

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Starwalker PR LLC) ASBCA No. 61520
)
Under Contract No. W91B4N-09-D-5005)

APPEARANCES FOR THE APPELLANT: Richard L. Moorhouse, Esq.
Jozef S. Przygodzki, Esq.
Greenberg Traurig, LLP
McLean, VA

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
Frank A. March, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE MCILMAIL ON THE
GOVERNMENT’S MOTION TO DISMISS FOR LACK OF JURISDICTION

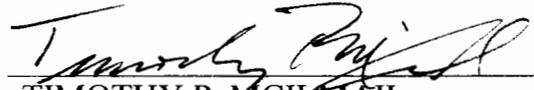
The government moves to dismiss ASBCA No. 61520* for lack of jurisdiction because, it says, the contracting officer never received appellant’s September 14, 2017 claim, which is attached to appellant’s complaint. It is up to appellant to demonstrate by a preponderance of the evidence that we have jurisdiction by showing that it first presented its claim to the contracting officer. *See Rover Construction Co.*, ASBCA No. 60703, 17-1 BCA ¶ 36,682 at 178,613; *King Aerospace, Inc.*, ASBCA No. 57057, 16-1 BCA ¶ 36,451 at 177,653. Appellant’s response to the motion points to an email addressed to the contracting officer and others that references an “attached” certified claim; that response, however, does not provide the referenced attachment. In addition, the contracting officer has declared under oath that she did not receive the claim (gov’t mot., ex. 3).

Finally, appellant’s response does not request that we deny the government’s motion; it says that we should stay proceedings to give the contracting officer (who, appellant says, “now has a complete copy of the September 14, 2017 claim”) time to

* This decision only pertains to ASBCA No. 61520, which is consolidated with ASBCA No. 61557.

decide the claim (app. resp. at 2). The preponderance of the evidence before us is *not* that appellant first presented its claim to the contracting officer. Therefore, the appeal is dismissed for lack of jurisdiction.

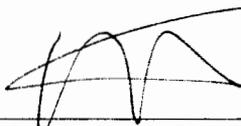
Dated: August 1, 2018



TIMOTHY P. MCILMAIL

Administrative Judge
Armed Services Board
of Contract Appeals

I concur in result



RICHARD SHACKLEFORD

Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

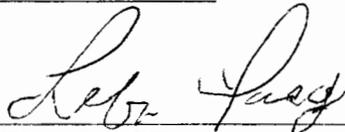
I concur in result



J. REID PROUTY

Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I concur in result



REBA PAGE

Administrative Judge
Armed Services Board
of Contract Appeals

I concur



DONALD E. KINNER

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 in ASBCA No. 61520, Appeal of Starwalker PR LLC, rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals