



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: May 19, 2021

CBCA 6929

KHALIL BUGHIO,

Appellant,

v.

AGENCY FOR GLOBAL MEDIA,

Respondent.

Khalil Bughio, pro se, Alexandria, VA.

Maryellen Righi and James McLaren, Office of General Counsel, Agency for Global Media, Washington, DC, counsel for Respondent.

Before Board Judges **SULLIVAN, LESTER, and O'ROURKE.**

**O'ROURKE**, Board Judge.

Respondent, the United States Agency for Global Media, seeks dismissal of this appeal for lack of jurisdiction based on the contracting officer's conversion of the termination for cause to one for the convenience of the Government. The conversion rendered the appeal moot, and there is no longer a dispute before the Board. Appellant, Khalil Bughio, does not oppose the motion, but requested we dismiss the appeal with prejudice. With no dispute to decide, we dismiss the appeal for lack of jurisdiction.

Background

In January 2020, respondent awarded appellant a contract to work as an international multimedia journalist with Voice of America (VOA). In mid-August of that year, the agency contracting officer issued a show cause notice to appellant for purportedly violating certain provisions of his contract, including failing to comply with VOA's Journalistic Code, Best Practices Guide, Charter, and a personal services contractor (PCS) handbook. Appellant

denied the allegations, stating that he followed the correct procedures and complied with all codes and directives. Notwithstanding appellant's protestations, the agency contracting officer found that his actions were not beyond his fault or were negligent and terminated appellant's contract for cause on August 25, 2020. Appellant appealed the termination, insisting that he performed the contract in accordance with its terms and conditions and noting his long history of compliance as a contract journalist with VOA.

After submission of the pleadings and the appeal file, the parties expressed a mutual desire to engage in settlement discussions, and the Board issued a stay of proceedings to accommodate their request. On March 26, 2021, the agency filed a motion to dismiss the appeal for lack of jurisdiction. In its motion, the agency stated that the contracting officer's final decision had been withdrawn, and that the contracting officer had converted the termination for cause to one for the convenience of the Government, rendering the appeal moot.

The Board's order of March 31, 2021, gave appellant thirty days to respond to the motion. However, appellant responded the same day (March 31, 2021), acknowledging receipt of the motion and stating, "I agree to the cited motion filed by respondent." Because appellant's response was not properly filed, the Board instructed appellant to re-file his response using the e-file email address, which he did approximately one week later, withdrawing his reply of March 31, 2021, and stating:

The undersigned does not oppose respondent's Motion to Dismiss for Lack of Jurisdiction as moot submitted on March 26, 2021. If an additional submission is required, please let me know. . . . Kindly forgive my lack of knowledge about the legal procedures/requirements of this Board. I am not represented by Counsel.

Because appellant is self-represented, the Board scheduled a teleconference with the parties to address appellant's submissions and a potential reply from the agency, but the call failed to materialize. On April 27, 2021, the Board followed up to reschedule. Two days later, with no intervening teleconference, appellant asked the Board to dismiss his appeal with prejudice since the parties had entered into a settlement agreement, a copy of which he attached to the email. For the reasons that follow, we dismiss the appeal for lack of jurisdiction, not with prejudice.

### Discussion

The parties, perhaps unintentionally, seek different dispositions of this appeal. While both paths will result in removing the appeal from the Board's docket, our only recourse here is to dismiss the appeal for lack of jurisdiction. As the Board stated in *Mubashir Ali v. Agency for Global Media*, CBCA 6914 (Feb. 24, 2021):

The contracting officer has withdrawn the default termination that appellant appealed and replaced it with a termination for convenience. The withdrawal of the termination for default is irrevocable. *Avue Technologies Corp. v. Agency for Global Media*, CBCA 6752, et al., 20-1 BCA ¶ 37,639. Conversion of the default termination to a termination for convenience is the only relief that the Board could have granted in the appeal. *Universal Home Health & Industrial Supplies, Inc. v. Department of Veterans Affairs*, CBCA 4012, et al., 16-1 BCA ¶ 36,370. With this conversion, there is no remaining dispute that the Board has jurisdiction to address. *Avue Technologies; H.H. Christian Co.*, AGBCA 82-120-1, 83-1 BCA ¶ 16,335.

Appellant, a self-represented litigant, asks the Board to dismiss the appeal with prejudice, but also states that he does not oppose the agency's motion to dismiss the appeal for lack of jurisdiction. "Any dismissal for lack of jurisdiction is, by necessity, without prejudice" because, "[w]ithout jurisdiction, we lack the ability to render a merits determination and therefore 'cannot presume to dismiss the complaint,' or the appeal, 'with prejudice.'" *SRA International, Inc. v. Department of State*, CBCA 6563, 20-1 BCA ¶ 37,543 (quoting *Scott Aviation v. United States*, 953 F.2d 1377, 1378 (Fed. Cir. 1992)). Conversely, "when mootness results from a bilateral settlement through which 'the claims are permanently withdrawn, 'a dismissal with prejudice is indicated.'"" *Muhammad v. Department of Justice*, CBCA 5188, 16-1 BCA ¶ 36,541. Appellant has provided us with a copy of a settlement agreement that he signed three weeks after the agency filed its motion to dismiss, but that, as far as we can tell, the agency has not yet executed. When the agency filed its motion, however, there was no settlement, and the case had become moot because of the contracting officer's irrevocable action in converting the default termination into one for convenience. "Once we are aware that we lack jurisdiction to entertain an appeal, we have 'no other recourse but to dispose of the case by dismiss[ing]' it based upon the jurisdictional defect." *Duke University v. Department of Health & Human Services*, CBCA 5992, 18-1 BCA ¶ 37,023.

To the extent that appellant is concerned that the dismissal order does not protect him against future action by the agency because it does not use the words "with prejudice," we can assure him that the agency cannot undo the conversion of his termination to one for convenience, *Mubashir Ali*, and that the form of this dismissal has no effect on the enforceability of any settlement that he is or has been able to negotiate with the agency.

Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION.**

*Kathleen J. O'Rourke*  
KATHLEEN J. O'ROURKE  
Board Judge

We concur:

*Marian E. Sullivan*  
MARIAN E. SULLIVAN  
Board Judge

*Harold D. Lester, Jr.*  
HAROLD D. LESTER, JR.  
Board Judge