

CIVILIAN BOARD DIVERGES FROM ARMED SERVICES BOARD ON FILING APPEALS WITH CONTRACTING OFFICER

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Although the Armed Services Board of Contract Appeals (“ASBCA”) and the Postal Service Board of Contract Appeals (“PSBCA”) accept appeals that are filed with the Contracting Officer (not the Board) within 90 days, the Civilian Board of Contract Appeals (“CBCA”) considers only appeals filed with the Board within 90 days. *Mahavir Overseas v. Agency for Int’l Dev.*, CBCA 6704, Dismissed June 16, 2020.

Mahavir filed a notice of appeal of its Contracting Officer’s decision on a government claim, but the filing was more than 90 days after Mahavir received the Contracting Officer’s decision. It is interesting to note that the decision notified Mahavir that it could appeal this decision to the agency board of contract appeals within 90 days of receipt of the decision, or within a year at the Court of Federal Claims. The decision did not specifically name the CBCA as the relevant board or provide an address or contact information for the CBCA. Approximately 75 days after receiving the decision, Mahavir asked the USAID contracting officer for the name and contact information of the Board. The Contracting Officer did not respond until 91 days after receipt, or *after* the time to appeal to the CBCA has passed.

The Board notified Mahavir that its notice of appeal was filed more than 90 days after receiving the contracting officer’s decision, and that untimeliness bars the CBCA from considering the merits. The CBCA considers the 90 days to be jurisdictional, citing *Cosmic Const. Inc. v. United States*, 697 F. 2d 1389 (Fed. Cir. 1982).

Mahavir asserted that it sent a notice of appeal to the contracting officer *prior to* the appeal deadline had passed. However, the CBCA noted that only a filing at the CBCA Board was acceptable. The decision notes that “[a]lthough other boards may view contracting officers for the agencies they serve as ‘agents’ for the purpose of accepting appeal notices on those boards’ behalf [citations omitted], the unique independent position of the CBCA, which hears disputes involving numerous agencies of which the Board is neither an affiliated department nor an organization, precludes us from doing so”.

The CBCA dismissed the appeal for lack of jurisdiction.

Takeaway. While the ASBCA and PSBCA will consider an appeal “filed” if it is received by the Contracting Officer within 90 days, that is not the case at the CBCA. An appeal notice to the CBCA can be a one line filing—so it is easy to make it within 90 days of your receipt of the Cotracting Officer’s decision.

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