

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
International Maintenance Resources, Inc.) ASBCA No. 50162
)
Under Contract No. DABT31-94-D-0009)

APPEARANCE FOR THE APPELLANT: Mr. W. Frank Coleman
President

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
LTC Daniel K. Poling, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE FREEMAN
ON MOTION FOR RECONSIDERATION AND
CROSS-MOTION TO DISMISS

International Maintenance Resources, Inc. (IMR) moves for reconsideration of the Board's 5 June 2002 decision denying this appeal. *See International Maintenance Resources, Inc.*, ASBCA No. 50162, 02-2 BCA ¶ 31,878. The Government moves to dismiss the motion as untimely, and otherwise opposes on the merits. We grant the motion to dismiss.

Our 5 June 2002 decision denying the appeal was received by IMR's counsel of record on 10 June 2002. IMR's motion for reconsideration, signed by its president, Mr. Coleman, was filed (postmarked) on 27 July 2002. This filing was 17 days late under Board Rule 29. IMR states that the filing was late because (i) its attorney withdrew from the case, and (ii) its president was "ill and under [his] doctor's treatment for a chronic shoulder ailment which made it difficult to file the request for reconsideration timely." (App. "Certification" at 1) IMR, however, has not stated when its attorney withdrew, other than at sometime after receipt of the decision, nor has it offered a medical affidavit showing the extent of its president's physical incapacitation.

Board Rule 29 requires the filing of a motion for reconsideration within 30 days of receipt of the decision by the moving party. We generally enforce the rule strictly. *See Buckner & Moore, Inc.*, ASBCA No. 44113, 93-3 BCA ¶ 26,085 (lack of prejudice no excuse for filing one day late); *Chronometrics, Inc.*, ASBCA No. 46581, 95-2 BCA ¶ 27,697 (lack of experience no excuse for filing two days late); *Black River Limited Partnership*, ASBCA No. 51754, 02-2 BCA ¶ 31,885 (mail distribution delay no excuse for filing two days late).

In exceptional cases we have reopened an appeal after a final decision “where justice and fairness demand it,” *see Control Data Corporation*, ASBCA No. 16448, 76-1 BCA ¶ 11,841 at 56,631, or otherwise on grounds similar to those in Rule 60(b) of the Federal Rules of Civil Procedure. *See Laka Tool & Stamping Co.*, ASBCA No. 21338, 84-2 BCA ¶ 17,326 at 86,327-28. In IMR’s case, however, there is insufficient evidence showing that either the withdrawal of the attorney or the president’s shoulder ailment provides such grounds. On this record, justice and fairness do not require waiving the rule.

Although the motion for reconsideration is not timely before us, we observe that it offers no new evidence or argument showing that IMR could have performed any additional mowings over and above those which were actually scheduled and which it failed to complete. *See International Maintenance Resources, Inc.*, *supra* at finding 4. Thus, even if IMR were to prove that the Government was obligated to order the unscheduled work, its claim would fail for lack of proof that it could have performed the unscheduled work and earned the claimed compensation.

The motion for reconsideration is dismissed.

Dated: 16 December 2002

MONROE E. FREEMAN, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 50162, Appeal of International Maintenance Resources, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals