



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 8, 2024

CBCA 8051-RATE

In the Matter of JAMES FORWARDING COMPANY, INC.

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LESTER, Board Judge.

Claimant, James Forwarding Company, Inc. (JFC), has asked the Board to review a decision of the General Services Administration (GSA) denying as untimely its claim for payment of \$14,595.69 for transportation services. JFC originally billed the Personal Property Shipping Office (PPSO) within the Department of the Navy (Navy) for those services in September 2018, soon after they were rendered, but the Navy denied that invoice on October 2, 2018, as part of a prepayment audit review because JFC's invoice was not supported by weight tickets. Although JFC interpreted the Navy's comment in the denial as suggesting that JFC could resubmit its payment request with the weight tickets, there is no evidence in the record that JFC did so until 2023, four-and-a-half years after the payment denial. In accordance with regulation, the Navy forwarded the renewed payment request to GSA, which denied the claim as barred by the three-year limitation period set forth in the Transportation Act of 1940, 31 U.S.C. § 3726(c)(2) (2018).

As explained below, although the Navy, when denying payment on JFC's invoice, failed to provide JFC with notice of its appeal rights (as required by regulation), JFC cannot establish that it was prejudiced by that lack of notice in the circumstances here. Because the absence of that notice did not toll the statute of limitations, JFC's four-and-a-half-year delay in responding to the Navy's payment denial renders its claim to the agency untimely.

Background

On May 31, 2018, JFC commenced transporting the household goods (HHG) of an employee of the Navy as part of the employee's permanent change of station (PCS) from Louisiana to Guam. The HHG was delivered to Guam at some point in June or July 2018.

Pursuant to part IV of the Defense Transportation Regulation (DTR), which covers transportation of personal property, a transportation service provider (TSP) is required to provide weight tickets to the agency "within seven Government Business Days (GBD) after shipment pickup." DTR pt. IV, app. A-A ¶ B.2.e (available at https://www.ustranscom.mil/dtr/part-iv/dtr_part_iv_app_A-A.pdf (last visited Aug. 7, 2024)). The TSP is responsible for entering all accessorial services, weights, and actual pickup and delivery dates. *Id.*; *see id.* ¶ B.4.b(2)(b) ("The weight ticket information must be entered into the [payment system] by the TSP."). "TSPs are responsible for the resolution of all invoices in 'Audit Exception' status in the [applicable third party payment system]." *Id.* ¶ B.2.e.

On September 26, 2018, JFC submitted an invoice on Standard Form 1113 in the Defense Personal Property System (DPS)¹ seeking payment for its Louisiana-to-Guam transportation services. That invoice was initially approved within DPS on September 28, 2018. Upon approval, DPS, through an electronic data interchange, sent a "notification of service completed" to Syncada, an Internet-based transportation payment system that the Department of Defense utilizes.² The Syncada system conducts a line-by-line comparison

¹ DPS "is the PCS and storage portal for Defense Department . . . personnel and their families" to use in setting up moves. <https://www.militaryonesource.mil/resources/gov/defense-personal-property-system/> (last visited Aug. 7, 2024). After providing transportation services, TSPs use the DPS to submit their invoices to the responsible agencies.

² "Syncada is a software package" that, "in conjunction with the Department of Defense (DOD) Global Freight Management (GFM)/Electronic Transportation Acquisition (ETA) Freight assignment software, . . . provides a virtually paperless transaction application that processes Commercial Bills of Lading (CBL) electronically." <https://www.uscg.mil/Portals/0/FINCEN/Documents/SyncadaCBLProcess2021.pdf> (last

of each charge in an invoice. If any discrepancies are identified, the invoice is placed in an “audit exception” that requires manual intervention by the TSP or the shipping office. In this case, when JFC’s payment was processed through Syncada, the system identified the absence of a weight ticket associated with the invoice, resulting in the denial of the invoice on October 2, 2018.

In its submission to the Board, JFC acknowledges that, on or about October 2, 2018, a Navy representative “place[d] a note in Syncada” explaining the denial—the note read, “Additional Comments: Missing weight ticket verification”—but asserts that the representative “did not place a note in DPS, nor did she provide an email address for us to send the weight ticket to.” The Syncada denial provided no notice to JFC telling it of any appeal rights or explaining how an appeal process would work. Nevertheless, it clearly stated that payment on the invoice was “denied.”

The record before us does not identify exactly when JFC became aware of the denial in Syncada, but copies of internal company emails show that, by July 12, 2019, JFC’s accounting manager had transmitted the relevant weight ticket for the HHG shipment to JFC’s document management clerk, following email communications about the need for the document management clerk to submit it to the Navy. JFC has informed the Board that, as a matter of regular business, its employee routinely would have (and, as a result, must have) submitted the weight ticket to the Navy at that time. JFC indicates, however, that the document management clerk is no longer with the company and that JFC does not have access to her former email account. As a result, JFC has been unable to provide the Board with any evidence to show that the weight ticket was sent to the Navy or GSA at that time. Neither GSA nor the Navy has any record of having received the weight ticket in 2019.

The earliest evidence of the Government’s receipt of any response by JFC to the Syncada denial is from January 13, 2023, when JFC electronically added a comment to the denied Syncada record indicating that the company would send the weight ticket. At some point before August 22, 2023, JFC submitted the weight ticket and other documentation to GSA’s Office of Transportation and Property Management (the GSA Transportation Audits Division) and requested a decision on what it referenced as its claim.³ On January 22, 2024,

visited Aug. 7, 2024). “The various carriers that are registered in Syncada then turn these CBL[s] into freight invoices.” *Id.*

³ The record does not contain a copy of JFC’s claim to the GSA Transportation Audits Division, but it is clear from the record that JFC submitted one sometime in 2023. JFC originally attempted to file this matter with the Board on August 22, 2023, but, pursuant to Rule 302(a) (48 CFR 6103.302(a) (2023)), the Clerk of the Board deferred docketing it

the GSA Transportation Audits Division denied the claim as barred under the three-year time limitation of section 3726, stating as follows:

As an allowance for transportation furnished the United States Government under Document Reference Number CNNQ0515267, has been examined and disallowed for the following reason(s):

Your bill in the amount [of \$14,595.69] was received on the date indicated on the public voucher. In accordance with the provisions of section 332 of the Transportation Act of 1940, as amended (31 U.S.C[.] 244), every claim cognizable by the General Services Administration for charges for transportation within the purview of this section is forever barred unless the claim is received by the General Services Administration, or its designee (the agency out of whose activities the claim arose), within 3 years from the date of

- (1) Accrual of the cause of action thereon, or
- (2) Payment of charges for the transportation involved[,] or
- (3) Subsequent refund for overpayment of charges, or
- (4) Deduction made pursuant to this section, whichever is later.

Since your claim was not received within the prescribed statutory period of limitations, it cannot be given consideration[.] The claim, together with all papers transmitted therewith, is returned. . . .

Time Barred Denial
Direct Claim

On March 19, 2024, JFC submitted to the Board its request for review of the GSA Transportation Audits Division's denial of the claim. GSA responded on March 28, 2024, arguing that JFC's claim was time-barred under 31 U.S.C. § 3726(c)(2)(A), and the Navy submitted its own response on March 29, 2024, agreeing with GSA's position. After JFC submitted a reply, the Board issued an order on May 3, 2024, requesting supplemental briefing to help it better understand the Syncada invoice submission and denial process and

because JFC did not identify the GSA Transportation Audits Division claim number. The Clerk referred JFC to the GSA Transportation Audits Division website. In its decision dated January 22, 2024, the GSA Transportation Audits Division represents that JFC submitted a claim but does not indicate when JFC submitted it.

the statutory basis of GSA's and the Navy's untimeliness argument. After receiving the parties' supplemental briefing, the Board conducted a "virtual" conference on June 4, 2024, during which the parties further explained their positions.

Discussion

I. JFC's Request for Review

Pursuant to 31 U.S.C. § 3726(i)(1), a TSP may ask that the Board review a decision of the GSA Transportation Audits Division denying a claim for payment.⁴ JFC has requested such a review, and it did so within six months after receiving the GSA Transportation Audits Division's decision, as required by section 3726(i)(1).

