



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: November 3, 2025

CBCA 8363

WILLIAMS BUILDING COMPANY, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Douglas L. Patin and Erik M. Coon of Bradley Arant Boult Cummings LLP, Washington, DC, counsel for Appellant.

Neil S. Deol, Office of General Counsel, Department of Veterans Affairs, Decatur, GA, counsel for Respondent.

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

LESTER, Board Judge.

Appellant, Williams Building Company (WBC), has requested that the Board allow it to withdraw this appeal but without prejudice to its ability to raise the challenges that it has identified in the claim underlying this appeal in another case that is currently pending before the Board. WBC seeks specific declaratory relief in this appeal that subsequent circumstances have rendered moot, but it is seeking monetary compensation in the related appeal for the alleged agency breaches of contract upon which this appeal is based. Because it is clear that the Board lacks jurisdiction to entertain this appeal, we dismiss it for lack of jurisdiction, which effectively acts as a dismissal without prejudice.

Background

On December 9, 2020, the Department of Veterans Affairs (VA) awarded a contract to WBC for a construction project at the Togus VA Medical Center in Augusta, Maine. WBC alleges that, soon thereafter, it identified numerous latent defects in the plans for the project for which it sought answers through the submission of requests for information (RFIs). It asserts that the VA refused to cooperate with WBC in resolving those design defects and that, on November 3, 2021, it asked the VA to terminate the contract for convenience. It further alleges that, on January 4, 2022, the VA suspended work on the project; that the VA later insisted that WBC submit replacement drawings for the entirety of the project, which it did under protest; and that, on August 22, 2022, the VA refused to terminate the contract for convenience. Asserting that the price of the project would increase dramatically using the new drawings, WBC in March 2023 requested a substantial increase in the contract price, a request to which WBC says the VA contracting officer never responded. The parties continued to interact and exchange blame for the next several months about problems on the project.

In July 2024, WBC submitted a request for an equitable adjustment (REA) seeking payment of more than \$7.7 million for what it called the VA's breach of the contract. On September 26, 2024, it converted that REA into a certified claim in accordance with section 7103 of the Contract Disputes Act (CDA), 41 U.S.C. § 7103 (2018).

In October 2024, at the contracting officer's direction, WBC remobilized on site. WBC alleges that it was later told to perform work in accordance with the original design and not in accord with proposed change orders, which WBC asserted could not be done. The parties continued to conflict about the work to be performed.

Then, on November 26, 2024, WBC submitted to the VA contracting officer what it called a "Claim for Declaratory Relief" under the CDA in which it "request[ed] a final decision/contract interpretation by . . . the Contracting Officer, that the VA has materially breached the contract, and that [WBC] has the right to stop work."

On February 26, 2025, WBC filed this appeal, which the Clerk of the Board docketed as CBCA 8363, from the "deemed denial" of its November 26 declaratory relief claim.

Soon thereafter, on March 20, 2025, WBC filed with the Board a notice of appeal from the contracting officer's "deemed denial" of its September 26, 2024, monetary claim, which the Clerk of the Board docketed as CBCA 8390.

On July 24, 2025, the VA contracting officer terminated the contract for default. WBC appealed the termination decision to the Board that same day, which the Clerk of the Board docketed as CBCA 8519.

By order dated August 25, 2025, the Board requested that WBC show cause as to whether, in light of the default termination, there was any remaining live dispute in CBCA 8363, given that the request in that appeal was for permission to allow WBC to stop work on the contract. WBC responded on October 15, 2025, indicating its belief “that this declaratory relief appeal [CBCA 8363] has been rendered moot by Respondent’s termination for default” and requested that the Board allow it to withdraw its declaratory relief appeal without prejudice and “without . . . waiving its rights to raise all issues discussed in CBCA 8363 in defense of the termination for default appeal, CBCA 8519.” Appellant’s Motion to Withdraw Appeal Without Prejudice (Oct. 15, 2025) at 1.

