

FAILURE TO PROSECUTE A CASE AT THE BOARDS

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Both the Armed Services Board of Contract Appeals (“ASBCA”) and the Civilian Board of Contract Appeals (“CBCA”) have a failure to prosecute rule. Both are simple: if a party fails to file required documents, or take other required actions, the board may dismiss a case for failure to prosecute. *Network Global Logistics, LLC*, ASBCA No. 62345, Jan. 7, 2021 is a good example, as discussed below. First, the two rules.

ASBCA Rule 17, Dismissal or Default for Failure to Prosecute or Defend, states in part:

Whenever the record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed with prejudice for failure to prosecute.

CBCA Rule 12(b)(4) is a less detailed, but similar rule, which states that the Board may dismiss a case (normally with prejudice unless specified otherwise):

For failure to prosecute. The Board may dismiss all or part of a case for failure to prosecute.

In *Network Global*, the government requested a 60 day stay of proceedings, but the appellant did not respond to the Board’s request for its views on the stay, nor did it respond to a subsequent order directing it to respond to that request. The Board issued a stay and requested a status report. Some time thereafter, the Board held a conference call with both parties, and the parties agreed they would continue to attempt to resolve the appeal. The Board directed the parties to inform the board of the status of their discussions within 30 days. The appellant provided no report, and the government reported that appellant’s counsel had authorized it to inform the Board that appellant “has not responded to counsel’s repeated attempts to make contact and seems not to be interested in taking action on this matter.”

One week later, the Board directed appellant to show cause why the appeal should not be dismissed for lack of prosecution and granted 3 weeks for appellant to respond. There was no response from the appellant, and the Board dismissed the appeal with prejudice.

Takeaway. Never ignore required document deadlines (e.g. complaint, answer, responses to interrogatories, Board orders, Board requests, Board notices, etc.). Always respond, unless you are willing to have your case dismissed for lack of prosecution. If you can’t meet a deadline, file a request to extend the deadline and seek concurrence of the other party in advance of filing, but file regardless of their concurrence. Follow the Board’s orders strictly. And, should you no longer wish to pursue your case at the Board, you can always move for dismissal, which would save you the embarrassment of having a written decision like the one in *Network Global*.

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