



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITHOUT PREJUDICE: July 21, 2026

CBCA 8940

GROUP HEALTH INCORPORATED,

Appellant,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

A. Xavier Baker of Groom Law Group, Washington, DC, counsel for Appellant.

Emily E. Warner, Office of the General Counsel, Office of Personnel Management, Washington, DC, counsel for Respondent.

Before Board Judges **LESTER**, **SHERIDAN**, and **VOLK**.

LESTER, Board Judge.

In this appeal, appellant, Group Health Incorporated (GHI), challenges what, on its face, appears to be a demand by an Office of Personnel Management (OPM) contracting officer in an audit resolution letter for restitution payments of \$15,086,311. This demand followed an audit by OPM's Office of the Inspector General (OIG) of GHI's Federal Employees Health Benefits Program (FEHBP) Pharmacy Operations for contract years 2015 through 2019.

On July 6, 2026, GHI, in a motion joined by OPM, asked that we dismiss this appeal without prejudice, believing that the Board lacks jurisdiction to entertain it. In its motion, GHI represents that counsel for OPM recently informed it that, contrary to a prior OPM

representation made before GHI filed this appeal, the OPM contracting officer's audit resolution letter was not intended to be a final decision under the Contract Disputes Act (CDA), 42 U.S.C. §§ 7101–7109 (2024), and that “the Contracting Officer has not yet issued any final determination” resolving the audit issues. Based upon that representation, GHI asks us to dismiss this appeal without prejudice.

Reviewing the resolution letter that the OPM contracting officer issued, it is clear that GHI was entitled to rely on it as a decision that could be appealed under the CDA. Accordingly, we have jurisdiction to entertain GHI's appeal. That being said, the OPM contracting officer has filed a statement indicating that, to the extent that the letter could be viewed as a final decision under the CDA, she has withdrawn the decision to allow for continued discussions between the parties about the audit resolution outside of the litigation process. Although the withdrawal of the decision does not moot this appeal or eliminate the jurisdiction basis underlying it, GHI is entitled to withdraw this appeal without prejudice to its right to file a new appeal if and when the OPM contracting officer issues a new final decision resolving the pending audit issues.

Background

GHI had a contract with OPM to provide pharmacy benefits and services to FEHBP members from 2015 through 2019. After contract performance was completed, OPM's OIG conducted an audit of GHI's FEHBP Pharmacy Operations, as authorized by a provision of GHI's contract allowing for audits of the program's operations, “to determine whether costs charged to the FEHBP, and services provided to its members, were in accordance with the terms of the Contract, the Agreement, and applicable Federal regulations.” Audit Report (Feb. 16, 2023) at 2. On February 16, 2023, the OIG issued report no. 1H-08-00-21-015, finding that OPM had been “overcharged . . . \$15,086,272 (including lost investment income) by not passing-through all discounts and credits related to prescription drug pricing that were required under the [Pharmacy Benefit Manager] Transparency Standards found in [GHI's] contract with OPM.” Audit Report (Executive Summary) at i.

On March 30, 2026, after GHI had provided its objections to the report's findings, the OPM contracting officer issued a letter addressing ten audit recommendations that OPM's OIG had made in the audit report and providing his own “determinations” as to each recommendation. For each of the ten recommendations, the contracting officer considered and then rejected GHI's objections and then instructed GHI to “[p]lease provide a certification showing the return of [the specific amount of money that the OIG had recommended be returned] to the FEHB Program” or something similar. Adding the ten demands for reimbursement together, the OPM contracting officer ultimately requested

return of \$15,086,311. The resolution letter did not contain any notice of appeal rights or identify itself as a contracting officer's "final decision" under the CDA.

On April 20, 2026, counsel for GHI sent an email to a program analyst in the Audit Resolution and Compliance section of OPM's Healthcare and Insurance division, asking whether the audit resolution letter constituted the final decision of the contracting officer for purposes of the CDA. On April 22, 2026, responding to counsel for GHI's inquiry by email, the OPM program analyst stated as follows: "Please consider the Resolution Letter dated March 30, 2026, as OPM's Final Decision." On June 25, 2026, GHI filed its notice of appeal with the Board, challenging the March 30 decision.

Soon thereafter, counsel for OPM notified counsel for GHI that the March 30 audit resolution letter was not, and was not intended to be, a final determination for purposes of the CDA. Subsequently, on July 6, 2026, GHI filed a motion in which OPM joined to dismiss this appeal without prejudice, explaining that, "[a]bsent a final determination, there is no predicate decision for GHI to appeal and, likewise, no deadline has started for the prosecution of such appeal" and that, as a result, "this Board lacks jurisdiction to hear the appeal." Motion to Dismiss at 2. GHI asked that, following dismissal without prejudice, it be granted "leave to refile within 90 days of the Contracting Officer's final decision." *Id.*

On July 13, 2026, in response to an inquiry from the Board, OPM filed a declaration from the OPM contracting officer currently responsible for GHI's contract,¹ who represented that "[t]he March 30 Letter was intended to communicate OPM's audit-resolution position and the determinations of OPM's administrative review of the audit findings and remaining open recommendations, rather than to constitute a final adjudication of a claim under the [CDA]." Contracting Officer Declaration ¶ 4. The contracting officer reported that, "[t]o the extent the March 30 Letter could be construed as a Contracting Officer's Final Decision under the [CDA], [the contracting officer] hereby withdraw[s] that letter as a final decision . . . effective immediately." *Id.* ¶ 7. Nevertheless, the contracting officer reported that the "withdrawal of the March 30 Letter . . . is not intended to resolve the merits of the underlying audit issues, to waive any position available to OPM or GHI, or to preclude the issuance of a Contracting Officer's Final Decision after the relevant administrative process has been completed." *Id.* ¶ 8.

¹ The current contracting officer for GHI's contract is not the one who signed the March 30 audit resolution letter.

Discussion

I. The Board's Jurisdiction to Entertain this Appeal

We possess jurisdiction to entertain this appeal.

OPM has asserted a claim against GHI for payment of \$15,086,311. A “claim” is “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.” Federal Acquisition Regulation (FAR) 2.101 (48 CFR 2.101 (2024)). Nevertheless, the existence of a government claim, by itself, is not enough to allow a contractor to commence an appeal. If the Government is asserting a claim against a contractor, “the CDA requires that a contracting officer issue a final decision on the claim before it can be appealed.” *Palafox Street Associates, L.P. v. United States*, 114 Fed. Cl. 773, 781 (2014) (citing *Sharman Co. v. United States*, 2 F.3d 1564, 1568 (Fed. Cir.1993), *overruled on other grounds by Reflectone, Inc. v. Dalton*, 60 F.3d 1572 (Fed. Cir.1995)); *see Alenia North America, Inc.*, ASBCA 57935, 13 BCA ¶ 35,296, at 173,270 (“The CDA requires that government claims be the subject of a [contracting officer’s] final decision.” (citing 41 U.S.C. § 7103(a)(3))).

Normally, in a final decision asserting a government claim, the contracting officer will describe the government’s claim, reference pertinent contract terms, state the facts as the contracting officer sees them, demand payment by the contractor (identifying a supporting rationale), and, importantly, provide notice of the contractor’s appeal rights. FAR 33.211(a)(4). “The absence of these requirements, however, does not necessarily render a [c]ontracting [o]fficer’s decision insufficient to provide a jurisdictional basis for an appeal.” *M.G.C. Co.*, DOTCAB 1553, 85-1 BCA ¶ 17,777, at 88,781-82 (1984). “Whether a contracting officer’s letter may be taken as a final expression of the agency’s position on a claim in issue is ultimately to be judged by what the letter says and not by how it is labeled.” *Litton Systems, Inc. v. United States*, 27 Fed. Cl. 306, 309 (1992). “A letter can be a final decision under the CDA even if it lacks the standard language announcing that it constitutes a final decision.” *Alliant Techsystems, Inc. v. United States*, 178 F.3d 1260, 1267 (Fed. Cir. 1999). That is because “[t]he notice of appeal rights and other formalities associated with the content and issuance of a [c]ontracting [o]fficer’s final decision are for the contractor’s protection,” and the contractor can elect to waive them and treat the payment demand as “a ‘de facto decision’ adequate for the purpose of appeal.” *M.G.C. Co.*, 85-1 BCA at 88,782; *see Placeway Construction Co. v. United States*, 920 F.2d 903, 907 (Fed. Cir. 1990) (“The decision is no less final because it failed to include the boilerplate language usually present for the protection of the contractor.”).

