

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
Environmental Safety Consultants, Inc. ) ASBCA No. 51722  
)  
Under Contract No. N62470-95-C-2399 )

APPEARANCE FOR THE APPELLANT: Mr. Peter C. Nwogu  
President

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 DICUS ON APPELLANT'S MOTION  
FOR REQUEST OF REISSUANCE OF THE BOARD'S DECISION DATED 18 OCTOBER  
2002

In *Environmental Safety Consultants, Inc.*, ASBCA No. 51722, 03-1 BCA ¶ 32,057 (*ESCI II*), the Board, on reconsideration, affirmed its earlier decision, *Environmental Safety Consultants, Inc.*, ASBCA No. 51722, 02-2 BCA ¶ 31,951 (*ESCI I*), in which we dismissed appellant's monetary claim in the captioned appeal for lack of jurisdiction. Familiarity with those decisions is assumed. We deny the current motion.

In its 28 April 2003 forwarding letter, appellant states it only recently learned of *ESCI III*. It further states "ESCI was not informed and/or did not get a copy of the decision from the Board. This may be because our address was changed, and we have difficulties in getting mails." In its motion, appellant avers that our decision was in error. The relief appellant seeks, however, is not reversal of our decision, but a change in the date of the decision "so that we can have the opportunity to file an appeal [to the United States Court of Appeals for the Federal Circuit]" (mot. at 2).\*

As to appellant's assertion that it did not receive a copy of the decision, in both cases, the forwarding letters for the decisions show the following address: Mr. Peter Nwogu, President, Environmental Safety Consultants, Inc., 4303 Memorial

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\* We, of course, have no jurisdiction with respect to timeliness of appeals to the Federal Circuit.

Drive, Suite H, Decatur, GA 30032. The Board’s docket shows no communication from appellant advising of any but that address. However, the letterhead on the forwarding letter and the handwritten return address on the envelope in which the current motion was sent is P.O. Box 477, Decatur, GA 30031-0477.

In any event, our docket shows the following entry for 9 December 2002: “APPELLANT’ S COPY OF THE BOARD[’ S] 18 OCT 02 DECISION WAS RETURNED BY THE US POST OFFICE AS ‘ UNCLAIMED.’ ” The Board thus did what was required of it to provide appellant with the decision. Where the fault for not receiving a decision from the Board is the litigant’s fault, we have said “[a]ppellant’s failure to receive the certified mailings of the Board’s order dismissing the appeal . . . should not now be used by appellant as a basis for extending the period in which it can file a timely motion for reconsideration.” *Mac-In-Erny, Inc.*, ASBCA No. 28689, 88-1 BCA ¶ 20,359 at 102,951, *aff’d*, *Mac-In-Erny, Inc. v. United States*, 862 F.2d 321 (table) (Fed. Cir. 1988). We note parenthetically that in *ESCI I* the Board dismissed appellant’s \$334,687.85 monetary demand because no attempt had been made at CDA certification. In *ESCI II* the Board affirmed *ESCI I*. Appellant’s arguments that the Board erred in *ESCI I* and *ESCI II* raise no new grounds and fail utterly to establish that it made any attempt at certification of its request for equitable adjustment. Thus, even if we were to treat the motion as though it were filed under FED. R. CIV. P. 60(b), it would fall short. Appellant’s motion is denied.

Dated: 19 May 2003

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CARROLL C. DICUS, JR.  
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  
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. 51722, Appeal of Environmental Safety Consultants, Inc., rendered in conformance with the Board's Charter.

Dated:

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