

## **IMPLICATIONS OF SIX YEAR STATUTE OF LIMITATIONS FOR SUBMITTAL OF CLAIMS**

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The Contract Disputes Act includes a six year statute of limitations for submittal of claims. 41 U.S.C. § 7103(a)(4)(A). This section had been interpreted as a jurisdictional bar that caused many cases at the Boards and in the Court of Federal Claims to be dismissed immediately without further development of the case. See, e.g., *Sys. Dev. Corp. v. McHugh*, 658 F. 3d 1341, 1347 (Fed. Cir. 2011). Two years later, the Supreme Court overruled *Sys. Dev.* and articulated a more stringent test for determining when a statutory time limit is jurisdictional. *Auburn Reg. Med. Center*, 132 S. Ct. 817, (2013). The Supreme Court held that filing deadlines ordinarily are not jurisdictional” instead, absent a clear statement that such deadlines were jurisdictional, they were “ ‘quintessential claim-processing rules.’” The Federal Circuit, in *Sikorsky Aircraft Corp. v. United States*, 773 F. 3d 1315 (Fed. Cir. 2014) held, when considering this statute of limitations, the statute does not speak in jurisdictional terms and does not provide clear evidence that this provision was mean to carry jurisdictional consequences.

This blog has explained the result, but the significance of this is very clearly stated in a recent Armed Services Board decision, *Red Bobtail Trans.*, ASBCA No. 63789. June 12, 2024.

First, there is no basis to dismiss an appeal for lack of jurisdiction if the 6 year statute of limitations on claim submission is not met.

Second, failure to meet the statute can be used as an affirmative defense on the merits, whereas a motion to dismiss for lack of jurisdiction is a threshold challenge to the Board/Court’s jurisdiction. A merits challenge has res judicata (claim preclusion) effect.

The Government bears the burden of proving its affirmative defense, rather than the claimant bearing the burden of establishing jurisdiction before the case can proceed.

As noted above, in the past, when the government immediately moved to dismiss for lack of jurisdiction, the forums often converted this into a motion to dismiss for failure to state a claim, and then into a motion for summary judgment, which would have claim preclusive effect. In the current situation, that would not be possible, and the burden would falls to the government to prove its affirmative defense.

Takeaway. Object to have a jurisdictional dismissal where the statutory claim submission has not been met. Insist that the government prove its defense, rather than merely note the statute of limitations was not adhered to.

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