Accordingly, “[w]hen the Government issues a written demand for payment, specifying the amount the Government asserts entitlement to and unequivocally informing the contractor that payment is now due, the requirements for a contracting officer decision are generally deemed to have been met such that the contractor may appeal.” *Midwest Properties, LLC v. General Services Administration*, GSBCA 15822, et al., 03-2 BCA ¶ 32,344, at 160,038 (2002). “The government cannot, in response to a proper claim, demand that a contractor obey the contracting officer’s directive without further discussion while characterizing that directive as nonfinal.” *Alliant Techsystems*, 178 F.3d at 1268.

Here, in the March 30 audit resolution letter, the OPM contracting officer demanded that GHI repay \$15,086,311 to OPM and certify that it had done so. That demand clearly constitutes a “claim” by the Government that the contracting officer is requiring GHI to pay. The letter “determine[d] both liability and damages” and was adverse to the contractor. *Placeway Construction*, 920 F.2d at 907. Although the contracting officer’s March 30 resolution letter did not state that it was a final decision and did not notify GHI of its appeal rights under the CDA (specifically, that it had ninety days to appeal the contracting officer’s monetary payment demands to the Board), that does not preclude GHI from treating the contracting officer’s repayment demand as an appealable decision.² Accordingly, we possess jurisdiction to entertain this appeal.

II. The Contracting Officer’s Withdrawal of the Decision

The contracting officer has informed the Board and GHI that, to the extent the audit resolution letter could be viewed as an appealable decision, the decision is now withdrawn. That does not necessarily moot this action or eliminate our jurisdiction. “Once our jurisdiction has been established through a timely appeal, it is not the subsequent withdrawal of the contracting officer’s final decision that moots the action, but the elimination of the *dispute* between the parties that is embodied within that final decision.” *Avue Technologies Corp. v. Agency for Global Media*, CBCA 6752, 20-1 BCA ¶ 37,639, at 182,754; *see Thomas J. Murray, Jr.*, GSBCA 6869, 84-1 BCA ¶ 17,081, at 85,055 (1983) (“[O]nce jurisdiction . . . is properly vested in the Board by a timely appeal, . . . the Board’s jurisdiction may not be divested [merely] by the expedient of rescission and withdrawal of the final decision.”). Because the contracting officer has reserved the right to reissue OPM’s repayment demand, either for its current amount or for a different amount, the withdrawal

² In fact, in light of OPM’s representation on April 22, 2026, directing GHI to treat the March 30 letter as OPM’s final decision, GHI’s decision to file this appeal is more than understandable, even though that representation did not come from the contracting officer.

of the decision does not moot this action, *see Rothe Development Corp. v. Department of Defense*, 413 F.3d 1327, 1332-33 (Fed. Cir. 2005) (“A defendant’s ‘voluntary cessation’ of alleged misconduct does not moot a claim unless the defendant proves it to be ‘absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services*, 528 U.S. 167, 169-70 (2000))), meaning that we have not been divested of our jurisdiction to entertain the appeal. *See Centron Industries, Inc.*, ASBCA 52581, 02-2 BCA ¶ 32,022, at 158,260.

That being said, GHI has asked that we dismiss this appeal without prejudice, presumably so that it can negotiate with the agency without the need simultaneously to incur litigation expenses before the Board. We grant that request. The contracting officer, having withdrawn the decision on appeal, is effectively reconsidering OPM’s position and has eliminated the decision’s finality. Because of that reconsideration, there is no current deadline by which GHI needs to refile an appeal. When “the contracting officer reconsiders a decision, the appeal clock starts running, from zero, upon issuance of the ‘final’ decision following a timely-requested reconsideration.” *Safe Haven Enterprises, LLC v. Department of State*, CBCA 3871, et al., 15-1 BCA ¶ 36,117, at 176,322. Accordingly, only if and when the OPM contracting officer issues a new decision on the audit resolution issues for any of the contract years at issue here will the time for GHI to refile an appeal start to run.

We make no determination here whether, if and when the OPM contracting officer issues a new audit resolution decision for contract years 2015 through 2019, the “election doctrine” would require GHI to file any appeal of that decision with the Board, rather than the Court of Federal Claims. *See Palafox Street Associates*, 114 Fed. Cl. at 780-88 (discussing the election doctrine); *see also Palafox Street Associates, L.P. v. United States*, 122 Fed. Cl. 18, 25-31 (2015) (same).

Decision

This appeal is **DISMISSED WITHOUT PREJUDICE**.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge

We concur:

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

Daniel B. Volk
DANIEL B. VOLK
Board Judge