

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

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DISMISSED FOR LACK OF JURISDICTION: February 24, 2003

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GSBCA 16056

RAY COMMUNICATIONS, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Dr. Leonard Ray, Sr., President of Ray Communications, Inc., Philadelphia, PA,  
appearing for Appellant.

Michael J. Noble, Office of General Counsel, General Services Administration,  
Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **BORWICK**, and **NEILL**.

**DANIELS**, Board Judge.

The General Services Administration (GSA), respondent, moves the Board to dismiss for lack of jurisdiction an appeal filed by Ray Communications, Inc. (Ray). We grant the motion, as the appeal was filed too late for us to hear it.

Background

On December 2, 1998, GSA awarded to Ray a multiple award schedule contract with a performance period of December 2, 1998, through December 1, 2003.

By decision dated October 2, 2002, a GSA contracting officer canceled the contract, effective on November 3, 2002, and determined that Ray owed GSA \$17,935 on unreported sales under the instrument. The contracting officer advised Ray that if it wished to appeal her decision to this Board, it would have to do so within ninety days from the date on which it received the decision.

The contracting officer's decision was sent to Ray by both facsimile transmission and commercial courier service. Ray received the facsimile transmission on the afternoon of October 2, 2002, and the copy delivered by courier on the morning of October 3.

Ray's notice of appeal is dated December 23, 2002. The notice of appeal was sent to us in the United States mail. The envelope in which it arrived is postmarked January 10, 2003, and was delivered on January 16. Ray has presented no evidence as to the date on which it mailed the appeal (or as to any other matter in response to the motion).

### Discussion

The Contract Disputes Act of 1978 provides: "Within ninety days from the date of receipt of a contracting officer's decision . . . , the contractor may appeal such decision to an agency board of contract appeals. . . ." 41 U.S.C. § 606 (2000).

The deadline for filing an appeal is unforgiving; it has been strictly construed by the Court of Appeals for the Federal Circuit because the authorization to make the filing is a waiver of sovereign immunity. As that court has held, "If no appeal to the Board is taken within the ninety day statutory period set forth in section 606, the Board has no jurisdiction to hear the claim." D. L. Braughler Co. v. West, 127 F.3d 1476, 1480 (Fed. Cir. 1997) (citing Cosmic Construction Co. v. United States, 697 F.2d 1389, 1390 (Fed. Cir. 1982)). The Board has consistently followed the court's directive by dismissing for lack of jurisdiction appeals which are filed more than ninety days after the filers received the subject contracting officer decisions. E.g., Mid-South Metals, Inc. v. General Services Administration, GSBCA 15702, 02-1 BCA ¶ 31,723 (2001); D. L. Woods Construction, Inc. v. General Services Administration, GSBCA 13882, 97-2 BCA ¶ 29,009 (1996); Wood & Co. v. Department of the Treasury, GSBCA 12452-TD, 94-1 BCA ¶ 26,395 (1993).

Ray received the contracting officer's decision on October 2, 2002. (The receipt of a second copy of the decision on October 3 is superfluous for the purpose of determining date of receipt.) Filing generally occurs when a document is received by the Office of the Clerk of the Board, but if a notice of appeal is mailed, it is considered to have been filed on the date on which it is mailed. A United States Postal Service postmark is prima facie evidence that the document with which it is associated was mailed on the date of the postmark. Rule 101(b)(5)(i) (48 CFR 6101.1(b)(5)(i) (2001)). Ray's notice of appeal bears a postmark of January 10, 2003, and we have no other evidence as to the date of mailing, so we conclude that the notice was mailed on January 10. The date typed on the notice and the date of delivery are irrelevant for the purpose of determining when the notice was filed.

Ninety days after October 2, 2002 – the day Ray received the contracting officer's decision – was December 31, 2002. Ray's notice of appeal would have been timely only if it had been filed by that date. Because the notice of appeal was not filed until January 10, 2003 – one hundred days after Ray received the decision – it is untimely, and we have no jurisdiction to consider the appeal.

### Decision

The case is **DISMISSED FOR LACK OF JURISDICTION**.

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STEPHEN M. DANIELS  
Board Judge

We concur:

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ANTHONY S. BORWICK  
Board Judge

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EDWIN B. NEILL  
Board Judge