Discussion

We lack jurisdiction over the appeal in CBCA 8363. WBC is not seeking monetary relief in CBCA 8363. Although repeatedly mentioning entitlement to monetary relief in its CBCA 8363 submissions, WBC ultimately seeks only declaratory relief in CBCA 8363 that would allow WBC to stop work on the contract at issue without the work stoppage being considered a contract breach. Approximately five months after WBC filed its appeal in CBCA 8363, the VA contracting officer terminated WBC’s contract for default, an action that is currently on appeal in CBCA 8519. Because the contract termination precludes WBC from continuing to work the project at issue, the termination notice provided the relief that WBC is seeking in CBCA 8363 (that is, the ability to stop work on the project), albeit not in the form that WBC may have wanted.

“If a case does not ‘present a ‘case or controversy’ due to developments during litigation, those claims become moot.” *Momenta Pharmaceuticals, Inc. v. Bristol-Myers Squibb Co.*, 915 F.3d 764, 770 (Fed. Cir. 2019) (quoting *Canadian Lumber Trade Alliance v. United States*, 517 F.3d 1319, 1338 (Fed. Cir. 2008)). “A case is moot where it can be said with assurance that there is no reasonable expectation that the alleged violation will recur and interim relief or events have completely and irrevocably eradicated the alleged violation.” *Avue Technologies Corp. v. Agency for Global Media*, CBCA 6752, et al., 20-1 BCA ¶ 37,639, at 182,754 (quoting *RMTC Systems*, GSCBA 8732-P, 87-1 BCA ¶ 19,557, at 98,851 (1986)).

In Article III courts, “[t]he mootness doctrine implicates subject matter jurisdiction, which requires the existence of an active case or controversy ‘at the outset and at all later stages’ of a case.” *Id.* (quoting *Ford Motor Co. v. United States*, 688 F.3d 1319, 1324 (Fed.

Cir. 2012)); *see Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (“[A]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” (citations omitted)). “[M]ootness is an exception to ‘the long-standing rule in the Federal courts that jurisdiction is determined at the time the suit is filed and, after vesting, cannot be ousted by subsequent events, including action by the parties.’” *CBY Design Builders v. United States*, 105 Fed. Cl. 303, 329 (2012) (quoting *F. Alderete General Contractors, Inc. v. United States*, 715 F.2d 1476, 1480 (Fed. Cir. 1983)).

The extent to which the boards of contract appeals have treated the absence of a “case or controversy” as a jurisdictional issue in appeals before them has been somewhat inconsistent. The “case or controversy” requirement is set forth in Article III of the United States Constitution. The Board, however, is an Article I, not an Article III, tribunal. The boards have sometimes adopted the need for a “case or controversy” as a jurisdictional requirement in CDA appeals while, at other times, have found that it is not a jurisdictional necessity. *Compare Avue Technologies*, 20-1 BCA at 182,755-56 (dismissing for lack of jurisdiction appeals that became moot) *and SWR, Inc.*, ASBCA 56708, 12-1 BCA ¶ 34,988, at 171,945 (“[L]ike the United States Court of Federal Claims, a non-Article III tribunal that applies case or controversy justiciability standards, we also recognize such conditions, including that standing is an element of our jurisdiction that must be proven by appellant.” (citation omitted)) *and Computer Data Systems, Inc.*, GSBCA 12824-P-R, 94-3 BCA ¶ 27,153, at 135,322-23 (“Because [the party] seeks an advisory opinion, the Board summarily dismisses this portion of the motion for lack of jurisdiction” because of the absence of “an actual case or controversy.”) *with Air, Inc.*, GSBCA 7687, et al., 1985 WL 17107 (Nov. 5, 1985) (“Traditionally the boards of contract appeals, when dismissing cases for mootness, have not linked such dismissals to a lack of jurisdiction.”) *and Custodial Guidance Systems, Inc.*, GSBCA 6531, 83-1 BCA ¶ 16,278, at 80,886 (opining that the boards are not limited in CDA cases by the case-or-controversy requirement like Article III courts but ultimately concluding that the issue “is a matter we think can await future developments”) *and Henry Products Co.*, ASBCA 19154, 74-2 BCA ¶ 10,918, at 51,947 (dismissing moot case “with prejudice”).

Other Article I tribunals, including the Court of Federal Claims and the United States Court of Appeals for Veterans Claims, have consistently applied the “case or controversy” requirement in cases before them and dismissed for lack of jurisdiction cases that do not satisfy that requirement, including cases that became moot while pending. *See, e.g., Anderson v. United States*, 344 F.3d 1343, 1350 n.1 (Fed. Cir. 2003) (“The Court of Federal Claims, though an Article I court . . . applies the same standing requirements enforced by other federal courts created under Article III.”); *Zevalkink v. Brown*, 102 F.3d 1236, 1243 (Fed. Cir. 1996) (“As a court established under Article I of the U.S. Constitution, the Court of Veterans Appeals [now the Court of Appeals for Veterans Claims] is not bound to the

‘case or controversy’ requirement of Article III,” but “it has decided [to adopt it as a jurisdictional requirement] based on the same prudential considerations behind the “case or controversy” requirement, *i.e.*, courts should only decide real and substantial controversies, not hypothetical claims.”); *Industries for the Blind, Inc. v. United States*, 120 Fed. Cl. 132, 135 (2015) (“Although the jurisdiction of this Court, as an Article I court, is not limited by the ‘case or controversy’ requirement of Article III, this Court and other Article I courts have adopted many justiciability precepts—including the doctrine of mootness—based upon prudential grounds.”); *Schooling v. United States*, 63 Fed. Cl. 204, 208 n.7 & 209 (2004) (dismissing case for lack of subject-matter jurisdiction because claims asserted in the complaint were moot).

One of the reasons that at least the Court of Federal Claims has cited for treating Article III’s “case or controversy” requirement as a jurisdictional prerequisite to a suit in that court is that the Article I court’s “decisions are appealable to the United States Court of Appeals for the Federal Circuit, which is an Article III court.” *CW Government Travel, Inc. v. United States*, 46 Fed. Cl. 554, 558 (2000) (citation omitted). A prior Supreme Court decision directly supports and, in fact, appears to mandate that understanding. In *Muskrat v. United States*, 219 U.S. 346 (1911), the Supreme Court considered the need for a “case or controversy” to support jurisdiction before the then-Court of Claims, which was at that time an Article I court. By statute, the Court of Claims was granted jurisdiction to entertain certain types of claims, including monetary claims involving challenges to the constitutional validity of acts of Congress, “with the right of appeal, by either party, to the Supreme Court of the United States.” *Id.* at 350 (statutory citation omitted). There was no doubt that the Supreme Court’s authority to decide a case was “limited to ‘cases’ and ‘controversies’” under Article III. *Id.* at 356; *see id.* at 362. Nevertheless, jurisdiction to resolve monetary disputes arising from constitutional violations started in the Article I court, with such cases going “first to the court of claims, and then upon appeal to” the Supreme Court. *Id.* at 360. The Supreme Court determined that “there is neither more nor less in this procedure than an attempt to provide for a judicial determination, *final in this court*, of the constitutional validity of an act of Congress.” *Id.* at 361 (emphasis added). It recognized that it could not segregate or bifurcate the Court of Claims’ authority to decide monetary relief suits through decisions that, if not timely appealed, were supposed to be considered “final” from the constitutional requirements applicable to the appellate court such that the Article I court’s consideration of the case was subject to the same constitutional requirements as the Article III court to which the Article I court’s decision would be appealed:

For the reasons we have stated, we are constrained to hold that these actions present no justiciable controversy within the authority of the court, acting within the limitations of the Constitution under which it was created. *As Congress, in passing this act, as a part of the plan involved, evidently intended*

to provide a review of the judgment of the court of claims in this court, as the constitutionality of important legislation is concerned, we think the act cannot be held to intend to confer jurisdiction on that court separately considered.

