

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
AEC Corporation, Inc. ) ASBCA No. 42920  
)  
Under Contract No. N62467-88-C-0646 )

APPEARANCE FOR THE APPELLANT: Vivian Katsantonis, Esq.  
Watt, Tieder, Hoffar & Fitzgerald L.L.P.  
McLean, VA

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.  
Navy Chief Trial Attorney  
Ellen M. Evans, Esq.  
Trial Attorney  
Engineering Field Activity Chesapeake  
Washington, DC

OPINION BY ADMINISTRATIVE JUDGE LIPMAN  
ON MOTION FOR RECONSIDERATION AND  
CROSS-MOTION TO DISMISS

Appellant moves for reconsideration of the Board's 20 November 2002 decision dismissing this appeal. The Government moves to dismiss the motion as untimely as well as generally opposing it on the merits. We grant the motion to dismiss.

Board Rule 29 requires the filing of a motion for reconsideration within 30 days of receipt of the decision by the moving party. Here, appellant's counsel received our 20 November 2002 decision on 21 November 2002. Under Board Rule 29, any motion for reconsideration was due to be filed no later than 21 December 2002, the end of the 30-day period. Since 21 December 2002 fell on a Saturday, appellant had until Monday, 23 December 2002 to file a motion for reconsideration. That filing could have been timely accomplished by placing the motion in the U.S. mail on that date. *Hugo Auchter GmbH*, ASBCA No. 39642, 91-2 BCA ¶ 23,777.

Appellant's motion for reconsideration was hand-carried to the Board on 24 December 2002. Because of its apparent tardiness, the Board, on 26 December 2002, ordered appellant to show cause why the motion should not be dismissed as untimely. Appellant responded to the Board's order on 31 December 2002 and moved for what amounted to a retroactive extension of time to file its motion for reconsideration. On 7 January 2003, the Government filed its motion to dismiss the motion for reconsideration and moved the Board to deny the request for a retroactive time extension.

In support of its request for a time extension, appellant has included affidavits of its counsel and the manager of its courier service. In her affidavit, appellant's counsel stated: that in her 13 years of practice she has never untimely filed any pleading; that she signed and prepared the motion for reconsideration for delivery on 23 December 2002; that her usually reliable courier assured her that the motion would be delivered to the Board on 23 December 2002; that the courier picked up the motion on 23 December 2002; that, upon being advised by the Board of the late delivery, she contacted the courier service which advised her that the courier had gained access to the Board's building on 23 December 2002, but "was precluded from entry" to the Board because the elevators "would not go to the seventh floor," the location of the Board's offices; that "the courier re-delivered the pleading as soon as possible the following morning"; that she had acted in good faith to timely file the motion for reconsideration; and, that she did not believe that the Government would suffer any prejudice as a result of the one day "technical" delay.

In his affidavit, the office manager of appellant's courier service stated that, as office manager, "I have knowledge regarding the requests for service and am in contact with the delivery personnel," and that he had reviewed the affidavit of appellant's counsel and confirmed the statements made therein. No affidavit from the courier was submitted.

The 30-day time limit in Board Rule 29 is strictly enforced. *Chronometrics, Inc.*, ASBCA No. 46581, 95-2 BCA ¶ 27,697; *Black River Limited Partnership*, ASBCA No. 51754, 02-2 BCA ¶ 31,885. That result is reached even where the motion was filed only one day late and prejudice has not been demonstrated. *Buckner & Moore, Inc.*, ASBCA No. 44113, 93-3 BCA ¶ 26,085.

In its motion, appellant characterizes its own actions as "excusable neglect." It cites Board Rule 33 which states that the Board may grant time extensions where "appropriate and justified." However, 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. *Chemical Equipment Corporation*, ASBCA Nos. 21574, 22798, 80-2 BCA ¶ 14,493; *Derrick Electric Company*, ASBCA No. 21246, 78-1 BCA ¶ 12,942.

Here, appellant prepared its motion for reconsideration for filing on the last day of the reconsideration time period and elected to hand deliver the motion. The alleged cause of the failure to deliver on 23 December 2002 — unavailability of elevators to the Board's offices — is strange, at best, and it is based upon the affidavit of the courier office manager, who presumably heard the excuse from the unidentified courier. The Board was open on 23 December 2002, and Board personnel conducted business, received deliveries and used the elevators on that date.

The Government's Motion to Dismiss is granted. Appellant's Motion for an Extension of Time to File its Motion for Reconsideration is denied. Appellant's Motion for Reconsideration is dismissed.

Dated: 15 January 2003

---

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

---

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. 42920, Appeal of AEC Corporation, Inc., rendered in conformance with the Board's Charter.

Dated:

---

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