

APPELLANT'S EMERGENCY SURGERY DOES NOT TOLL CONTRACT DISPUTES ACT APPEAL DATE

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The Armed Services Board recently considered a contractor's appeal that was submitted more than 90 days after the Contracting Officer's final decision on the underlying claim. The Board dismissed the appeal for lack of jurisdiction. *Logistics and Rental Car SARL*, ASBCA No. 63950, April 9, 2025.

Logistics was awarded a contract in 2019 by the Marine Corps ("USMC") for the rental of non-tactical vehicles at Camp Lemonnier, Djibouti, Africa. The USMC and Logistics executed a bilateral modification that changed the contract completion date to Sept. 1, 2019. In August 2019 the USMC returned the rental vehicles to Logistics and issued a contract completion statement which indicated that the contract was closed as of June 1, 2020. Logistics then informed the CO that all payments for the contract had been resolved.

On Feb. 1, 2023, Logistics submitted a certified claim for \$113,000 for damages it alleged the government caused to its vehicles during the contract performance period. In a letter dated April 13, the contracting officer issued a final decision denying the claim in its entirety. The final decision notified Logistics of its right to appeal the decision to the agency board of contract appeals within 90 days of receipt. Logistics replied on April 14, 2024 by email acknowledging it was aware of the government's denial of the claim. Logistics did not file an appeal until August 6, 2024, or 480 days after it received the notice of final CO decision. Logistics' representative and manager responded that "he was unable to file a timely appeal because he became ill and had an emergency operation." The representative asked that the Board grant him an opportunity to continue the appeal.

The USMC moved to dismiss the appeal for lack of jurisdiction because it was not filed within 90 days of the final decision. The Board noted that the 90 day window is statutory and cannot be waived. Furthermore, the Board noted that the agency (which has the burden to prove the date the final decision was received) had adequately shown that Logistics was in receipt of the final decision no later than April 14, 2023.

The Board held that Logistics had failed to meet the 90 day appeal window, which is statutory and cannot be waived, and offered no evidence to the contrary, the appeal was deemed untimely, and the Board dismissed the appeal for lack of jurisdiction.

Takeaway. The Board will enforce the statutory deadlines set forth in the Contract Disputes Act, and this was an example of a failure by a contractor to follow them. Really, the Board had no choice but to dismiss the case.

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