II. Rules Regarding Timeliness of Transportation Claims

There is no dispute that JFC provided HHG delivery services, that JFC timely submitted an invoice to the Navy for those services, and that, in October 2018, the Navy denied payment on that invoice because it was unsupported by weight tickets. When JFC submitted its claim challenging non-payment in 2023, GSA denied it solely because it was not timely. Accordingly, the only issue before us is timeliness. "The burden is on the claimant to present evidence of receipt of a claim in the proper office within the statutory period of limitations." *Tri-State Motor Transport Co.*, B-256411, et al., 1995 WL 322417, at *2 (Comp. Gen. May 30, 1995); see *Cinco Star Forwarding*, GSBICA 16865-RATE, 2006 WL 2831129 (Sept. 29, 2006); Rule 301(b) (48 CFR 6103.301(b) (2023)).

Timeliness of transportation claims is governed by section 3726. *Inter-Coastal Xpress, Inc. v. United States*, 296 F.3d 1357, 1367-69 (Fed. Cir. 2002). Section 3726 authorizes GSA to "adjudicate transportation claims which cannot be resolved by the agency procuring the transportation services, or the carrier or freight-forwarder presenting the bill." 31 U.S.C. § 3726(c)(1). The statute provides that GSA can allow a claim only if the GSA Transportation Audits Division (or, pursuant to the regulation implementing this section, the agency that provided the services) receives it "not later than 3 years" from the latest of the following four dates:

⁴ The statute provides for review by the Administrator of General Services of the GSA Transportation Audits Division's decision, but the Administrator has redelegated that function to the Board. See 31 U.S.C. § 3726(g) (authorizing such delegation); 41 CFR 102-118.490(b); 48 CFR 6103.301(a); GSA Order ADM 5440.1 ch. 19 (Apr. 5, 2022) at 1.c.

- (A) The date of accrual of the claim.
- (B) The date payment for the transportation is made.
- (C) The date a refund for an overpayment for the transportation is made.
- (D) The date a deduction under subsection (d) of this section is made.

Id. § 3726(c)(2); *see* 41 CFR 102-118.470 (“[A]n administrative claim must be received by the GSA Transportation Audits Division or its designee (the agency where the claim arose) within 3 years” of the dates identified in section 3726(c)(2)). By regulation, a “claim” involves a request for payment of (1) “[a]mounts owed but not included in the original billing”; (2) “[a]mounts deducted or set off by an agency that are disputed by the TSP”; (3) “[r]equests by a TSP for amounts previously refunded in error by that TSP”; and/or (4) “[u]npaid original bills requiring direct settlement by GSA, including those subject to doubt about the suitability of payment.” 41 CFR 102-118.450.⁵

Most of the timeliness issues previously considered by the Board and its predecessors (the General Services Board of Contract Appeals (GSBCA) and the General Accounting Office (now the Government Accountability Office (GAO))) in deciding transportation claims were brought by TSPs that had failed to submit any invoice for payment within three years after completing their delivery services. Typically, “[a] claim for freight charges accrues when the shipment is delivered.” *Peralta Shipping Corp.*, B-197661, 1980 WL 16562, at *2 (Comp. Gen. May 22, 1980) (citing *Baggett Transportation Co. v. United States*, 319 F.2d 864, 868 (Ct. Cl. 1963)); *see Southern Railway System*, 51 Comp. Gen. 201, 203 (1971) (“A cause of action for transportation charges against the United States accrues upon the completion of the transportation service, that is, the date of delivery to the consignee, and the statute of limitations begins to run from that date.”). Accordingly, it has routinely been held that, when a TSP fails to submit its initial invoice for payment to the appropriate government office within three years after completing delivery, its claim for

⁵ The regulations covering transportation claims contain a second definition of the term “claim,” defining it as “[a]ny demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them.” 41 CFR 102-118.35(2). Although, on its face, amounts that actually *were* included in the original bill but not paid would seem to fall outside of this definition, it goes on to provide that “[t]his includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which is believed to be owed; and any subsequent bills from the TSP resulting from a transaction that was prepayment or postpayment audited by the GSA Transportation Audits Division.” *Id.* Because section 102-118.450 plainly allows a TSP to submit a claim for payment of a disputed unpaid original bill, we need not attempt to decipher how this second regulatory definition applies to the situation before us.

payment is time-barred. *See, e.g., Cinco Star Forwarding*, 2006 WL 2831129; *Apollo Van Lines, Inc.*, GSBCA 16074-RATE, 03-2 BCA ¶ 32,330, at 159,952; *North American Van Lines, Inc.*, GSBCA 15941-RATE, 03-1 BCA ¶ 32,221, at 159,347-48; *American Stitching & Box, Inc.*, GSBCA 14615-RATE, 99-1 BCA ¶ 30,369, at 150,141; *Peralta Shipping*, 1980 WL 16562, at *2; *Sea-Land Service, Inc.*, B-178546, 1973 WL 7774, at *2 (Comp. Gen. June 14, 1973); *Southern Railway*, 51 Comp. Gen. at 203. Where a claim is untimely submitted, “neither the GSA nor the Board has the authority to allow payment.” *American Stitching & Box, Inc.*, 99-1 BCA at 150,141. It matters not that there is “no question that the [agency] received the moving services.” *Id.* at 150,140.

