

## Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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September 29, 2006

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GSBCA 16865-RATE

### In the Matter of CINCO STAR FORWARDING

Bob Mueller, Vice President of Cinco Star Forwarding, Katy, TX, appearing for Claimant.

James F. Fitzgerald, Director, Audit Division, Office of Transportation and Property Management, Federal Supply Service, Arlington, VA, appearing for General Services Administration.

Col. Scott Kilgore, Staff Judge Advocate, Headquarters, Surface Deployment and Distribution Command, Department of the Army, Alexandria, VA, appearing for Department of the Army.

**PARKER**, Board Judge.

Cinco Star Forwarding has asked the Board to review the General Services Administration Audit Division's (GSA's) settlement of Government Bill of Lading (GBL) No. AP689325, concerning a shipment of household goods. For the reasons discussed below, we agree with GSA that Cinco Star's claim was filed after the statutory deadline and, thus, was properly dismissed by GSA as untimely filed.

#### Background

On June 8, 2001, Cinco Star picked up a shipment containing a military service member's household goods. The goods were to be delivered on October 2, 2001, to the member's new residence in Naples, Italy. Cinco Star completed the delivery on time and became entitled to payment but says that it was unable to bill for the transportation charges

“because the paperwork had been missing until a certified copy of the GBL had been received in November of that year [2004].”

Cinco Star filed a claim for payment with the Department of Defense (DoD) on November 23, 2004, three years and fifty-one days after the date of delivery. DoD forwarded the claim -- disputed because it had been filed more than three years after the claim accrued -- to GSA for settlement in December 2004. In October 2005, GSA disallowed the claim as untimely filed.

### Discussion

By statute, a carrier or freight forwarder which transports an individual or property for the Government may make a claim to the Administrator of General Services for payment for its services. 31 U.S.C. § 3726(c)(1) (2000). The claim may only be made, however:

if it is received by the Administrator not later than 3 years (excluding time of war) after the later of the following dates:

- (A) The date of accrual of the claim.
- (B) The date payment for the transportation is made.
- (C) The date a refund for an overpayment for the transportation is made.
- (D) The date a deduction under subsection (d) of this section is made.

*Id.* § 3726(c)(2).

Only the first event listed above, accrual of the claim, is relevant here. A claim includes an unpaid original bill requiring direct settlement by GSA, including one such as this which the agency doubts should be paid. 41 CFR 102-118.450(d) (2004); *Apollo Van Lines, Inc.*, GSBCA 16074-RATE, 03-2 BCA ¶ 32,330. The burden is on the carrier to establish that either GSA or the agency received the claim within the period set out in the statute. *Id.*

Cinco Star acknowledges that it did not file a claim within three years of the claim’s accrual but argues that the claim was not subject to the statutory three-year limitation period because the transaction took place during a “time of war.” Cinco Star maintains that the actions of the United States following the terrorist attacks on September 11, 2001, constituted a “time of war” within the meaning of the statute and that, because the delivery of the shipment and processing of the subsequent paperwork occurred during that time, the three-year statutory period for filing transportation claims did not apply.

Cinco Star is wrong. GSA's predecessor in settling and reviewing settlements of transportation claims such as this one, the General Accounting Office (GAO), made it clear long ago that the tolling of the statute "would begin when the Congress of the United States exercised its power to declare war under the Constitution of the United States, Article 1, Section 8, Clause 11." *Langer Transportation Corp. - Claim for Transportation Charges*, B-182444-O.M. (Jan. 13, 1975). Holding that the Vietnam conflict was not a "time of war" for purposes of giving effect to the three-year statute of limitations for filing transportation claims, GAO opined that "Congress probably intended the phrase '(not including any time of war)' to mean 'time of declared war.'"<sup>1</sup> *Id.* We think GAO's interpretation, which GAO said gave "certainty of application to the Act," *id.*, made good sense then and even better sense in today's world of varying levels of undeclared military actions in various parts of the world. Accordingly, because Congress has never exercised its power to declare war under the Constitution in connection with the responses of the United States to the terrorist attacks of September 11, 2001, the statute of limitation applies, and Cinco Star's claim was thus filed too late.

### Decision

GSA correctly decided that Cinco Star's claim is time-barred by statute. Because the Board lacks jurisdiction to consider matters relating to transportation services which were not previously presented in a timely fashion to GSA, *Arpin International Group*, GSBCA 16471-RATE, 04-2 BCA ¶ 32,795, the claim is dismissed for lack of jurisdiction.

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ROBERT W. PARKER  
Board Judge

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<sup>1</sup>At the time of the decision, when GAO was the statutory entity designated to settle transportation claims such as this one, the statute read:

every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years (not including any time of war) from the date of . . . .