The judgments will be reversed and the cases remanded to the Court of Claims, with directions to dismiss the petitions for want of jurisdiction.

Id. at 362-63 (emphasis added; citations omitted); see David Krinsky, *How to Sue Without Standing: The Constitutionality of Citizen Suits in Non-Article III Tribunals*, 57 Case W. Rsrv. L. Rev. 301, 326 (2007) (“When hearing . . . cases [demanding monetary relief], the [Article I Court of Federal Claims] adheres to Article III standing requirements [except in congressional reference cases], apparently on the statutory interpretation ground that its appeals are intended to go to the Article III Court of Appeals for the Federal Circuit, which is barred from ruling one way or another on a purely advisory lower-court judgment.”).

The boards of contract appeals’ jurisdiction to consider contract disputes “derives from, and is limited to claims that arise under, the CDA.” *Rashid El Malik v. Department of Veterans Affairs*, CBCA 6600, 20-1 BCA ¶ 37,536, at 182,275; see 41 U.S.C. § 7105(e). The CDA provides that a contractor may appeal a contracting officer’s final decision to a board and that, if a party is dissatisfied with a board decision, it may appeal the decision to the Court of Appeals for the Federal Circuit, an Article III court, 41 U.S.C. § 7107(a)(1), followed by a petition seeking review by the Supreme Court. 28 U.S.C. § 1254. That appellate process before the Article III courts may be pursued only if there is an active “case or controversy,” see *Arctic Corner, Inc. v. United States*, 845 F.2d 999, 1000-01 (Fed. Cir. 1988) (dismissing appeal of a board of contract appeals’ decision that was issued without an actual “case or controversy” and finding that the board’s decision, which could be considered only advisory (even though labeled final), was effectively unenforceable), and a “case or controversy” must exist and continue to exist during all stages of the disputes resolution process. See *Muskrat*, 219 U.S. at 362-63. Unless our decisions are to be considered anything other than advisory in nature, that includes the time that an appeal is pending before the Board.¹ See *id.* at 362 (“In a legal sense the judgment [of the Article I court, issued without a case or controversy,] could not be executed, and amounts in fact to no more than an expression of opinion upon the validity of the acts in question.”). The CDA does not

¹ To the extent that the Board in *Sylvan B. Orr v. Department of Agriculture*, CBCA 5299, 16-1 BCA ¶ 36,522, dismissed a CDA appeal that had become moot for failure to state a claim, rather than for lack of jurisdiction, we did not consider the Supreme Court’s guidance in *Muskrat* in deciding that case.

contemplate that our decisions are only advisory. *See* 41 U.S.C. § 7107(a)(1) (“[T]he decision of an agency board is final” unless timely appealed.).

Because WBC’s request for a decision allowing it to stop work on the contract at issue here was rendered moot by the agency’s termination of the contract for default, there is no active case or controversy underlying this appeal, as required by Article III. Accordingly, we lack jurisdiction to entertain the appeal.

To the extent that WBC arguably might have a separate outstanding request in CBCA 8363 (beyond its request for a decision allowing it to stop work) that the Board declare the agency in material breach of the contract, the Federal Circuit’s decision in *Securiforce International America, LLC v. United States*, 879 F.3d 1354, 1360-62 (Fed. Cir. 2018), precludes us from exercising jurisdiction over a request for declaratory relief when the ultimate purpose of the requested declaration would be to allow the appellant to recover money. WBC may pursue its monetary claim, based upon alleged breaches of contract that it can prove, in CBCA 8390, which is still pending before the Board.

Decision

For the foregoing reasons, this appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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

We concur:

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge