



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR FAILURE TO PROSECUTE: February 8, 2022

CBCA 7044

BRANDON STAFFING SOLUTIONS LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Richard Harris, CEO of Brandon Staffing Solutions LLC, Wylie, TX, appearing for Appellant.

Natica Chapman Neely, Office of General Counsel, Department of Veterans Affairs, Jackson, MS, counsel for Respondent.

Before Board Judges **KULLBERG**, **SULLIVAN**, and **O'ROURKE**.

KULLBERG, Board Judge.

The Government has requested that the Board dismiss this appeal for failure to prosecute. For the reasons stated below, the Board dismisses this appeal for failure to prosecute.

Background

The Board docketed this appeal on February 11, 2021, and subsequently issued an order that set due dates for the initial submission of pleadings and exhibits. On March 10, 2021, the parties jointly requested an extension of time for submission of pleadings and exhibits, which the Board granted. Appellant failed to submit its complaint as ordered, and

the Board issued an order on April 19, 2021, that directed appellant to submit its complaint. After receiving no timely response, the Board again ordered appellant on June 8, 2021, to submit its complaint. Appellant submitted its complaint on June 15, 2021.

By order dated June 30, 2021, the Board directed the parties to submit a joint status report on or before September 13, 2021, that would set forth proposed hearing dates and a schedule for discovery. On September 13, 2021, the Government advised the Board that it had been unable to contact appellant in order to propose a joint status report, and the Government proposed its own schedule for discovery and a hearing. In its order dated September 20, 2021, the Board again directed the parties to confer and submit a joint status report.

On October 4, 2021, the Government filed a request that the Board dismiss this appeal for failure to prosecute. The Government submitted documentary evidence of repeated unsuccessful efforts to communicate with appellant by email and telephone. On October 5, 2021, the Board ordered appellant to respond to the Government's motion but received no response. By order dated November 10, 2021, the Board again directed appellant to respond to the Government's motion. Receiving no response, the Board issued an order to appellant on January 4, 2022, to show cause why this appeal should not be dismissed for failure to prosecute. Appellant has not filed a response to the Board's order to show cause, and the due date for responding has passed. All reasonable efforts to contact appellant have been to no avail.

Discussion

The issue before the Board is whether appellant's consistent failure to respond to orders is sufficient grounds to dismiss this appeal for failure to prosecute. The Board's rules provide the following:

If a party or its representative, attorney, expert, or consultant fails to comply with any direction or order of the Board . . . the Board may make such orders as are just, including the imposition of appropriate sanctions. Sanctions may include, but are not limited to:

. . . .

(6) Dismissing the case or any part thereof.

Rule 35 (48 CFR 6101.35(b) (2020)). This Board has recognized that "dismissal for failure to prosecute is appropriate when an appellant is unresponsive to an order requiring action by the appellant." *Persaud Cos. v. General Services Administration*, CBCA 3179, 14-1 BCA

¶ 35,547. “As this Board has held, this authority is reserved for situations ‘where parties have repeatedly failed to comply with the tribunal’s orders.’” *Elite Quality Services, LLC v. Department of Commerce*, CBCA 5050, 16-1 BCA ¶ 36,269 (quoting *Medtek, Inc. v. Department of Veteran Affairs*, CBCA 1544, 09-2 BCA ¶ 34,285). Appellant has repeatedly failed to respond to the Board’s orders in spite of having been afforded ample opportunity to do so. Dismissal is the appropriate sanction in this case.

Decision

The appeal is **DISMISSED FOR FAILURE TO PROSECUTE**.

H. Chuck Kullberg

H. CHUCK KULLBERG
Board Judge

We concur:

Marian E. Sullivan

MARIAN E. SULLIVAN
Board Judge

Kathleen J. O’Rourke

KATHLEEN J. O’ROURKE
Board Judge