

RECEIPT OF CO DECISION INCLUDES RECEIPT BY YOUR ATTORNEY OR EMPLOYEE

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The Court of Federal Claims recently held that when your attorney receives a Contracting Officer's ("CO") final decision under the Contract Disputes Act ("CDA"), the claimant has received it and the clock begins for appeal. *Sandstone Assoc., Inc. v. United States*, No. 19-900C (Fed. Cl. Dec. 12, 2019). This is important because although the CDA provides for appeals from a CO decision, 41 U.S.C. § 7104(b)(1), the CDA also requires that appeals be made "within 12 months from the date of receipt of a contracting officer's decision..." 41 U.S.C. § 7104(b)(3). And failure to appeal within the 12 month period is jurisdictional—the court (or the Board of Contract Appeals—which has a 90 day window for appeals) will not entertain your claim. This provision was at the forefront of the *Sandstone* opinion.

Sandstone entered into a lease with the U.S. Postal Service for property in Newark, NJ. The lease was subject to the CDA. Sandstone's counsel made a written demand (claim) for payment of certain taxes as provided for in the lease. On May 7, 2018, in a final decision, the CO denied Sandstone's claim, and Sandstone's counsel received the CO's denial by US Mail on May 24, 2018. Sandstone did not file its appeal (complaint) of the CO's decision until June 20, 2019—well beyond 12 months after its counsel's receipt of the denial.

The U.S. contended, and Sandstone did not dispute, that its complaint was filed more than 12 months after the CO's final decision. Sandstone asserted to no avail that there was "good cause" to relax the 12 months, because there would be no prejudice to the United States. The Court found these arguments unavailing. The "triggering event" for the 12 month period is receipt of a final CO decision. The Court also noted other cases where the "triggering event" (for the 12 month appeal period) including receipt of the decision by a plaintiff's attorney and also, receipt by an employee. The Court then dismissed Sandstone's appeal as untimely under the CDA.

Takeaway. If you want to appeal the full or partial CO's denial of a CDA claim at the Court of Federal Claims, you must do it within 12 months of receipt (or 90 days if you appeal to a Board of Contract Appeals) by you, your attorney or your employee. This requirement is jurisdictional and Courts will not waive it for "good cause" or other reasons.

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