

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

DISMISSED IN PART FOR LACK OF JURISDICTION: November 4, 2003

GSBCA 16264-SSA

HANS EVERS, M.D.,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

Martin B. Lowery, Naperville, IL, counsel for Appellant.

Seth Binstock, Office of General Law, Social Security Administration, Baltimore, MD, and Donna L. Calvert, Office of Regional Counsel, Social Security Administration, Chicago, IL, counsel for Respondent.

Before Board Judges **PARKER, NEILL, and DeGRAFF.**

DeGRAFF, Board Judge.

Hans Evers filed this appeal on September 3, 2003. In his complaint, Dr. Evers challenges the agency contracting officer's August 15, 2003 decision to terminate his contract for cause. In addition, the complaint claims the agency violated Dr. Evers's constitutional right to due process, committed torts against Dr. Evers, failed to follow its procedures for debarment and suspension, and is liable to Dr. Evers for monetary damages.

On October 24, the agency filed a motion to dismiss the appeal for lack of jurisdiction, except for the challenge to the agency's decision to terminate the contract, because none of the other claims contained in the complaint has been presented to the contracting officer and because the other claims, except for the claim for monetary damages, would be outside the Board's jurisdiction even if Dr. Evers were to present them to the contracting officer.

On October 27, Dr. Evers filed a motion to dismiss the entire appeal, without prejudice, for lack of jurisdiction. The agency filed an opposition to Dr. Evers's motion because, the agency says, we have jurisdiction to consider the propriety of the termination

of the contract and we should not allow Dr. Evers to have the appeal dismissed without prejudice because he made a binding election to challenge that termination here at the Board and the agency has expended a certain amount of effort in defending against the appeal. The agency is willing to allow Dr. Evers to withdraw his appeal voluntarily with prejudice. The agency points out that if Dr. Evers voluntarily withdraws his appeal, he may very well impair his ability to challenge the termination of his contract, either here or in another forum. In response to the agency's assertion that we have jurisdiction to consider the propriety of the termination of his contract, Dr. Evers says we lack jurisdiction over this claim "because that issue is inextricably intertwined with the constitutional issues of denial of procedural and substantive due process in violation of [his] Fifth amendment rights and the Constitutional torts committed against him by [the agency]." Appellant's Response to Respondent's Opposition to Appellant's Motion for Dismissal at 1.

Except for the challenge to the termination of the contract, we lack jurisdiction to consider the claims made in the complaint because none of them has been the subject of a contracting officer's decision and because our jurisdiction does not encompass claims of due process violations, torts, or debarments and suspensions. 41 U.S.C. §§ 605, 607 (2000). We dismiss these claims, without prejudice, for lack of jurisdiction.

We have jurisdiction to consider Dr. Evers's challenge to the termination of his contract, because the necessary jurisdictional prerequisites were satisfied when the contracting officer issued a decision terminating the contract and Dr. Evers appealed that decision to the Board. Id. Dr. Evers can choose to continue to litigate the propriety of the termination of his contract here at the Board and, in the course of doing so, he can put forward for our consideration whatever facts bear upon the agency's action, including many of the facts included in his complaint in support of the claims over which we lack jurisdiction. Alternatively, he can tell us he wishes to withdraw this portion of the complaint voluntarily, without prejudice, pursuant to Board Rule 128, keeping in mind how such a withdrawal might affect his ability to challenge the termination at a later date either here or in another forum. Bonneville Associates, Ltd. Partnership v. Barram, 165 F.3d 1360 (Fed. Cir.), cert. denied, 528 U.S. 809 (1999). If we do not hear from Dr. Evers to the contrary by November 18, 2003, we will assume he wishes to continue to litigate the propriety of the termination of his contract here at the Board and we will set a schedule for further proceedings.

The appeal is **DISMISSED IN PART FOR LACK OF JURISDICTION.**

MARTHA H. DeGRAFF
Board Judge

We concur:

ROBERT W. PARKER
Board Judge

EDWIN B. NEILL
Board Judge