



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: January 22, 2024

CBCA 7887

ROYAL HAWAIIAN MOVERS, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Cynthia Queenan of Royal Hawaiian Movers, Inc., Honolulu, HI, appearing for Appellant.<sup>1</sup>

Timothy Saffles, Office of General Counsel, Department of Veterans Affairs, Redwood City, CA; and David G. Fagan, Office of General Counsel, Department of Veterans Affairs, Portland, OR, counsel for Respondent.

Before Board Judges **GOODMAN**, **KULLBERG**, and **KANG**.

**KULLBERG**, Board Judge.

After the Board received appellant's notice of appeal, we raised, sua sponte, the issue of whether we had jurisdiction to hear this appeal. Appellant, Royal Hawaiian Movers, Inc. (RHM), acknowledges that it brought this appeal without having first submitted a claim to

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<sup>1</sup> The filings do not indicate that Ms. Queenan is either an attorney or a corporate officer of appellant. Given that we are dismissing this appeal for lack of jurisdiction, we need not consider whether she is an "authorized representative" or otherwise has legal authority to appear before the Board in this matter. *See* Rules 2(a), 5(a)(1) (48 CFR 6101.2(a), .5(a)(1) (2022)).

the contracting officer (CO). For the reasons stated below, we dismiss this appeal for lack of jurisdiction.

### Background

On December 5, 2022, RHM executed bilateral modification P00005 (modification) to contract 36C26121P0487 (contract) with the Department of Veterans Affairs (VA). Pursuant to the modification, the VA deobligated \$22,249.29 of contract funds and closed out an associated purchase order, and RHM “release[d] the Government from any and all liability under this contract.” Subsequently, RHM submitted invoice LOC05130, dated December 8, 2022, and invoice LOC05187, dated January 5, 2023. Both invoices were dated after RHM signed the modification, and the VA did not pay either invoice. A series of email exchanges followed in which the VA sought clarification as to when the work related to the invoices was performed. In an email dated March 16, 2023, the VA’s CO stated the following:

Per the prior emails[,] this contract is closed and no additional payments can be made. The attached modification was signed by Royal Hawaiian Movers and the VA Contracting Officer. In this modification your company released, waived, and discharged the Government from any and all liabilities. If you would like to continue to pursue relief you will need to submit a claim under the disputes clause of the contract.

The record does not contain any communication between the VA and RHM after the date of that email.

On August 31, 2023, the Board docketed RHM’s appeal, which requested “reversal” of the modification. RHM’s notice of appeal did not include or even reference the submission of a claim to the CO. Instead, RHM referenced invoices LOC05130 and LOC05187 and requested a “reobligation” of contract funds in the amount of \$15,294.82. The Board subsequently ordered RHM to advise the Board whether it had submitted a claim to the CO. On November 1, 2023, the Board ordered RHM to show cause why this appeal should not be dismissed for lack of jurisdiction. On November 22, 2023, RHM responded to the Board’s order and represented that “we are writing to state that we had filed an appeal with the contracting officer on [September 22, 2023,] and are awaiting a decision.” RHM acknowledged that it filed this appeal prematurely but did not request this appeal be dismissed. On November 29, 2023, the Board then ordered RHM to advise the Board whether this appeal can be dismissed for lack of jurisdiction.

### Discussion

The issue before the Board is whether it has jurisdiction to hear this appeal, as it appears that RHM submitted a claim to the CO only after filing this appeal. The Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018), provides that “[e]ach claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.” *Id.* § 7103(a)(1). A contractor may appeal a CO’s decision or appeal the deemed denial of a claim when the CO fails to issue a timely decision. *Id.* §§ 7103(f)(5), 7104(a). The Federal Acquisition Regulation (FAR) defines a claim as follows:

*Claim* means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. . . . A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

48 CFR 2.101(b)(2) (2022) (FAR 2.101(b)(2)). The Board has recognized that it does not have jurisdiction when an appellant has not submitted a claim to the CO and is only filing its appeal because it has not received payment on an invoice. *U.S. Army Tactical Supply v. Department of State*, CBCA 5989, et al., 19-1 BCA ¶ 37,218, at 181,188 (2018).

The Board lacks jurisdiction to hear this appeal because RHM did not submit a claim to the CO before filing this appeal, and the appeal is premature. At most, the record shows that RHM submitted invoices which the VA did not pay, but those circumstances do not amount to a dispute over which the Board has jurisdiction. RHM acknowledged that it filed this appeal prematurely but has declined to respond to the Board’s November 29, 2023, order, which leaves the Board with no alternative other than to issue this decision.

### Decision

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

H. Chuck Kullberg  
H. CHUCK KULLBERG  
Board Judge

We concur:

*Allan H. Goodman*  
ALLAN H. GOODMAN  
Board Judge

*Jonathan L. Kang*  
JONATHAN L. KANG  
Board Judge