

CONTRACTING OFFICER'S DEMAND FOR PAYMENT IN AUDIT RESOLUTION LETTER IS A FINAL DECISION

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Our readers know that a claim by a contractor pursuant to the Contract Disputes Act (“CDA”) must either receive a final decision by the Contracting Officer (“CO”), or a “deemed denial” of the claim after a period of no decision by the CO, before the claim can be appealed either to a Board of Contract Appeals or the U.S. Court of Federal Claims. When a CO has reason to demand funding from a contractor (e.g. for restitution/repayments of overpayments, defective pricing amounts, liquidated damages or some other reason), the CO must issue a claim in the form of a final decision stating that demand. Absent that final decision (or deemed denial) of the claim, the Contract Disputes Act does not permit an appeal to be docketed. In the case of *Group Health Inc. v. Office of Personnel Management*, CBCA 8940, July 21, 2026, the Board considered whether a CO’s “resolution letter” concerning ten audit recommendations that recommended the return of specific sums from Group Health was a CO final decision, and whether the Board had jurisdiction or not over an appeal that Group Health had submitted to the Board.

Group Health had a contract with the Office of Personnel Management (“OPM”) to provide pharmacy benefits and services to the Federal Employees Health Benefits Program from 2015 through 2019. The OPM Inspector General (“IG”) conducted an audit to determine if costs charged to the Benefits Program were in accordance with the terms of the contract. The audit concluded that OPM had been overcharged \$15.1 million. Although Group Health provided its objections to the IG report’s 10 recommendations, the CO considered and rejected all of them. In a “resolution letter” sent to Group Health, the CO instructed the contractor to submit a certification showing the actual return of the specific amount of money recommended in the audit, totaling \$15.1 million. Responding to a Group Health inquiry, an OPM program analyst stated “[P]lease consider the Resolution Letter dated March 30, 2026 as OPM’s final decision.” Group health filed its notice of appeal with the Board, challenging the March 30th decision. Subsequently, in response to a Board inquiry, the OPM CO stated that the March 30th letter was merely intended to communicate OPM’s audit-resolution position and did not constitute a final adjudication of a claim under the CDA. Further, the CO reported to the Board that “to the extent the March 30 letter could be construed as a Contracting Officer’s final decision under the CDA, the CO hereby withdraws that letter effective immediately.”

First, the Board considered and found it had jurisdiction to consider the appeal because the CO demanded that Group Health repay \$15.1 million to OPM and certify that it had done so. This was an appealable decision. Next the Board considered whether the withdrawal of the decision could eliminate the Board’s jurisdiction or moot this action. The Board stated that once jurisdiction is properly vested in the Board by a timely appeal, that jurisdiction may not be divested merely by the expedient of rescission and withdrawal of the final decision. And, because the CO had reserved the right to reissue the repayment demand (or a portion of it) the withdrawal of the March 30th letter did not moot this appeal.

However, Group Health requested that the Board dismiss the appeal without prejudice so it could negotiate with the agency without the expense of simultaneously incurring litigation expenses before the Board. The Board granted that request, noting that the CO, by withdrawing the decision on appeal, was effectively reconsidering OPM's position on the audit and eliminated the decision's finality. However, if and only if and when the OPM CO issued a new decision on the audit resolution/repayment amounts, the time for Group Health to file an appeal would begin again.

Takeaway. A CO cannot moot a properly filed appeal merely by withdrawing the CO's final decision. However, in this case, the appellant (Group Health) believed that it could save litigation expenses by seeking a new CO final decision that could be more financially favorable. However Group Health could appeal that new CO final decision.

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