

## **NO EQUITABLE TOLLING OF SIX YEAR STATUTE OF LIMITATIONS ON SUBMISSION OF CLAIM**

**Copyright 2024 Richard D. Lieberman, Consultant & Retired Attorney**

In a complex case, the Civilian Board of Contract Appeals denied relief on a certified claim of \$3.1 million for medical services where the contractor had billed for patient payments as inpatient status but the Department of Veterans Affairs (“VA”) had only authorized the patient for “observation,” and the contracting officer had denied the claim. *South Texas Health System v. Dept of Veterans Affairs*, CBCA 6808, August 23, 2023. South Texas had claimed that the VA failed to pay individual medical claims for patients that the contractor had treated under its medical services contract with VA.

There are a number of other issues in this case, but this review only concentrates on one, namely claims which the Board ultimately found were time-barred because they were barred by the Contract Disputes Act statute of limitations. FAR 33.206(a) requires submission of a claim to the contracting officer within 6 years after accrual of a claim. Failure to submit within the six years gives the agency an affirmative defense to the claim. FAR 33.201 defines the accrual of a claim as “the date when all events that fix the alleged liability on either the Government or the contractor and permit assertion of the claim, were known or should have been known.” The VA was required to issue an authorization decision (whether the patients was for observation or inpatient status) within a day of coming in for medical services. South Texas argued that the contract was unclear, but the Board held that the claim accrued when VA provided the contractor with its authorization decision on each claim.

The case discusses possible equitable tolling of its claims. To obtain equitable tolling of a statute of limitations the Board noted that “two elements must be established: (1) that the litigant has been pursuing his rights diligently; and (2) that some extraordinary circumstances stood in his way and prevented timely filing.” The Board noted that Federal courts have typically extended equitable relief only sparingly... in situations where the claimant has actively pursued his judicial remedies or where the complainant has been induced or tricked by his adversary’s misconduct into allowing a filing deadline to pass. Merely failing to exercise due diligence in preserving legal rights rarely results in equitable tolling.

South Texas argued that the parties engaged in discussions, but the Board noted that mere continuance of negotiations provides no reason to extend the limitations period. And the claims at issue in this appeal were not filed until more than six years after their accrual. The Board concluded that South Texas had no justifiable excuse for that delay, and awarded summary judgment on that issue to the government.

Takeaway. Equitable tolling is hard to win. It clearly requires the two elements discussed above, and unless the claimant can show hard proof of both, it will have the same fate as South Texas—all medical claims for which the VA authorized observation status rather than the requested inpatient status were ruled time barred by the Board.

**For other helpful suggestions on government contracting, visit:**

**Richard D. Lieberman's FAR Consulting & Training**  
at <https://www.richarddlieberman.com/>, and **Mistakes in Government Contracting**  
at <https://richarddlieberman.wixsite.com/mistakes>.