



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: December 6, 2022

CBCA 7575

MINACT, INC.,

Appellant,

v.

DEPARTMENT OF LABOR,

Respondent.

Augustus L. Collins, Chief Executive Officer of MINACT, Inc., Jackson, MS, appearing for Appellant.

José Otero and Virginia Ackerman, Office of the Solicitor, Department of Labor, Washington, DC, counsel for Respondent.

Before Board Judges **LESTER**, **DRUMMOND**, and **SHERIDAN**.

SHERIDAN, Board Judge.

After the Board issued a show cause order questioning the timeliness of this recently-filed appeal, the parties jointly requested that the Board dismiss this appeal with prejudice. The parties' submissions, however, establish that we lack jurisdiction to entertain this appeal. In such circumstances, we cannot dismiss the appeal in the manner requested but must instead dismiss it for lack of jurisdiction.

Discussion

The contracting officer sent the final decision at issue here to the appellant by email on August 3, 2022. The appellant submitted its notice of appeal to the Board on November 3, 2022, ninety-two days after the appellant's receipt of the decision.

The Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018), provides that a contractor may appeal a contracting officer’s decision to an agency board of contract appeals “within 90 days from the date of receipt of [that] decision.” *Id.* § 7104(a). The CDA’s deadline for appealing a decision has “been strictly construed by the Court of Appeals for the Federal Circuit because the authorization to make the filing is a waiver of sovereign immunity. Failure to file an appeal within the ninety-day deadline divests the Board of jurisdiction to consider the case on its merits.” *Treasure Valley Forest Products v. Department of Agriculture*, CBCA 3604, 14-1 BCA ¶ 35,549, at 174,207 (citing *Systems Development Corp. v. McHugh*, 658 F.3d 1341 (Fed. Cir. 2011); *Cosmic Construction Co. v. United States*, 697 F.2d 1389 (Fed. Cir. 1982)). Because the appeal was filed outside of the ninety-day window, we lack jurisdiction to hear it.

“When jurisdiction is lacking, we cannot proceed to decide a case.” *Monster Government Solutions, Inc. v. Department of Homeland Security*, DOT BCA 4532, 06-2 BCA ¶ 33,312, at 165,155. Instead, as the Board has previously held, “[o]nce we are aware that we lack jurisdiction to entertain an appeal, we have ‘no other recourse but to dispose of the case by dismiss[ing]’ it based upon the jurisdictional defect,” without reaching the merits of the parties’ dispute. *Duke University v. Department of Health & Human Services*, CBCA 5992, 18-1 BCA ¶ 37,023, at 180,291 (quoting *Rex Systems Inc. v. United States*, No. 92-411C, 1993 WL 13726058, at *3 (Fed. Cl. Dec. 13, 1993), *appeal dismissed*, 41 F.3d 1517 (Fed. Cir. 1994) (table)). “As a general matter of law, a dismissal ‘with prejudice’ bars any subsequent actions on the same cause of action, giving the same finality as a decision on the merits.” *Toole Construction Co.*, HUDBCA 79-439-C49, 81-2 BCA ¶ 15,318, at 75,866. Accordingly, when we know that we lack jurisdiction, we cannot enter a dismissal with prejudice. *See Shonto Governing Board of Education, Inc. v. Department of the Interior*, CBCA 6043-ISDA, 18-1 BCA ¶ 37,038, at 180,319-20; *Duke University*, 18-1 BCA at 180,291; *see also Keo & Associates, Inc. v. Department of Labor*, CBCA 5787, 17-1 BCA ¶ 36,828, at 179,487 (“When jurisdiction is lacking, we cannot proceed to decide a case. Our only function is to announce the lack of jurisdiction and dismiss the case.” (quoting *EnergX, LLC v. Department of Energy*, CBCA 3060, 17-1 BCA ¶ 36,633, at 178,414)).

Although the CDA limits the time for a contractor to appeal a contracting officer’s decision to the Board to ninety days after the contractor’s receipt of the decision, it provides the contractor with twelve months after receipt to file suit with the Court of Federal Claims. 41 U.S.C. § 7104(b)(3). Because we have not resolved the merits of this appeal and have dismissed it for lack of jurisdiction, the appellant still has time to seek relief in the Court of Federal Claims if it so desires.

Decision

Because we lack jurisdiction to entertain this appeal, it is **DISMISSED FOR LACK OF JURISDICTION**.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

We concur:

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

Jerome M. Drummond
JEROME M. DRUMMOND
Board Judge