woolery, but actually received by the Department, prior to midnight on May 30, 2018.