



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: October 1, 2026

CBCA 8999

JESUS DIAZ,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Jesus Diaz, pro se, Streamwood, IL.

Kimberly Thayer, Office of General Counsel, General Services Administration,
Detroit, MI, counsel for Respondent.

Before Board Judges **GOODMAN**, **O'ROURKE**, and **VOLK**.

O'ROURKE, Board Judge.

Appellant, Mr. Jesus Diaz, bid on and won an auction for surplus government equipment but then twice failed to pay for the equipment by the established deadlines. An agency contracting officer issued a decision terminating the contract for default and assessing \$293 in liquidated damages. Mr. Diaz appealed the decision 116 days later. Because the statutory deadline for appeal to the Board is ninety days, we dismiss the appeal for lack of jurisdiction.

Background

Appellant participated in an online auction for surplus property. The General Services Administration (GSA) administered the auction. On March 2, 2026, GSA notified appellant that he submitted the winning bid for a pressure washer. The agency sent appellant a contract award letter, congratulating him on his win. This letter provided details of the award and instructions and deadlines for remitting payment for the item. Appeal File, Exhibit 1.¹ The letter stated, “**You must pay for this property within 2 business days from the date and time you received this notification.**” *Id.* at 1. The letter informed appellant that he could pay for the item online, by telephone, by wire transfer, or by using a cashier’s check and warned that:

Failure to make payment . . . constitutes a breach of contract, and your contract will be terminated. In addition to contract termination, you will lose all rights, title and interest to the property and will be liable for liquidated damages.

Id. at 2. Appellant did not make the required payment by the due date. The contracting officer issued a cure notice to appellant four days after the award letter, pointing out that he failed to make timely payment and extended the payment deadline by two days. Exhibit 2. If payment was not received by the revised deadline, the contracting officer stated, he would terminate the contract for default and assess liquidated damages. *Id.* Appellant did not respond to the cure notice or remit payment. On April 2, 2026, the contracting officer notified appellant that his contract was terminated for default, that he owed \$293 in liquidated damages, and that payment of the liquidated damages was due to the agency within thirty days of the termination notice. Exhibit 4. The termination notice also informed appellant of his appeal rights:

If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the [Civilian Board of Contract Appeals (CBCA)] and provide a copy to the Sales Contracting Officer.

Id. at 7.

On July 28, 2026, appellant filed a notice of appeal with the Board. Appellant did not dispute the assessment of liquidated damages in his appeal. Instead, he requested waiver of

¹ All exhibits are found in the appeal file unless otherwise noted. Page references are to Bates numbers where added by the parties, with leading zeros omitted.

the assessment “due to significant financial hardship” and offered to provide evidence of such hardship upon request. Notice of Appeal at 1. The Board docketed the case the next day. On August 19, 2026, the Board issued a show cause order to appellant, directing him to explain, by September 2, 2026, why the appeal should not be dismissed for lack of jurisdiction. Board’s Show Cause Order at 2. The show cause order directed appellant to identify the date that he received the termination notice and provide any legal authority demonstrating that his appeal was timely. *Id.* Appellant failed to respond to the Board’s show cause order but, on September 15, 2026, submitted a copy of an email, dated May 22, 2026, which he sent to the agency, explaining that he could not log into his account to pay the outstanding invoices. Exhibit 7. No information or explanation related to the show cause order accompanied the email.

Discussion

The Board derives its jurisdiction to hear contract disputes between the Federal Government and contractors from the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2024). “[T]he strict limits of the CDA” constitute “jurisdictional prerequisites to any appeal.” *Bass Transportation Services, LLC v. Department of Veterans Affairs*, CBCA 4995, 16-1 BCA ¶ 36,464, at 177,688 (quoting *England v. Swanson Group, Inc.*, 353 F.3d 1375, 1379 (Fed. Cir. 2004)). An appellant’s failure to file an appeal in a timely manner following receipt of a contracting officer’s final decision “is a jurisdictional defect that precludes [a board] from entertaining the appeal.” *JAF Supply, Inc. v. Department of Veterans Affairs*, CBCA 6934, 20-1 BCA ¶ 37,729, at 183,126 (quoting *Raks Fire Sprinkler, LLC v. General Services Administration*, CBCA 6095, 18-1 BCA ¶ 37,122, at 180,676).

The Board has jurisdiction over contract appeals filed within ninety days of the contractor’s receipt of a contracting officer’s final decision (COFD).² 41 U.S.C. § 7104(a). The United States Court of Appeals for the Federal Circuit strictly construes this deadline because the authorization to make the filing is a waiver of sovereign immunity. *Cosmic Construction Co. v. United States*, 697 F.2d 1389, 1390 (Fed. Cir. 1982). “A late filing divests the Board of jurisdiction to consider the case on its merits.” *Tobias Schunck v.*

² Alternatively, a contractor may file a lawsuit in the United States Court of Federal Claims within twelve months of receipt of the contracting officer’s final decision. 41 U.S.C. § 7104(b); *see Soto Construction, Inc. v. Department of Agriculture*, CBCA 3210, 13 BCA ¶ 35,301, at 173,285-86. An untimely appeal to the Board does not preclude a contractor from filing a timely suit in the Court of Federal Claims. *JAF Supply*, 20-1 BCA at 183,126.

General Services Administration, CBCA 3079, 13 BCA ¶ 35,222, at 172,828 (citing *Systems Development Corp. v. McHugh*, 658 F.3d 1341, 1347 (Fed. Cir. 2011)).

Here, the termination notice was issued by email on April 2, 2026. The Board received the appeal on July 28, 2026, which, if we assume that appellant received the email the day that it was sent, would be twenty-six days beyond the statutory filing deadline. However, because the record in this case did not conclusively establish when appellant received the COFD (i.e., the contract termination and liquidated damages notice), the Board ordered appellant to show cause why his appeal should not be dismissed as untimely. The Board further ordered appellant to submit proof of the date on which he received the termination notice. Appellant never responded to the Board's show cause order.

Based on the record presented, we find that Mr. Diaz received the contracting officer's final decision on the day it was transmitted by email, which was more than ninety days before he appealed it to the Board. For these reasons, we conclude that we lack jurisdiction to consider this appeal.³ *Westlake Farms, Inc. v. General Services Administration*, CBCA 6008, 18-1 BCA ¶ 36,971, at 180,108.

Decision

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

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

We concur:

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge

Daniel B. Volk
DANIEL B. VOLK
Board Judge

³ Because we determine that the appeal was untimely and we lack jurisdiction to hear it, we need not address the Board's authority to decide appeals seeking a waiver of liquidated damages based on financial hardship.