

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
A. Montano Electrical Contractor ) ASBCA No. 56951  
)  
Under Contract No. 000000-00-0-0000 )

APPEARANCE FOR THE APPELLANT: Mr. Jose A. Montano  
President

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.  
Engineer Chief Trial Attorney  
David C. Brasfield, Jr., Esq.  
Engineer Trial Attorney  
U.S. Army Engineer District,  
Mobile

OPINION BY ADMINISTRATIVE JUDGE PAGE  
ON MOTION FOR RECONSIDERATION

The Board on 27 October 2010 dismissed the subject appeal for lack of jurisdiction. *A. Montano Electrical Contractor*, ASBCA No. 56951, 10-2 BCA ¶ 34,587. We held that appellant, a subcontractor to a defaulted contractor on a government project, failed to prove that it possessed legal capacity to sue directly under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (CDA) (*see especially* 41 U.S.C. § 7101 Definitions, ¶ (7) Contractor), and did not establish that a “cognizable claim [was] submitted to the contracting officer on its behalf by a party competent to do so.” 10-2 BCA ¶ 34,587 at 170,500. Montano has filed a motion for reconsideration, which we dismiss as untimely.

A delivery receipt from the United States Postal Service shows that Montano acknowledged on 3 November 2010 that it had received the Board’s 27 October 2010 decision.

Montano’s letter of 13 March 2011, which was postmarked 14 March 2011, expressed concern over appellant’s “continued attempt to be compensated” for work it allegedly had performed as a subcontractor. The Board on 18 March 2011 responded that it was unclear that Montano’s letter was intended as a request for reconsideration, and reminded appellant that Board Rule 29 Motion for Reconsideration requires a party to file such a motion within 30 days of receiving the Board’s decision. Montano was informed that the Board did not intend to take further action because the letter did not ask for

reconsideration, and more than 30 days had elapsed since appellant acknowledged receipt of the decision dismissing the appeal.

Appellant's correspondence of 27 March 2011, postmarked 28 March 2011, stated that "yes, I request for the [B]oard to reconsider its dismissal" of Montano's appeal. The Board's 1 April 2011 Order accepted appellant's request of 27 March 2011 as a motion for reconsideration and allowed the government 30 days to respond. The government did not reply, and the time to do so has expired.

Appellant again wrote on 2 June 2011 to inform the Board that it had been advised by a friend to "file a motion in accordance with" the CDA and Board "Rule 29" to "insure that [the appeal] is still open and or to determine [its] next recourse." Appellant advised that "[o]nce this is determined a motion for reconsideration will be filed." Appellant requested that the Board "clarify" its 1 April 2011 Order and grant Montano "an opportunity to submit a motion in [its] defense."

### DECISION

Board Rule 29 Motion for Reconsideration states that:

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

This 30-day requirement is strictly enforced, and motions for reconsideration filed more than 30 days after the date the movant receives the Board's decision are not timely made. *AEC Corp.*, ASBCA No. 42920, 03-1 BCA ¶ 32,139; *International Maintenance Resources, Inc.*, ASBCA No. 50162, 03-1 BCA ¶ 32,111; *Black River Limited Partnership*, ASBCA No. 51754, 02-2 BCA ¶ 31,885; *Chronometrics, Inc.*, ASBCA No. 46581, 95-2 BCA ¶ 27,697.

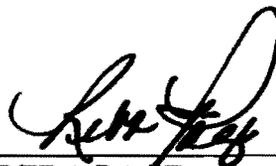
As the result of Montano's 3 November 2010 receipt of the Board's 27 October 2010 decision, the 30-day period set forth in Board Rule 29 for appellant to timely move for reconsideration ended on 3 December 2010. The Board accepts the United States Postal Services postmark of 28 March 2011 as the effective date that Montano filed its motion. *Premier Consulting & Management Services*, ASBCA No. 54691, 05-1 BCA ¶ 32,949; *CS&T General Contractors, Inc.*, ASBCA No. 43657, 94-1 BCA ¶ 26,314. We dismiss as untimely Montano's 27 March 2011 motion for reconsideration, as it was filed 145 days after Montano received the Board's decision (and 115 days beyond the

3 December 2010 deadline for reconsideration). Even if we regarded Montano's prior correspondence of 13 March 2011 as a motion for reconsideration (which we do not, as the letter did not adequately indicate that it was meant to serve this purpose), the postmarked date of 14 March 2011 exceeded by 101 days the permissible period until 3 December 2010 for appellant to seek reconsideration.

CONCLUSION

The motion is dismissed as untimely.

Dated: 23 June 2011

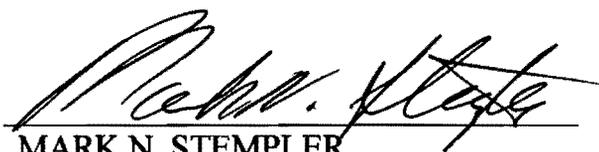


---

REBA PAGE  
Administrative Judge  
Armed Services Board  
of Contract Appeals

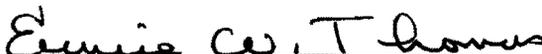
I concur

I concur



---

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



---

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. 56951, Appeal of A. Montano Electrical Contractor, rendered in conformance with the Board's Charter.

Dated:

---

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