

ARMED SERVICES BOARD OF CONTRACT APPEALS

Application Under the Equal Access )  
to Justice Act -- )  
 )  
Radar Devices, Inc. ) ASBCA No. 43912  
 )  
Under Contract No. DAAC09-90-D-0001 )

APPEARANCE FOR THE APPELLANT: Mr. Lawrence F. Anderson  
President

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA  
Chief Trial Attorney  
MAJ David T. Crawford, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE PARK-CONROY  
ON THE GOVERNMENT'S MOTION TO DISMISS APPELLANT'S  
APPLICATION FOR ATTORNEY'S FEES FOR LACK OF JURISDICTION

Following a full hearing on the merits during which appellant was represented by Mr. Lawrence F. Anderson, its president, the Board issued a decision on 22 January 1999 in the above-captioned appeal converting the termination for default of appellant's contract to supply shipboard receiving systems into a termination for the convenience of the Government. *Radar Devices, Inc.*, ASBCA No. 43912, 99-1 BCA ¶ 30,223. The decision was affirmed on reconsideration on 19 May 1999. *Id.*, 99-2 BCA ¶ 30,396.

By a letter dated 1 August 2000, appellant's president submitted a request for attorney's fees under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504, as amended, incurred in connection with this appeal. Attached to the letter was a Statement for Professional Services rendered by Kenneth M. Christison, Attorney At Law, in the amount of \$74,587.50 during the period September 1995 through July 1997 in connection with this appeal. The statement was dated 31 July 2000.

The Board considered appellant's request to be an EAJA fee application. By a letter dated 8 August 2000, the Board gave appellant 30 days to show cause why the fee application should not be dismissed as untimely. The Government was also given an opportunity to address the timeliness of the application.

By a letter dated 6 September 2000, appellant asked that the Board excuse the untimeliness of its application because appellant is represented by its *pro se* president due to financial difficulties and its president was not aware of EAJA.

The Government received appellant's response by fax on 22 September 2000 and filed a response and motion to dismiss the application for lack of jurisdiction because it was untimely on 19 October 2000. The Government stated that it had received the Board's reconsideration decision on 24 May 1999, that the 120-day appeal period expired on 21 September 1999 and that, under EAJA, appellant had 30 days, until 21 October 1999, to file a timely EAJA application to the Board for fees and expenses. The Board's records confirm that the Government received the reconsideration decision on 24 May 1999.

The Government asserted that a *pro se* appellant is not entitled to legal expenses, that the application was late, and that neither the doctrine of waiver nor the doctrine of equitable tolling was applicable.

Appellant filed a reply to the Government's assertions on 30 November 2000. Its reply asserted that Mr. Anderson was "not a lawyer and did not realize the existence of the equal access provision to cover legal fees" and that the Government has continually treated him unfairly by terminating the contract and refusing to settle his claim, resulting in serious medical complications. The reply included quotes from the letters of several doctors and a decision by a Social Security Administration Administrative Law Judge and a copy of a letter from Department of Veterans Affairs Northern California Health Care System advising that Mr. Anderson was under treatment "for Post Traumatic Stress Disorder and Recurrent Major Depression."

### DECISION

We do not read appellant's application to be seeking legal expenses for Mr. Anderson who represented appellant *pro se* as its president during the hearing and post-hearing phases of the appeal. Rather, it is clear from the application that appellant is seeking fees for legal services performed by Mr. Christison in connection with this appeal. Unfortunately, the application for these fees is untimely.

The EAJA provides in relevant part:

A [contractor] seeking an award of [attorney] fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award under this section. . . .

5 U.S.C. 504(a)(2).

The Board's Interim Procedures for EAJA applications states:

6. *Time for filing applications*

a. An application may be filed after an appellant has prevailed in the Contract Disputes Act appeal . . . , but not later than 30 days after the disposition of the appeal has become final. This statutory 30-day period cannot be extended.

The disposition in this appeal became final on 21 September 1999 when the Government's 120-day appeal period expired. Appellant had 30 days, until 21 October 1999, to submit its application for EAJA fees to the Board. It did not do so until 1 August 2000.

We have previously held that "[t]he thirty day time limit for filing an EAJA application is a jurisdictional prerequisite and can not be waived by the Board." *HSQ Technology*, ASBCA No. 32272, 88-3 BCA ¶ 21,144, *citing J.M.T. Machine Company, Inc. v. United States*, 826 F.2d 1042 (Fed. Cir. 1987). That appellant is proceeding *pro se* and has experienced medical problems does not change this jurisdictional bar to its untimely request for attorney's fees under EAJA.

#### CONCLUSION

The Board lacks jurisdiction to consider appellant's untimely application for attorney's fees under EAJA. The application is dismissed for lack of jurisdiction. \*

Dated: 27 February 2001

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CAROL N. PARK-CONROY  
Administrative Judge  
Armed Services Board  
of Contract Appeals

(Signatures continued)

I concur

I concur

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\* Judges Spector and Grossbaum who participated in the decision on the merits have since retired.

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

ELIZABETH A. TUNKS  
Administrative Judge  
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 on an application for fees and other expenses incurred in connection with ASBCA No. 43912, Appeal of Radar Devices, Inc., rendered in accordance with 5 U.S.C. § 504.

Dated:

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