

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

DISMISSED FOR LACK OF JURISDICTION: March 6, 2003

GSBCA 16068

SHANE FAST,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Shane Fast, pro se, Kennewick, WA.

Thomas F. Linn, Office of Regional Counsel, General Services Administration,
Denver, CO, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **PARKER**, and **DeGRAFF**.

DeGRAFF, Board Judge.

The General Services Administration (GSA) moves the Board to dismiss for lack of jurisdiction an appeal filed by Shane Fast. We grant the motion, because Mr. Fast filed his appeal too late for us to hear it.

Background

According to Mr. Fast's notice of appeal, he purchased an item at a GSA auction. Dissatisfied with his purchase, he submitted a claim to GSA's contracting officer. In a decision dated October 7, 2002, the contracting officer denied Mr. Fast's claim. The contracting officer told Mr. Fast that if he wished to appeal her decision to this Board, he would have to file a notice of appeal within ninety days from the date that he received the decision. Notice of Appeal.

Mr. Fast received the contracting officer's decision on October 11, 2002. Motion to Dismiss, Exhibit B. Mr. Fast sent his appeal to us by United States Postal Service mail. According to the postmark on the envelope, he mailed his notice of appeal on February 1, 2003. Notice of Appeal.

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). As we recently explained:

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 Communications, Inc. v. General Services Administration, GSBCA 16056, slip op. at 2 (Feb. 24, 2003).

Mr. Fast received the contracting officer's decision on October 11, 2002. Ninety days after October 11, 2002, was January 9, 2003. Mr. Fast's notice of appeal would have been timely only if it had been filed by that date. Mr. Fast mailed his notice of appeal to us in an envelope postmarked February 1, 2003. According to our rules of procedure, the postmark is prima facie evidence of the mailing date, and because the item mailed was a notice of appeal, the mailing date is the filing date. Rule 101(b)(5)(i) (48 CFR 6101.1(b)(5)(i) (2001)). Thus, Mr. Fast filed his notice of appeal on February 1, 2003.

Because Mr. Fast did not file his notice of appeal within ninety days from the date he received the contracting officer's decision, it is untimely, and we have no jurisdiction to consider the appeal.

Decision

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

MARTHA H. DeGRAFF
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

ROBERT W. PARKER
Board Judge