



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: August 30, 2024

CBCA 8158

THE GILCHRIST LAW FIRM, P.A.,

Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

Jacquin P. Gilchrist of The Gilchrist Law Firm, P.A., Coral Gables, FL, counsel for Appellant.

Anastasia Snyderman and Tami Hagberg, Office of the General Counsel, Department of Health and Human Services, Washington, DC, counsel for Respondent.

Before Board Judges **VERGILIO**, **O'ROURKE**, and **NEWSOM**.

O'ROURKE, Board Judge.

A contractor appealed from a contracting officer's email stating that the contractor's claim would likely be denied. The agency moved to dismiss the appeal for lack of jurisdiction, then joined the contractor's request to dismiss the appeal without prejudice. Our Rules state that, when the Board lacks jurisdiction to hear an appeal, it will dismiss the matter for lack of jurisdiction, regardless of the parties' positions. Rule 12(b)(3) (48 CFR 6101.12(b)(3) (2023)). Because we find that the appeal was premature, we dismiss it for lack of jurisdiction.

Background

The Gilchrist Law Firm, P.A. (appellant or Gilchrist) has a contract with the Department of Health and Human Services (HHS) to provide real estate support services. Pursuant to that contract, Gilchrist submitted a claim to the contracting officer on July 10, 2024, in the amount of \$18.05, for interest that Gilchrist asserts that it is owed under the Prompt Payment Act, 31 U.S.C. § 3902 (2018). In the claim, the contractor provided a brief list of “undisputed facts” and then stated:

As a reminder, once a claim is submitted, the contracting officer must issue a final decision within a reasonable time, considering factors such as the size and complexity of the claim and the adequacy of the information provided. If the contracting officer fails to issue a decision within the required period, it is deemed a decision denying the claim I propose a deadline of July 15, 2024, by 5:00 PM EST for the Contracting Officer’s decision.

On July 12, 2024, the contracting officer responded to the claim by email, stating: “It is highly likely that the claim for \$18.05 will be denied. [Our Invoice Processing Platform (IPP)] automatically pays interest when it is warranted. As the delivery date for [contract line item number (CLIN)] 0001 is June 14th, 2024, the payment was made on July 5th, which is within 30 days of the delivery date stated in the attached contract.” No further communication between the parties occurred.

On July 23, 2024, Gilchrist filed an appeal with the Board based on the contracting officer’s July 12, 2024, email. After obtaining a copy of the email, the Board docketed the appeal on July 24, 2024. The next day, respondent, HHS, filed a motion to dismiss the appeal for lack of jurisdiction. Shortly thereafter, Gilchrist moved to withdraw its appeal without prejudice. HHS joined Gilchrist’s motion on August 12, 2024.

Discussion

Before the Board is the parties’ joint motion to dismiss Gilchrist’s appeal without prejudice under Board Rule 12(b)(2), which pertains to voluntary dismissals. The rule states: “Subject to Rule 12(b)(3), the Board will dismiss all or part of a case on the terms requested if the appellant, petitioner, or applicant moves for dismissal with prejudice or moves jointly with the respondent for dismissal with or without prejudice.” As stated in the rule, voluntary dismissals are subject to Board Rule 12(b)(3), which pertains to the Board’s jurisdiction and provides: “If the Board finds that it lacks jurisdiction to decide all or part of a case, the Board will dismiss the case or the part of the case, regardless of the parties’ positions on jurisdiction or dismissal.”

The Board’s jurisdiction to consider appeals involving contract disputes derives from the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109. “Once a claim is submitted, the contracting officer must have an opportunity to respond to it before judicial review can commence.” *Pros Cleaners v. Department of Homeland Security*, CBCA 5871, 17-1 BCA ¶ 36,904, at 179,807. Regarding the time frame for review, the CDA requires a contracting officer to “issue a decision on any submitted claim of \$100,000 or less within 60 days from the contracting officer’s receipt of a written request from the contractor that a decision be rendered within that period.” 41 U.S.C. § 7103(f)(1).

Here, Gilchrist sought a decision within *five* days of claim submission, citing the reasonableness language in section 7103(f)(3) of the CDA as justification for a quick decision. *See* 41 U.S.C. § 7103(f)(3) (“The decision of a contracting officer on submitted claims shall be issued within a reasonable time . . .”). While nothing in the CDA prohibits a contractor from asking the contracting officer to issue a decision within sooner than sixty days, the contracting officer is not required to do so. Of course, a contracting officer is free to issue a decision in fewer than sixty days, but we are not aware of any regulations compelling a shorter time frame, and Gilchrist cites none.

With regard to Gilchrist’s appeal to the Board, the case law is well established. “Until there is a decision on [the] claim, or the date for issuance passes, [the contractor] cannot maintain an appeal with the Board or a suit at the Court of Federal Claims on its claim.” *Hawk Contracting Group, LLC v. Department of Veterans Affairs*, CBCA 5527, 16-1 BCA ¶ 36,572, at 178,120. An appeal is premature if it is filed before one of those qualifying events occurs. *Fire Security Systems, Inc. v. General Services Administration*, GSBCA 12350, 93-3 BCA ¶ 26,047, at 129,487. Here, neither of those events occurred, rendering the appeal premature. As there is neither a denied nor a deemed denied claim, the Board lacks jurisdiction over the appeal. Furthermore, the parties’ joint motion voluntarily to dismiss the appeal without prejudice does not cure the jurisdictional defect. *See Amalgamated Services, Inc. v. General Services Administration*, CBCA 7642, 23-1 BCA ¶ 38,292, at 185,912 (appeal dismissed for lack of jurisdiction even though contractor sought dismissal without prejudice).

Decision

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

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

We concur:

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge