

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
KHS Corporation ) ASBCA No. 62032  
 )  
Under Contract No. SPE4A6-15-D-5845 )

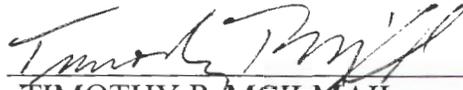
APPEARANCE FOR THE APPELLANT: Mr. William Schwemlein  
Vice-President

APPEARANCES FOR THE GOVERNMENT: Daniel K. Poling, Esq.  
Chief Trial Attorney  
Edward R. Murray, Esq.  
Ashley M. Kelly, Esq.  
Trial Attorneys  
DLA Aviation  
Richmond, VA

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

The government moves to dismiss the appeal for lack of jurisdiction, saying that in this appeal from a supposed termination of the contract for default there has been no termination. For us to have jurisdiction there has to be a claim; in an appeal from a contract termination, the claim (which in a termination case is the claim of the government) is the termination itself. *See Malone v. United States*, 849 F.2d 1441, 1443 (Fed. Cir. 1988). Appellant requests that we delay the hearing of the appeal *until the government determines whether to terminate the contract* (app. Aug. 16, 2019, filing at 3). We take that as a concession that the above-captioned contract has *not* been terminated and accordingly grant the motion and dismiss the appeal for lack of jurisdiction.

Dated: November 20, 2019

  
TIMOTHY P. MCILMAIL  
Administrative Judge  
Armed Services Board  
of Contract Appeals

(Signatures continued)

I concur



---

RICHARD SHACKLEFORD  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur



---

OWEN C. WILSON  
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. 62032, Appeal of KHS Corporation, rendered in conformance with the Board's Charter.

Dated:

---

PAULLA K. GATES-LEWIS  
Recorder, Armed Services  
Board of Contract Appeals