The situation before us is different. Here, JFC timely submitted its invoice for payment in September 2018, less than three months after its delivery of the HHG at issue. Accordingly, JFC met the initial time limit for submitting its request for payment. Subsequently, however, the Navy denied payment through Syncada as part of a prepayment audit required both by statute, 31 U.S.C. § 3726(a)(1), and by regulation, 41 CFR part 102-188.

In a prepayment audit, an agency conducts a thorough review “of transportation billing documents before payment [to the TSP] to determine their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders.” 41 CFR 102-118.35. If, as a result of the audit, the agency makes any adjustment to the TSP bill, the “agency must notify the TSP of [the] adjustment to the TSP bill either electronically or in writing within seven calendar days of the agency receipt of the bill.” *Id.* 102-118.290(a). By regulation, the notice must include the following information: “(1) TSP’s bill number; (2) Agency name; (3) TSP’s [Taxpayer Identification Number]; (4) [TSP’s Standard Carrier Alpha Code (SCAC)]; (5) [Document Reference Number (DRN) from the bill of lading]; (6) Date invoice submitted; (7) Amount billed; (8) Date invoice was approved for payment; (9) Date and amount agency paid; (10) Payment location number and agency organization name; (11) Payment voucher number; (12) Complete contract, tender or tariff authority, including item or section number; (13) Reason for the adjustment; and (14) Complete information on the agency appeal process.” *Id.* 102-118.290(b). Once the TSP receives the notice of adjustment, it “must submit claims to the agency within three years under the guidelines established in subpart F, Claims and Appeals Procedures, [41 CFR 102-118.450 to .675].” *Id.* 102-118.290(c).

GSA and the Navy tell us that, although JFC’s timely submission of its original invoice satisfied the original claim accrual deadline, the Syncada payment denial in October 2018 started a new accrual deadline that JFC had three years to satisfy. Because JFC did not submit a claim to either the Navy or GSA challenging the Syncada payment denial within that three-year period, the agencies argue, JFC’s claim here is time-barred.

III. Timeliness of JFC's Claim

A. JFC's Alleged Timely Invoice Resubmission

As an initial matter, JFC suggests that it is not necessary to decide whether a new three-year limitations period began to run in October 2018 because, even if it did, JFC should be presumed to have met that deadline. JFC has produced an internal company email chain from July 2019 in which its accounting manager and its document management clerk were communicating about the need to submit the weight tickets to the Navy. JFC asserts that it would have been illogical for its clerk not to have resubmitted the invoice with weight tickets at that time. Yet, there is no actual evidence in the record that anyone from JFC ever contacted either the Navy or GSA at any time before January 2023 about the denied invoice, much less actually resubmitted it with weight tickets. JFC's factual assertion is supported only by speculation and supposition. The GSBICA considered a similar situation in *Apollo Van Lines, Inc.*, 03-2 BCA ¶ 32,330, where a TSP, while asserting that it had timely submitted invoices to the agency, was unable to produce any contemporaneous evidence of submission or receipt. *See id.* at 159,952. The board recognized that it is the TSP's burden to establish that GSA or the relevant agency received a claim within the period set out in the statute and that the absence of any definitive evidence showing timely submission precluded the TSP from meeting that burden. *Id.* Like the claimant in *Apollo Van Lines*, JFC has produced no evidence that any of its employees actually resubmitted the invoice in July 2019 with weight tickets. JFC's speculation that submission must have happened is insufficient to meet its burden.

B. The Effect of the Navy's Failure to Provide Notice of Appeal Rights

With regard to the agencies' argument that the Syncada payment denial started a new three-year time limit for challenging the denial, we would, assuming that the agency's notice of the payment denial satisfied all regulatory requirements, agree. The regulatory provision at 41 CFR 102-118.290(c) makes clear that, after receiving a notice that the agency will pay only a reduced amount from that which was billed or will pay no money at all, the TSP has three years from the date of receipt to "submit claims to the agency . . . under the guidelines established in subpart F" of 41 CFR part 102-118. Under subpart F, a TSP may submit a "claim" challenging "[u]npaid original bills requiring direct settlement by GSA, including those subject to doubt about the suitability of payment." 41 CFR 102-118.450. If the agency questions whether an invoice should be paid, it is "subject to doubt," and the agency must obtain GSA's approval before making payment. *Rosemarie E. Naguski*, B-212335, 1984 WL 43950, at *3 (Comp. Gen. Feb. 28, 1984). In line with 41 CFR 102-118.470, claims "must be received by the GSA Transportation Audits Division or its designee (the agency where the claim arose) within 3 years" of the date of accrual. We agree with GSA and the Navy that

a TSP has three years from the date that it receives proper notice of the payment denial to submit a claim challenging it.

In this case, however, there is a problem with the notice that JFC received: it did not satisfy all of the regulatory requirements for a denial. By regulation, each agency's prepayment audit program is required to include "[a]n appeals process . . . for a TSP to appeal any reduction in the amount billed." 41 CFR 102-118.285(k); *see id.* 102-118.295 (similarly requiring agency establishment of appeals process). Each agency is encouraged to "establish an electronic appeal process that will direct TSP-filed appeals to an agency official for determination of the claim," and the "agency must complete the review of the appeal and inform the TSP of the agency determination within 30 calendar days of the receipt of the appeal, either electronically or in writing." *Id.* 102-118.295. If the TSP elects to submit an appeal of the adjustment to the agency and the agency is subsequently "unable to resolve the disputed amount with the TSP, [the] agency must submit, within 30 calendar days, all relevant transportation documentation associated with the dispute, including a complete billing history and the appropriation or fund charged, to GSA Transportation Audits Division by email." *Id.* 102-118.300.

Importantly for purposes of the matter before us, the regulations governing prepayment audit reviews require that, in the notice informing the TSP of a reduction in the invoiced payment amount, the agency must include (among other things) "[c]omplete information on the agency appeal process." 41 CFR 102-118.290(b)(14). GSA added that requirement to the Federal Management Regulations (FMR) in 2016 through notice-and-comment rulemaking. 81 Fed. Reg. 65,296, 65,302 (Sept. 22, 2016). GSA's stated reasons for revisions to the FMR included a need to implement the Travel and Transportation Reform Act of 1998, Pub. L. 105-264, which "established agency statutory requirements for prepayment audits of Federal agency and [Department of Defense (DoD)] transportation expenses," and to "[s]trengthen[] agency requirements and responsibilities for transportation prepayment audits." 81 Fed. Reg. at 65,296, 65,298.

The Syncada notice denying payment of JFC's invoice, which serves as a "notice of adjustment" of the invoice down to zero, did not provide JFC with any notice of its appeal rights or information about how or when to appeal. Nor did the Navy provide any alternative notice of appeal rights outside of the Syncada denial.

In its original briefing to the Board, GSA did not mention this regulatory requirement. After the Board requested supplemental briefing following its review of GSA's regulations, GSA explained that, unlike the the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018), which requires that contracting officers include notices of appeal rights in final decisions on government contractor claims, "neither the Transportation Act (31 U.S.C.

§ 3726) nor 49 U.S.C. § 14705 require carriers to be notified explicitly of their appeal rights.” GSA’s Supplemental Brief at 2. While it may be true that there is no *statutory* notice requirement in the transportation statutes, GSA’s *regulations* require that agencies provide such notice, and “[i]t is well established that valid regulations have the force and effect of laws.” *Shiflett v. United States Postal Service*, 839 F.2d 669, 673 (Fed. Cir. 1988). In other contexts, the Court of Appeals for the Federal Circuit has routinely enforced regulations mandating notifications of appeal rights, even where the notice requirements are not set forth in an authorizing statute, and found that the agency’s failure to provide a required notice can delay the accrual of a claim. *See, e.g., Ladrido v. Merit Systems Protection Board*, 248 F. App’x 184, 186 (Fed. Cir. 2007) (“An agency’s failure to provide notice of appeal rights required by applicable regulations if serious enough can, by itself, constitute good cause for untimely filing of an appeal.”); *Toyama v. Merit Systems Protection Board*, 481 F.3d 1361, 1366-67 (Fed. Cir. 2007) (Under Equal Employment Opportunity Commission regulations relating to discrimination cases, agency’s failure to provide “the notice of appeal rights required by the regulations . . . constitutes good cause for a late filing.”); *Shiflett*, 839 F.2d at 674 (In the Merit Systems Protection Board context, “the failure of the respondent to give notice to petitioner of her appeal rights,” as required by regulation, “constituted good cause for the late filing by petitioner of her appeal.”).

GSA represents that the absence of an appeal rights notification to JFC is not unusual because TSPs receiving “[i]ndividual denials” of their invoices for transportation services “are not generally provided notice of the appeals process” by the agencies that pay (or decline to pay) their invoices. GSA’s Supplemental Brief at 2-3. Yet, “[a]n agency must follow all applicable procedures.” *Shiflett*, 839 F.2d at 674. Even if agencies routinely ignore the requirements of 41 CFR 102-118.290(b), they do so at their own risk. Requirements that agencies include notices of appeal rights in decisions that they issue are for the benefit and protection of the recipients. *See, e.g., Decker & Co. v. West*, 76 F.3d 1573, 1579 (Fed. Cir. 1996); *Steith Construction, Inc.*, NASA BCA 44-0291, 91-3 BCA ¶ 24,140, at 120,795; *M.G.C. Co.*, DOT CAB 1553, 85-1 BCA ¶ 17,777, at 88,782 (1984). At least in the context of the CDA, which contains an appeal rights notification obligation that seems comparable to the one in 41 CFR 102-118.290(b)(14), an agency “decision that does not give the [recipient] adequate notice of its appeal rights is defective” and can preclude the commencement of the limitations period. *Pathman Construction Co. v. United States*, 817 F.2d 1573, 1578 (Fed. Cir. 1987).

C. Lack of Prejudice to JFC

That being said, “[t]he failure to include a notice of appeal rights does not prevent the start of the appeal period unless the [recipient] demonstrates that it was actually prejudiced by the lack of notice.” *Parsons Government Services, Inc.*, ASBCA 62113, 20-1 BCA

¶ 37,586, at 182,509 (citing *Decker & Co.*, 76 F.3d at 1580); see *Wise Developments, LLC v. General Services Administration*, CBCA 6659, 21-1 BCA ¶ 37,774, at 183,350 (“[T]he contractor must show prejudice from, or detrimental reliance upon, the absence of a proper appeal rights notice.”). Prejudice requires injury or damage, “with at least a showing of . . . some reasonable possibility that the outcome would have been different had [the contractor] received notice.” *Wise Developments*, 21-1 BCA at 183,351 (quoting *Old Republic Insurance Co. v. Underwriters Safety & Claims, Inc.*, 306 F. App’x 250, 255 (6th Cir. 2009)). “We will not presume ‘prejudice or [detrimental] reliance by virtue of the late filing alone.’” *Id.* (quoting *Shafi Nasimi Construction & Logistics Co.*, ASBCA 59916, 16-1 BCA ¶ 36,215).

GSA asserts that JFC could not have been adversely affected by the lack of notice because “any prudent person would [have] . . . contact[ed] the PPSO” after getting the Syncada denial, which JFC did not, and because “[t]he appeal process is clearly identified in 41 CFR § 102-118.” GSA’s Supplemental Brief at 3. “Yet, were we to find that the Government can escape a finding of prejudice every time it fails to include a notification of appeal rights in a final decision, simply because [a statute or regulation] identifies the contractor’s right, it would essentially eradicate the [agency’s] obligation under [the regulation] ever to provide such notice.” *Wise Developments*, 21-1 BCA at 183,350. As mentioned previously, one of the reasons for the 2016 amendment adding a requirement for a notice of appeal rights was to “[s]trengthen[] agency . . . responsibilities for transportation prepayment audits.” 81 Fed. Reg. at 65298. If we were to “adopt a standard of constructive notice that completely absolves the [agency] from ever having to meet [its] notice obligations,” *Wise Developments*, 21-1 BCA at 183,351, the 2016 regulatory amendments adding a requirement for notice would have no purpose. Agencies must be held accountable for failing to meet regulatory obligations.

GSA also references its Transportation Audits Management System (TAMS), which became effective on September 28, 2020, through which federal agencies and TSPs now manage their accounts, as providing information about appeals. GSA asserts that JFC created an account in the system on April 17, 2020, and that the “robust user guide” available through that site “provides step-by-step instructions . . . on submitting a claim to GSA,” meaning that JFC had information about its appeal rights no later than that date. GSA’s Supplemental Brief at 3. It is true that, when the agency fails to include a required notice of appeal rights in a decision, “a dismissal based on untimeliness may [still] be proper if the [recipient] fails to act promptly and within the allowable time limits after [it] becomes aware of those rights.” *Ratcliff v. Merit Systems Protection Board*, 55 F. App’x 942, 943 (Fed. Cir. 2003). Here, though, the literature to which GSA has pointed describes the TAMS as an accounting system “that identifies and recovers [TSP] overcharges and other debts relating to transportation bills [previously] paid by federal agencies.” TAMS External User Training

Guide (Apr. 3, 2024) ¶ 1.1 at 4-5 (available at <https://www.tams.gsa.gov/login> (last visited Aug. 7, 2024)). In this case, the agency never paid JFS anything, so there is no overpayment for the agency to collect, making it appear that TAMS does not apply to the situation before us. To the extent that the referenced literature makes any reference to prepayment audits, it says nothing about appeal processes or a three-year time limit for submitting an appeal. The TAMS literature does not assist GSA.

Despite our rejection of GSA's arguments regarding an alleged lack of prejudice, a review of the record here makes clear that it was not the absence of a notice of appeal rights that stopped JFC from timely submitting an appeal. As JFC acknowledges in its submissions, the invoice at issue simply got lost in JFC's accounting records. Outside of the July 2019 time frame when two JFC employees discussed the need to submit the weight tickets, it appears that JFC simply did not maintain records in which it could easily see that it had not been paid for this invoice before its current accountant discovered it in January 2023. As previously noted, to establish prejudice, JFC must show "some reasonable possibility that the outcome would have been different had it received notice." *Wise Developments*, 21-1 BCA at 183,351. The record here demonstrates that it was not the lack of an appeal rights notice that stopped JFC from timely submitting a claim on its invoice payment denial but instead faulty recordkeeping and a failure to keep track of unpaid bills. Even had the Navy provided an appeal rights notice in October 2018, JFC still would not have recognized the invoice nonpayment within the three-year limitations period. It still would have lost this invoice in its accounting system, and it still would not have rediscovered the invoice until four-and-a-half years after the Syncada denial. Because we cannot find that JFC would timely have submitted its challenge to the invoice denial had the Navy provided it with a notice of appeal rights, we have no basis for finding prejudice to JFC from its absence. Accordingly, JFC cannot overcome the untimeliness of its claim.

With regard to JFC's argument that, had the Navy timely provided it with notice of its appeal rights, it would have known where to send the missing weight tickets and could have taken immediate action to deal with it, a notice of appeal rights would not have provided that information. The missing notice would only have explained the agency's appeal process for challenging denied invoices, which GSA and the Navy tell us involved going to the Navy's PPSO through the same system that JFC eventually used to resubmit its invoice in 2023. The rules regarding the requirements for submission of weight tickets were contained in the DTR, with which JFC, as a TSP, was responsible for complying. *See* DTR pt. IV, app. A-A ¶¶ B.2.e, B.4.b(2)(b). The Navy was not required in an appeal rights notice to explain to JFC where to find those rules or how to fix defects in its invoice. Because an appeal rights notice would not have provided JFC with the information that it suggests would have encouraged it quickly to submit the missing weight tickets, this argument does not provide a basis for finding prejudice.

D. JFC's Request Based on Equity

JFC also asks that we forgive its failure timely to submit its claim, suggests that any failure to submit was not intentional, and asserts that the loss of any payment for the work that it indisputably performed would be unfair to JFC and a windfall to the agency. We lack authority to excuse untimeliness based upon equitable considerations. *See Arpin International Group*, GSBCA 16471-RATE, 04-2 BCA ¶ 32,795, at 162,211 (“We have no authority to consider matters relating to payment for transportation services which were not previously presented in a timely fashion to GSA in the form of claims.”).

Decision

For the foregoing reasons, JFC's claim is denied.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge