



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: July 11, 2025

CBCA 8335

OUTSIDE THE BOX, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Mary Catherine D'Arcy and David A. Rose of Rose Consulting Law Firm, Valdosta, GA, counsel for Appellant.

Justin S. Hawkins, Office of General Counsel, General Services Administration, Washington, DC; and Alexis Nash, Office of Assistant Regional Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

KULLBERG, Board Judge.

Appellant, Outside the Box, LLC (OTB), has requested that the Board dismiss this appeal without prejudice. OTB acknowledges that it filed its appeal more than ninety days after receipt of the contracting officer's final decision (COFD) and, consequently, seeks to file an appeal of the COFD before the Court of Federal Claims (COFC). The General Services Administration (GSA) does not dispute that OTB filed its appeal more than ninety days after receipt of the COFD, but GSA contends that this appeal should be dismissed for lack of jurisdiction. For the reasons stated below, the Board dismisses this appeal for lack of jurisdiction.

Background

On June 13, 2024, OTB submitted to the contracting officer (CO) its certified claim in the amount of \$573,775.08. The CO denied the claim, and on November 1, 2024, the CO sent his COFD to OTB and its legal counsel by email. OTB filed its appeal of the COFD with the Board on January 31, 2025, which was ninety-one days after OTB's receipt of the COFD.

On June 13, 2025, OTB submitted to the Board its request for a dismissal of this appeal without prejudice. OTB acknowledged that it had submitted its appeal more than ninety days after receipt of the COFD, but it could still submit a timely appeal to the United States Court of Federal Claims (COFC) provided the Board does not dismiss this appeal with prejudice. GSA's response, which was dated June 26, 2025, raised no objection to OTB's voluntary withdrawal of its appeal. However, GSA did object to a dismissal without prejudice and argued that an untimely appeal required a dismissal for lack of jurisdiction.

Discussion

At issue is whether the Board can dismiss this appeal without prejudice if OTB failed to bring a timely appeal of the COFD. The Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2018), provides that "[a] contractor, within 90 days from the date of receipt of a contracting officer's decision . . . may appeal the decision to an agency board." *Id.* § 7104(a). In the alternative, a contractor may appeal a COFD to COFC within twelve months of receipt. *Id.* § 7104(b).

There is no dispute in the record that OTB filed its appeal at the Board ninety-one days after receipt of the COFD. This Board has recognized that an "appellant's failure to file its notice of appeal within ninety days following its receipt of the contracting officer's final decision is a jurisdictional defect that precludes us from entertaining the appeal." *RAKS Fire Sprinkler, LLC v. General Services Administration*, CBCA 6095, 18-1 BCA ¶ 37,122, at 180,676 (citing *Cosmic Construction Co. v. United States*, 697 F.2d 1389, 1390 (Fed. Cir. 1982)). "The ninety day deadline is thus part of a statute waiving sovereign immunity, which must be strictly construed." *Cosmic Construction Co.*, 697 F.2d at 1390. Even if a contractor files its appeal one day late, which is the case in this appeal, the Board lacks jurisdiction. See *JAF Supply, Inc. v. Department of Veterans Affairs*, CBCA 6934, 20-1 BCA ¶ 37,729, at 183,126 ("[T]he Board did not receive JAF's appeal until September 29, 2020, ninety-one days after JAF received the contracting officer's final decision."). Consequently, the Board lacks jurisdiction to hear this appeal.

OTB requests that the Board dismiss this appeal without prejudice in order to avoid a dismissal with prejudice that would deny it of its “day in court.” Once the Board determines that it lacks jurisdiction to hear an appeal, it can only dismiss the appeal, and it does not reach the merits of the appeal. *MINACT, Inc. v. Department of Labor*, CBCA 7575, 23-1 BCA ¶ 38,243, at 185,701 (2022). In contrast, a dismissal with prejudice is a final adjudication on the merits of an appeal that bars any further action by the parties. *Id.* (citing *Toole Construction Co.*, HUD BCA 79-439-C49, 81-2 BCA ¶ 15,318, at 75,866. Consequently, the Board’s dismissal of this appeal for lack of jurisdiction does not bar OTB’s ability to pursue a possible appeal at COFC in accordance with the CDA. *Id.* (“Because we have . . . dismissed [the appeal] for lack of jurisdiction, the appellant still has time to seek relief in the Court of Federal Claims if it so desires.”)

Decision

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

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

We concur:

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge