

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Black River Limited Partnership) ASBCA No. 51754
)
Under Contract No. DACA87-86-C-0059)

APPEARANCES FOR THE APPELLANT:

E. Sanderson Hoe, Esq.
Stephen E. Ruscus, Esq.
McKenna & Cuneo
Washington, DC

Richard C. Tufaro, Esq.
Felice Roggen, Esq.
Milbank, Tweed, Hadley & McCloy
Washington, DC

APPEARANCES FOR THE GOVERNMENT:

Frank Carr, Esq.
Engineer Chief Trial Attorney
Paul Cheverie, Esq.
Laura Smith, Esq.
Engineer Trial Attorneys
U.S. Army Engineer District, Europe
Lorraine Lee, Esq.
Donald Harris, Esq.
Engineer Trial Attorneys
U.S. Army Engineer District, New York

OPINION BY ADMINISTRATIVE JUDGE LIPMAN
ON MOTION FOR RECONSIDERATION

The Board's decision in this appeal is dated 5 April 2002 and was mailed to the parties on 9 April 2002. The certified mail return receipt reflected that the Government received its copy of the decision on 12 April 2002, thereby, pursuant to Board Rule 29, requiring the Government to submit any motion for reconsideration within 30 days, no later than 13 May 2002. The Government filed a Motion for Reconsideration dated 15 May 2002 and hand carried it to the Board on that date. On 23 May 2002, the Board ordered the Government to show cause why the motion should not be dismissed as untimely.

On 28 May 2002, the Government filed its response supported by the affidavits of its Engineer Trial Attorney, Paralegal Specialist, and Legal Clerk. The affidavits include the following pertinent assertions:

1. The office of the Engineer Trial Attorney, to whom the Board addressed and mailed its decision, is in 26 Federal Plaza in New York, which houses approximately 56 tenant agencies and departments and has a central mailroom which is not operated by or under the control of the U.S. Corps of Engineers (COE).

2. The central mailroom receives all mail sent through the United States Postal Service, including certified mail and mail sent return receipt. Mailroom personnel sign the return receipts when they receive the item. The Paralegal Specialist recognizes the initials indicating receipt of the return receipt as those of a mailroom employee. Mail is delivered to the individual offices twice a day, but “[d]elays in the receipt of mail have become common after the anthrax scares.”

3. On 15 April 2002, the COE’s Paralegal Specialist handed the envelope containing the Board’s decision to the Engineer Trial Attorney. It is not clear on what date the Paralegal Specialist had received the envelope. Upon her receipt of the decision on 15 April 2002, the Engineer Trial Attorney advised the Paralegal Specialist to update the COE’s Matter Tracking System to reflect its receipt and asked the Legal Clerk to scan the decision so that it could be provided to others by e-mail.

4. The Engineer Trial Attorney calculated that a motion for reconsideration would have to be filed no later than 15 May 2002 based upon her receipt of the Board’s decision on 15 April 2002. She arranged to have the decision hand carried to the Board on 15 May 2002.

DECISION

Board Rule 29 requires that motions for reconsideration be filed within 30 days of the moving party’s receipt of the decision. That time limit is strictly enforced. *Chronometrics, Inc.*, ASBCA No. 46581, 95-2 BCA ¶ 27,697. Here, the certified mail return receipt reflected receipt by the Government on 12 April 2002 and a Government motion for reconsideration was required to be filed on or before 13 May 2002.

The Government contends that the 12 April 2002 return receipt signature was that of an employee in the mailroom who was neither employed by nor under the control of the COE, that the decision did not reach the Engineer Trial Attorney until 15 April 2002, and that the computation of the 30 days should commence with the latter date. We do not agree. The Board’s decision was properly addressed to the Engineer Trial Attorney and was received by a Government employee authorized to accept delivery of mail on behalf of the COE and to sign return receipts for such mail. While the Government makes general reference to mail delivery delays due to the anthrax scare, it has produced no evidence that receipt of the decision by the Engineer Trial Attorney was in any way affected by such delays. The 30-day reconsideration period therefore commenced on 12 April 2002, the

date of the authorized mail acceptance. *Vap-Air Division, Vapr Corporation*, ASBCA No. 14411, 72-1 BCA ¶ 9240; *Ship Analytics International, Inc.*, ASBCA No. 50914, 01-1 BCA ¶ 31,394. The motion was therefore late when filed on 15 May 2002.

Although the motion for reconsideration is not timely before us, we observe that its primary contention is based upon a misreading of our decision. The opinion of the presiding judge sustaining the appeal substituted new findings of fact in lieu of findings made in the entitlement decision. The two concurring judges did not concur in the presiding judge's reversal of findings made in the entitlement decision. Thus, on that point the concurring judges constituted the majority and the Board's decision on quantum was in accordance with the concurring opinion – that the appeal is sustained because the Government failed to meet its burden of proof.

The Government's Motion for Reconsideration is dismissed.

Dated: 31 May 2002

RONALD JAY LIPMAN
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

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

CARROLL C. DICUS, JR.
Administrative Judge
Acting 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. 51754, Appeal of Black River Limited Partnership, rendered in conformance with the Board's Charter.

Dated:

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