

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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MOTION TO RECTIFY CLERICAL MISTAKE DISMISSED: October 5, 2000

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GSBCA 14057-R

TRAVEL CENTRE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Fred Morahan, President of Travel Centre, Danvers, MA, appearing for Appellant.

Michael D. Tully and John E. Cornell, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **PARKER** and **HYATT**.<sup>1</sup>

PER CURIAM.

Travel Centre, appellant, has filed what it styles a "motion to rectify clerical mistake" in this case. The motion does not actually identify any clerical mistake in the decision to which it applies. The motion actually seeks a substantive change in the decision. We therefore treat the motion as one for reconsideration.

The Board has already issued five decisions in the case. On November 26, 1997, we granted the appeal as to entitlement. Travel Centre v. General Services Administration, GSBCA 14057, 98-1 BCA ¶ 29,536 (1997). On January 23, 1998, we denied a motion by the respondent for reconsideration of the entitlement decision, and on June 30, 1998, we denied a motion by that party for full Board consideration of that decision. 98-1 BCA ¶ 29,541; 98-2 BCA ¶ 29,849. On August 18, 1999, we granted the appeal in part as to

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<sup>1</sup>Board Judge Vergilio, who was a member of the panel of judges that wrote the decision to which this motion applies, has resigned from the Board and is therefore not involved in the consideration of the motion.

quantum, and on September 28, 1999, we denied the appellant's motion for reconsideration of that decision. 99-2 BCA ¶ 30,521; 00-1 BCA ¶ 30,584 (1999).<sup>2</sup>

The motion in question asks us to "correct a mistaken statement" in the initial decision in this case. The statement in the decision is, "When expected revenues did not materialize, Travel Centre closed its business." 98-1 BCA at 146,429. The appellant says that when expected revenues did not materialize, Travel Centre merely closed the branch office which was servicing the subject contract. The appellant maintains that it did not close its business until later, after the contract was terminated for default. Travel Centre filed the motion on August 24, 1998.

The case is now pending before the Court of Appeals for the Federal Circuit. Travel Centre filed an appeal on October 28, 1999, and the Government later cross-appealed. Travel Centre v. Barram, Nos. 00-1054, -1126 (Fed. Cir., appeals docketed Nov. 1 & Dec. 15, 1999).

For two reasons, we decline to consider Travel Centre's motion. First, "as a general proposition, once final judgment is entered and a timely notice of appeal has been filed, the trial tribunal loses jurisdiction over the case except to act in aid of the appeal or to correct clerical errors." A. C. Nielsen Co. v. Defense Commissary Agency, GSBCA 13466-P-R, et al., 97-1 BCA ¶ 28,774, at 143,594. The statement Travel Centre asks us to "correct" is not of any special significance to either the appellant's entitlement to recovery or the amount of damages. Thus, modifying the statement would not aid the appeal. The request does, however, seek a substantive change to the decision, so it may not be considered a motion to correct a clerical error. Because the motion does not meet either of the tests for consideration while a case is on appeal, we see no reason to take the extraordinary step of asking the appellate court for leave to entertain the motion. See id. (citing Yachts America, Inc. v. United States, 8 Cl. Ct. 278, 281 (1985), aff'd, 779 F.2d 656, 662 (Fed. Cir. 1985), cert. denied sub nom. Wilson v. United States, 479 U.S. 832 (1986)).

Second, even if we had addressed the motion before the appeal had been taken, we would not have considered the motion because it was filed so late. Under our Rules of Procedure, "[a] motion for reconsideration, [or] to alter or amend a decision or order, . . . shall be filed in an appeal . . . within 30 calendar days . . . after the date of receipt by the moving party of the decision or order." Rule 132(c) (48 CFR 6101.32(c) (1997)). The decision was issued on November 26, 1997. It was sent to the parties by facsimile transmission on that date; the respondent alleges, and the appellant does not deny, that the appellant received the decision on that date. The motion was filed 271 days later. Two hundred seventy-one days after receipt of the decision is plainly not within thirty days of that occurrence.

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<sup>2</sup>Separately, the Board has considered four other cases filed by Travel Centre: Travel Centre v. General Services Administration, GSBCA 13784, 14056 (May 7, 1997); GSBCA 14218-C(13784/14056), 98-2 BCA ¶ 29,940, reconsideration denied, 98-2 BCA ¶ 29,990, motion for full Board consideration denied, 98-2 BCA ¶ 30,077; GSBCA 15132-C(14057), 00-1 BCA ¶ 30,631 (1999).

For both these reasons, the Board **DISMISSES** Travel Centre's motion.