

IT'S EASY FOR A SMALL BUSINESS TO APPEAL A DENIED CLAIM

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Most small (and even some large) businesses don't realize that it is to appeal a denied claim to either the Armed Services Board of Contract Appeals ("ASBCA") or the Civilian Board of Contract Appeals ("CBCA"), depending on the agency that awarded the contract. Contractors don't even need an attorney to do it.

The first thing needed is a written claim submitted to the contracting officer ("CO"), requesting a decision. 41 U.S.C. § 7103. A claim is a written demand that the government pay you money as a matter of right, or adjust or interpret contract terms. FAR 2.101. The CO normally has 60 days to issue a final decision on your claim, but if the CO fails to issue a decision, the claim will be "deemed denied" and you may appeal it just as if it had been denied in writing.

Once you have a denied claim, or a deemed denial of your claim, you may then file a "notice of appeal."

WHO CAN FILE AT THE BOARDS?

You may use an attorney to file your notice of appeal, but it is not required. "An individual appellant may represent his or her interests before the Board; a corporation may be represented by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country." ASBCA Rule 15. At the CBCA, the rule is similar: "An individual appellant, petitioner, or applicant may appear in his or her own behalf; a corporation, trust, or association may appear by one of its officers; and a partnership may appear by one of its members. Any appellant, petitioner, or applicant may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia. CBCA Rule 5 (sentences inverted).

HOW DO YOU FILE?

You must file the notice of appeal at within 90 days of a final decision from the CO at either the ASBCA or CBCA by hand delivery or courier (e.g. FedEx or UPS), by U.S. Postal Mail, by facsimile or by email, as shown below:

Method	At ASBCA	At CBCA
Hand delivery-courier	Skyline Six, Room 703, 5109 Leesburg Pike, Falls Church, VA 22041-3208	1800 M Street NW, Room 6006, NW, Washington, DC 20036
U.S. Postal Service Mail	Skyline Six, Room 703, 5109 Leesburg Pike, Falls Church, VA 22041-3208	1800 M Street NW, Room 6006, NW, Washington, DC 20036
Facsimile	703-681-8535	202-606-0019
Email	asbca.recorder@mail.mil	cbca.efile@cbca.gov

Board phone number (for information, not for filing)	703-681-8502	202-606-8800
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WHAT MUST BE INCLUDED IN A NOTICE OF APPEAL?

At the ASBCA, the notice of appeal must indicate that an appeal is being taken and should identify the contract by number, the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if any. A copy of the contracting officer's final decision, if any, should be attached to the notice of appeal. The notice of appeal should be signed by the appellant or by the appellant's duly authorized representative or attorney. A copy of the notice of appeal must be sent to the CO.

At the CBCA: A notice of appeal shall be in writing and shall be signed by the appellant or by the appellant's attorney or authorized representative.. The notice of appeal should include the following information: (1) The number and date of the contract; (2)The name of the government agency and the component thereof against which the claim has been asserted; (3)The name, address, telephone number, facsimile machine number, and email address, if available, of the contracting officer whose decision is appealed and the date of the decision; (4) If the appeal is from the failure of the contracting officer to decide a claim, the name, address, telephone number, facsimile machine number, and email address, if available, of the contracting officer who received the claim; (5)A brief account of the circumstances giving rise to the appeal; and (6) An estimate of the amount of money in controversy, if any and if known. The appellant must send a copy of the notice of appeal to the CO.

ANOTHER WAY TO FILE AT THE ASBCA

At the ASBCA, but *not at the CBCA*, the Board has held that providing a notice of appeal to the CO "is tantamount to filing with the Board." *Afghan Active Group*, ASBCA No. 60387, April 14, 2016, citing *Ft. McCoy Shipping & Serv.*, ASBCA No. 58673, 13 BCA ¶35429. All you need to do is sent a written document to the CO within the 90 day period that indicates the contractor's intention to appeal the decision of the CO.

At the CBCA, the rules are not as liberal. You must actually file your notice of the appeal to the CBCA. The CBCA has said that "[w]hile the Board can decide cases arising out of executive agencies, these agencies cannot act as agents of the Board. Thus, an appeal sent only to the contracting officer or within the agency itself is not considered properly filed with the Board. *Geo-Imaging Consulting*, 10-1 BCA at 169,513 (citing *Charles T. Owen v. Agency for International Development*, CBCA 694, 07-2 BCA ¶ 33,638). The reason for this is probably that unlike the ASBCA, which has jurisdiction over primarily one large agency (Defense), the CBCA has jurisdiction over many smaller, geographically disparate agencies.