



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR FAILURE TO PROSECUTE: October 21, 2022

CBCA 7367

RAY'S ELECTRIC AND GENERAL CONTRACTING, INC.,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Steven Binette, President of Ray's Electric and General Contracting, Inc., Berlin, NH, appearing for Appellant.

Jacquelyn Garcia, Office of the General Counsel, Department of Agriculture, Milwaukee, WI, counsel for Respondent.

Before Board Judges **DRUMMOND**, **KULLBERG**, and **O'ROURKE**.

**DRUMMOND**, Board Judge.

The Board docketed this appeal on April 6, 2022, and that same day issued an order that set the due dates for the initial submission of pleadings and exhibits. The order, in part, directed appellant to file a complaint that complied with Board Rule 6(a) (48 CFR 6101.6(a) (2021)) by May 6, 2022. Appellant failed to file its complaint as ordered, and the Board issued a second order on June 6, 2022, directing appellant to file a complaint by June 17, 2022. Appellant again failed to file a complaint as ordered. Thereafter, on June 22, 2022, the Board issued a show cause order that directed appellant to file a complaint by July 1, 2022, and stated that failure to comply with this order could result in this appeal being dismissed with prejudice. In response, appellant re-filed its notice of appeal, and the Board accepted the notice of appeal submission as appellant's designated complaint.

On July 12, 2022, respondent filed a motion to dismiss or, in the alternative, a motion for a more definite statement asserting that appellant's notice of appeal (designated complaint) did not meet the requirements of Rule 6(a), which states that a complaint must state "in simple, concise, and direct terms the factual basis for each claim and the amount in controversy." The Board denied respondent's motion to dismiss but granted respondent's motion for a more definite statement, ordering appellant to file an amended complaint that complied with Rule 6(a) by August 11, 2022. Appellant failed to file an amended complaint as ordered. On August 17, 2022, the Board issued a second order to show cause, directing appellant either to file an amended complaint or otherwise to show cause by August 31, 2022, why this appeal should not be dismissed for failure to prosecute. Appellant confirmed receipt of the show cause order on August 18, 2022, by email but did not file an amended complaint or show cause.

With no response from appellant to the show cause order, respondent filed a motion to dismiss for failure to prosecute on September 1, 2022. The Board ordered appellant to respond to respondent's motion or otherwise show cause by September 20, 2022, why the appeal should not be dismissed for failure to prosecute. Appellant did not confirm receipt and did not file an amended complaint or show cause.

Appellant has failed to file an amended complaint in compliance with Rule 6(a) or otherwise respond to several of the Board's orders. This Board has recognized that dismissal for failure to prosecute is appropriate when an appellant is unresponsive to an order requiring action by the appellant. *See Brandon Staffing Solutions LLC v. Department of Veterans Affairs*, CBCA 7044, 22-1 BCA ¶ 38,050. Appellant's repeated "fail[ure] to comply with a[] direction or order of the Board" warrants the sanction of dismissal. Rule 35(b)(6).

#### Decision

The appeal is **DISMISSED FOR FAILURE TO PROSECUTE**.

Jerome M. Drummond  
JEROME M. DRUMMOND  
Board Judge

We concur:

H. Chuck Kullberg  
H. CHUCK KULLBERG  
Board Judge

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