

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Performance Construction, Inc.) ASBCA No. 53575
)
Under Contract No. N44255-96-C-0143)

APPEARANCE FOR THE APPELLANT: Denver C. Snuffer, Jr., Esq.
Nelson, Snuffer, Dahle & Poulsen
Sandy, UT

APPEARANCES FOR THE GOVERNMENT: Susan Raps, Esq.
Navy Chief Trial Attorney
Stephen R. O'Neil, Esq.
Assistant Director
Anthony K. Hicks, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE SHACKLEFORD
ON MOTION FOR RECONSIDERATION

On 5 January 2006, appellant filed a "MOTION FOR CLARIFICATION OF RULING OR REHEARING" of the subject appeal decided by the Board in an 11 July 2005 decision. *Performance Construction, Inc.*, ASBCA No. 53575, 05-2 BCA ¶ 33,027. Counsel for appellant received the decision on 14 July 2005. The 28-page motion addressing the merits of the claims was postmarked 175 days after appellant's receipt of the Board's decision, and amounts to a motion for reconsideration.

Under the Board's Rules, a motion for reconsideration must be filed by the moving party within 30 days of receipt of the decision sought to be reconsidered. Rule 29. In this instance, any motion for reconsideration was due to be filed with the Board no later than 13 August 2005. Since 13 August 2005 fell on a Saturday, appellant had until Monday, 15 August 2005, to file a motion for reconsideration. Rule 33(b).

Based on the apparent tardiness of the motion, the Board, on 10 January 2006, ordered appellant to show cause why the motion should not be dismissed as untimely. In response, and without addressing Rule 29 directly, appellant's attorney states he made numerous attempts to obtain authorization to file a motion for reconsideration from appellant's principal, Mr. Butcher. The principal's lack of response is attributed to his need to attend his daughter who had been struck by an automobile and hospitalized in an out-of-state facility.

Relying largely on Rule 33(a), appellant posits that under the circumstances presented, good cause exists for the delay in filing. Rule 33(a) provides, in part, “Where appropriate and justified . . . extensions of time will be granted . . .” By filing dated 23 February 2006, the government moved the Board to deny the motion, arguing that it was untimely under Rule 29 and that the Board’s 11 July 2005 decision had been rendered final, since it was not appealed within 120 days of receipt by appellant. 41 U.S.C. § 607(g)(1)(A). The last day for appellant to have appealed the Board’s decision to the United States Court of Appeals for the Federal Circuit was 14 November 2005.

DECISION

As we said in *AEC Corp.*, ASBCA No. 42920, 03-1 BCA ¶ 32,139, “Board Rule 33 itself states that it applies to procedural actions. Motions for reconsideration are not merely procedural and Board decisions normally become final upon the expiration of the filing period unless they are appealed.” (Citation omitted.)

We have generally strictly enforced Rule 29. *International Maintenance Resources, Inc.*, ASBCA No. 50162, 03-1 BCA ¶ 32,111; *Chronometrics, Inc.*, ASBCA No. 46581, 95-2 BCA ¶ 27,697. Despite repeated requests by its attorney, appellant’s principal failed to authorize a request for reconsideration within 30 days of receipt of the Board’s 11 July 2005 decision. Appellant’s attorney did not himself contact the Board within that time period to request an extension of any time. While we in no way intend to diminish the personal circumstances faced by appellant’s principal, we find no grounds for excusing appellant’s failure to comply with Rule 29.

Appellant’s “MOTION FOR CLARIFICATION OF RULING OR REHEARING”, which the Board deems a motion for reconsideration, is dismissed as untimely.

Dated: 27 July 2006

RICHARD SHACKLEFORD
Administrative Judge
Armed Services Board
of Contract Appeals

(Signature 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. 53575, Appeal of Performance Construction, Inc., rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals