

NOT A “NEW CLAIM”

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A contractor’s resubmission of a previous claim for payment was not a “new claim,” as explained below, and was merely a repeat, which was not timely filed with the Board. *BES Design/Build LLC v. General Services Admin.*, CBCA 7587, April 6, 2023. Accordingly the Board dismissed the claim for lack of jurisdiction.

The General Services Administration (“GSA”) entered into a construction contract with BES to replace two exterior stairs at a courthouse in North Carolina. During performance of the contract, disputes arose relating to non-performance and non-payment.

The following sequence of events occurred:

- On February 24, 2021, BES submitted a certified claim to the CO for \$37,800.
- On April 23, 2021, the CO issued a Contracting Officer’s final decision (“COFD”) denying the claim. The COFD included notice of appeal rights
- On June 8, 2022 (more than a year later) BES submitted a claim to the CO that was nearly identical to the February 24, 2021 claim. (The only difference was that BES lowered the claim amount because GSA made a payment between its first and second submission of the claim.)

The Board first noted that a contractor must file an appeal with the appropriate board within 90 days of receiving the COFD, otherwise the Board is precluded from considering it. BES asserted that the relevant claim was the one it submitted on June 8, 2022. However, when comparing the two documents, the board noted that even BES stated it was “resubmit[ing]” the claim for payment. If claims are based on a common or related set of operative facts and the court has to review the same or related evidence to make a decision, then only one claim exists. If the allegations and relief sought in each claim is substantially the same, the second claim is not a new claim.

The Board noted that BES’s claims arise from the same set of operative facts, the same contract and the same work. Each claim is for final payment after completion of the projects, thereby involving the same facts to evaluate the claim.

The Board concluded that the first COFD was issued to BES and received on April 23, 2021. Therefore the deadline for BES to file its appeal with the board was July 22, 2021, but the appeal was not filed until November 28, 2022—and accordingly was untimely. The second claim is not a new claim, the Board could not hear the appeal, and therefore it was dismissed.

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