

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Corbett Technology Company, Inc.) ASBCA No. 49477
)
Under Contract No. DAAH01-87-D-0198)

APPEARANCE FOR THE APPELLANT: Mr. Kenneth A. Corbett
Vice President

APPEARANCES FOR THE GOVERNMENT: COL Nicholas P. Retson, JA
Chief Trial Attorney
CPT Thomas C. Modeszto, JA
CPT Melissa T. Miller, JA
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE TODD
ON APPELLANT'S MOTION FOR RECONSIDERATION

Appellant has filed a Motion to Reconsider the Board's 18 January 2000 decision denying the appeal. *Corbett Technology Company, Inc.*, ASBCA No. 49477, 00-1 BCA ¶ 30,734. Appellant submits additional findings of fact that the Board allegedly should have made from the evidence and argues against the Board's decision, alleging that Government actions were arbitrary and capricious and taken in bad faith. Appellant maintains that it was prejudiced when the hearing was scheduled although it had over two years to engage in discovery and asks that the record be reopened to receive additional evidence. The Government has responded that the motion is untimely and should be dismissed and further argues that no reason was stated in the motion to believe that the Board erred in its decision.

According to the certified mail receipt in the Board's file, appellant received the decision on 24 January 2000. Under Board Rule 29 it had 30 days in which to file a motion for reconsideration. The 30 days was up on 23 February 2000. It is undisputed that on 23 February 2000 appellant delivered its motion to Federal Express, and on 24 February 2000 Federal Express delivered it to the Board.

In *B.M.S., Inc.*, ASBCA No. 35430, 90-2 BCA ¶ 22,819, we explained why a similarly late filed motion for reconsideration was untimely as follows:

Delivery by commercial couriers such as Federal Express (as opposed to the United States Postal Service) is considered to

be hand delivery, and is complete only when the item reaches its destination.

90-2 BCA at 114,583. A motion for reconsideration is deemed to have been filed with the Board when it is placed in the United States mails. The U. S. mail service is the only exception to actual delivery to the Board's offices. A commercial courier service is not given the same status under our Rules as the U.S. mail service. *See North Coast Remanufacturing, Inc.*, ASBCA No. 38599, 89-3 BCA ¶ 22,232.

Appellant submits that it delivered its briefs filed in this appeal to Federal Express on the filing dates for subsequent delivery to the Board without question raised about the timeliness of its filings. Appellant further argues that as a *pro se* litigant it was misled because it states that the Internal Revenue Service accepts filing by delivery to Federal Express. Appellant's motion is, nevertheless, untimely. Although the Board has authority to correct error in the absence of a motion for reconsideration filed within the time allowed, appellant's allegations are insufficient to present a requirement for correction of the decision in this appeal. *See Kos Kam, Inc.*, ASBCA No. 34681, 96-2 BCA ¶ 28,569; *Pathman Construction Company*, ASBCA No. 22003, 82-2 BCA ¶ 16,019.

We dismiss as untimely motions for reconsideration filed more than 30 days after receipt of the decision on the merits. *C. Lawrence Construction Company, Inc.*, ASBCA No. 51432, 99-1 BCA ¶ 30,133; *Industrial Data Link Corp.*, ASBCA No. 49348, 98-2 BCA ¶ 29,866. Accordingly, appellant's motion is dismissed under Board Rule 29.

Dated: 3 May 2000

LISA ANDERSON TODD
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
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. 49477, Appeal of Corbett Technology Company, Inc., rendered in conformance with the Board's Charter.

Dated:

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