



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

APPELLANT'S MOTION FOR SANCTIONS DENIED: November 3, 2025

CBCA 8401

NATIONAL RECOVERIES, INC.,

Appellant,

v.

DEPARTMENT OF EDUCATION,

Respondent.

Edward T. DeLisle, Andrés M. Vera, and Amaiya L. Johnson of Thompson Hine LLP, Washington, DC; and Jamar T. King of Thompson Hine LLP, Miamisburg, OH, counsel for Appellant.

Candice Jackson and Tim Rushenberg, Office of the General Counsel, Department of Education, Washington, DC, counsel for Respondent.

Before Board Judges **VERGILIO**, **CHADWICK**, and **KANG**.

KANG, Board Judge.

This appeal concerns a contract awarded to National Recoveries, Inc. (NRI) by the Department of Education (Education) for student loan debt collection services. NRI filed a motion seeking imposition of sanctions on Education based on its failure to meet deadlines for mandatory filings. We deny the motion.

Background

NRI filed this appeal on April 1, 2025. The Board's order of April 8, 2025, directed NRI to file its complaint and Education to file the appeal file under Board Rule 4 (48 CFR 6101.4(a) (2024)) by May 8, 2025, and for Education to file its answer within thirty days of the filing of the complaint, as required by the Board's Rules. The order also directed the parties to confer and file a proposed schedule for milestones in the appeal including discovery. NRI filed its complaint, but Education did not file its Rule 4 appeal file.

On May 19, 2025, the Board issued an order directing Education to do the following by May 23, 2025: "[E]ither file (1) its Rule 4 file or (2) a request for an extension that includes an explanation for why the filing has not been made and a specific date by which the filing will be made."

On May 22, 2025, the Board held a conference call with the parties to address a separate appeal filed by NRI concerning a different contract with Education (CBCA 8017). During that call, counsel for Education—who had not entered a notice of appearance for either appeal—advised with regard to CBCA 8401 that Education would comply with the Board's May 19, 2025, order by requesting an extension of time to submit its appeal file. Despite this representation, Education did not file a request for extension by the existing May 23, 2025, due date. Instead, on May 27, 2025, Education filed a request for an extension to submit the appeal file until June 3, 2025. On May 28, 2025, the Board granted Education's request for an extension to submit the appeal file. Yet, Education did not submit its appeal file by the extended deadline.

On June 12, 2025, the Board directed the parties to confirm their availability for a conference call to discuss the schedule for the appeal on June 16, 2025. Although counsel for NRI confirmed availability, counsel for Education did not respond.

On July 1, 2025, Education entered notices of appearance of counsel, Candice Jackson and Tim Rushenberg. On July 2, 2025, the Board issued an order directing the parties to confer and by July 11, 2025, file a joint proposed schedule submission of the appeal file, the answer to the complaint, and the remaining milestones set forth in the Board's order of April 8, 2025.

On July 11, 2025, the parties filed a joint proposed schedule for the appeal, which provided for, among other things, Education to file its answer and the appeal file by July 18, 2025. On July 14, 2025, the Board issued an order adopting the proposed schedule. Education did not file the appeal file or answer by the second extended deadline.

On August 29, 2025, NRI filed a motion seeking the following sanctions against Education: (1) deeming the allegations of NRI's complaint admitted; (2) precluding Education from producing evidence contrary to NRI's allegations; (3) drawing all evidentiary inferences in favor of NRI against Education; (4) granting NRI "unfettered access" to Education's electronic and non-electronic data storage systems so that NRI can "prepare the Rule 4 File at [Education's] expense"; and (5) other sanctions the Board deems appropriate. Memorandum in Support of Motion (Aug. 29, 2025) at 12-13. NRI asserted that "[d]espite several extensions and reset deadlines and stern warnings from the Board, [Education] refuses to file an answer to the complaint or serve a Rule 4 File." *Id.* at 1. NRI also represented that, consistent with Rule 8(a), it had attempted to resolve the matter with Education prior to filing the motion. *Id.* at 5.

On September 3, the Board ordered Education to file its answer and appeal file by September 23, 2025, and also ordered Education to file any opposition to the motion for sanctions by September 29, 2025. Education complied with both deadlines.

Discussion

Board Rule 35(a) provides that "[a]ll parties and their representatives, attorneys, and any expert or consultant retained by them or their attorneys shall obey directions and orders of the Board and adhere to standards of conduct applicable to such parties and persons." 48 CFR 6101.35(a). Rule 35(b) provides that sanctions may be imposed "[i]f a party or its representative, attorney, expert, or consultant . . . engages in misconduct affecting the Board, its process, or its proceedings." *Id.* 6101.35(b).

We recognize that the motion was filed at a time when Education had repeatedly failed to meet deadlines set by the Board's Rules and orders issued by the Board for filing its appeal file and answer. Nonetheless, Education ultimately complied with the Board's September 3, 2025, order and filed the appeal file and answer.

NRI's request to provide access to Education's records is moot in light of the production of the appeal file. *See Brasfield & Gorrie, LLC v. Department of Veterans Affairs*, CBCA 3300, et al., 14-1 BCA ¶ 35,806, at 175,118 (imposing sanctions on respondent for abusive discovery practices but noting that the sanctions would be unnecessary if respondent provided documents prior to the deadline for commencement of the sanctions). To the extent that any disputes arise concerning the documents filed, such disputes will be handled in the normal course under the Board's Rules.

The sanction of taking allegations as established based on the late filing of an answer is a severe penalty that is "authorized only in extreme circumstances" involving "willfulness,

bad faith or fault.” *MLU Services, Inc. v. Department of Homeland Security*, CBCA 8002, 24-1 BCA ¶ 38,549, at 187,365 (quoting *Refac International, Ltd. v. Hitachi, Ltd.*, 921 F.2d 1247, 1254 (Fed. Cir. 1990)). The record here does not show any evidence of the kind of “extreme” behavior by Education that would support the imposition of the sanctions sought by NRI in connection with the answer.¹

In sum, we find no basis to impose sanctions. Education is advised, however, that the events that precipitated the motion may be considered if further failures to meet deadlines prompt additional motions for sanctions.

Decision

The motion is denied.

Jonathan L. Kang
JONATHAN L. KANG
Board Judge

We concur:

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge

¹ We note that Education’s response to the motion did not explain its failure to meet the filing deadlines; rather, the response merely argued that the motion was moot because the filings were ultimately made. During the May 22, 2025, conference call, counsel for Education described challenges regarding staffing resources in its Office of the General Counsel caused by reductions in force. Apart from this general representation, Education has not made any specific statements, much less offered any evidence for the record, that could account for its multiple failures to meet deadlines set forth in the Board’s rules and orders.