



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: December 2, 2024

CBCA 8242

ALAN E. FRICKE MEMORIALS, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Francis M. Curran of Tully Rinckey PLLC, Albany, NY, counsel for Appellant.

Krishon Gill-Edmond and Shawn Larson, Office of General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

Before Judges **ZISCHKAU**, **SULLIVAN**, and **CHADWICK**.

SULLIVAN, Board Judge.

Alan E. Fricke Memorials, Inc. (Fricke or appellant) filed an appeal with the Board after receiving the final response from Department of Veterans Affairs (VA or respondent) to its termination for convenience settlement proposal. Because Fricke sought an amount over \$100,000 but did not certify its settlement proposal, the Board lacks jurisdiction and dismisses the appeal.

Background

In January 2023, the Board issued a decision, following a previous appeal by Fricke, directing that the termination for default be converted to a termination for convenience. *Alan E. Fricke Memorials, Inc. v. Department of Veterans Affairs*, CBCA 7352, et al., 23-1 BCA

¶ 38,262, at 185,795. In March 2023, Fricke sent a letter to VA, outlining its requested termination costs of approximately \$1.7 million. In May 2023, Fricke submitted a report from its accountant in support of its settlement proposal. Neither document contained any language that could be construed as a certification as to the accuracy of Fricke's submissions. In July 2024, VA issued a "Final CO Response to Amended Settlement Proposal of Alan E. Fricke Memorials, Inc."

In October 2024, Fricke filed its notice of appeal with the Board, and the Board issued a notice to show cause as to why the appeal should not be dismissed for lack of jurisdiction.

Discussion

The Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2018), provides the Board with jurisdiction to entertain appeals arising out of disputes involving contracts between contractors and executive branch agencies. Pursuant to the CDA, the Board may not exercise jurisdiction over an appeal unless the contractor submitted a claim to the contracting officer and the contracting officer denied that claim before the appeal was filed. *Id.* § 7103. The Federal Acquisition Regulation (FAR) defines a "claim" as "a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract." 48 CFR 2.101 (2023) (FAR 2.101).

A claim, including a termination cost proposal, must be certified if the amount sought is more than \$100,000. *DAI Global, LLC v. Administrator of the United States Agency for International Development*, 945 F.3d 1196, 1198 (Fed. Cir. 2019); 41 U.S.C. § 7103(b)(1). "A defect in the certification of a claim does not deprive a [board] of jurisdiction over the claim" so long as it is corrected. 41 U.S.C. § 7103(b)(3). But the "complete failure to provide a certification at all may not be deemed a defective certification." *Medina Construction, Ltd. v. United States*, 43 Fed. Cl. 537, 547 (1999). Without a certification present at all, the Board lacks jurisdiction over the claim. *Gulf Tech Construction LLC v. Department of Veterans Affairs*, CBCA 7447, 22-1 BCA ¶ 38,179, at 185,428.

Because there was no certification, the Board lacks jurisdiction to decide this case, and the case must be dismissed. Fricke, in response to the show cause order, did not dispute the absence of a certification but requested that the Board dismiss the appeal without prejudice. A dismissal for lack of jurisdiction is by definition without prejudice. *Wheeler v. United States*, 11 F.3d 156, 159-60 (Fed. Cir. 1993).

Decision

This appeal is **DISMISSED FOR LACK OF JURISDICTION.**

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

We concur:

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge