



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: August 22, 2017

CBCA 5800

CTA I, LLC,

Petitioner,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

John M. Manfredonia of Manfredonia Law Offices, LLC, Cresskill, NJ, counsel for Petitioner.

Neil S. Deol, Office of General Counsel, Department of Veterans Affairs, Decatur, GA, counsel for Respondent.

Before Board Judges **GOODMAN**, **KULLBERG**, and **CHADWICK**.

CHADWICK, Board Judge.

CTA I, LLC (CTA) submitted a certified claim to a Department of Veterans Affairs (VA) contracting officer in February 2017. The contracting officer has promised twice to “respond” to CTA’s claim by a date certain, but has yet to do so. In July 2017, CTA filed a petition under 41 U.S.C. § 7103(f)(4) (2012) and Board Rule 2(a)(2) (48 CFR 6101.2(a)(2) (2016)) for an order directing the contracting officer to decide the claim “no later than September 8, 2017.” VA opposes the petition. We deny the petition because CTA already possesses the only effective relief we could grant: the right to file an appeal from a deemed denial.

Background

CTA is performing contract VA246-14-C-0030 to construct a dialysis center at a VA medical facility in Richmond, Virginia. On February 15, 2017, CTA submitted a certified claim for \$2,023,745.58 for delay, labor inefficiencies, and related costs. Fifty-five days later, on April 11, 2017, the VA contracting officer advised CTA by letter that, “[d]ue to the size and complexity of the claim documentation, our office will respond to your request for a Contracting Officer’s final decision by 10 July 2017. The additional time is required for us to further evaluate the merits of the claim and review the associated documentation you provided.”

On May 15, 2017, CTA filed a petition with the Board for an order directing the contracting officer to issue a decision on the claim “no later than June 1, 2017.” We denied the petition because there was insufficient time to resolve the matter by June 1. *CTA I, LLC v. Department of Veterans Affairs*, CBCA 5748 (May 18, 2017).

When July 10 arrived, the contracting officer notified CTA by letter that VA “required a commercial claims consultant” to evaluate CTA’s claim, and that “to allow the claims consultant adequate time to assess the validity of the claim, I will respond to your request for a Contracting Officer’s final decision by 8 September 2017.” VA states in its brief in this matter that the contracting officer has not yet retained the consultant and no longer expects to meet the September 8 deadline.

CTA filed the instant petition on July 25, 2017. In it, CTA alleges that VA “is engaged in bad faith delaying tactics,” never intended to issue a decision by September 8, and “has failed to issue a final decision within a reasonable time,” causing CTA and its subcontractors “severe financial hardship.” CTA asks us to direct the contracting officer to decide its claim by September 8. VA responds that the contracting officer’s “need for additional time to review the claim is reasonable,” and that “review by a claims consultant, followed by a final decision, would benefit the Petitioner, the Government, and any tribunal asked to review the claim.” VA adds that the contracting officer will, at some point, “advise [CTA] of a new anticipated date” for a decision.

Discussion

This case affords the Board an opportunity to clarify the function of the provision of the Contract Disputes Act (CDA) that empowers us “to direct a contracting officer to issue a decision [on a claim] in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer.” 41 U.S.C. § 7103(f)(4). The CDA grants a contracting officer sixty days, after receipt of a certified claim exceeding \$100,000, to either decide the claim or notify the contractor “of the time

within which a decision will be issued.” *Id.* § 7103(f)(2). If the contracting officer does neither of those two things within the sixty days, the contractor may, at its option, appeal from a “deemed” denial of its claim. *Id.* § 7103(f)(5); *ThinkGlobal Inc. v. Department of Commerce*, CBCA 4410, 16-1 BCA ¶ 36,489, *reconsideration granted in non-relevant part and denied in part*, 17-1 BCA ¶ 36,642.

Moreover, “no language in the CDA provides the government with the right to a *second* extension” beyond the sixty days. *Rudolph & Sletten, Inc. v. United States*, 120 Fed. Cl. 137, 142 (2015) (emphasis added). This means that any deadline for a decision that the contracting officer sets within sixty days of receiving a claim is firm. If that deadline later passes with no decision, an appealable deemed denial occurs. *Id.*; *Tuba City Regional Health Care Corp. v. United States*, 39 F. Supp. 3d 66, 70-71 (D.D.C. 2014); *Claude E. Atkins Enterprises, Inc. v. United States*, 27 Fed. Cl. 142, 143 (1992).


CTA is therefore already entitled to treat its claim as having been denied. A deemed denial occurred here, either in April, sixty days after CTA submitted the claim, or in July (we need not decide which). CTA has the right under the CDA, but not an obligation, to file an immediate appeal. *See Fire-Security Systems, Inc. v. General Services Administration*, GSBCA 12175, 93-2 BCA ¶ 25,851. Granting CTA’s petition would provide no additional relief. *See Hawk Contracting Group, LLC v. Department of Veterans Affairs*, CBCA 5527, 16-1 BCA ¶ 36,572, at 178,119 (noting that CDA authorizes Board to “alter a time extension that the contracting officer has granted himself, and to allow a contractor to appeal on a ‘deemed denial’ basis if the contracting officer fails to issue a decision by the Board’s revised deadline”); *see also Sylvan B. Orr v. Department of Agriculture*, CBCA 5299, 16-1 BCA ¶ 36,522, at 177,930 (Board cannot grant injunctive relief).

Although we have said in dictum that a contractor has “two options for advancing the process” when a decision on a claim is delayed, i.e., either appealing a deemed denial or petitioning to obtain a contracting officer’s decision, *USProtect Corp. v. Department of Homeland Security*, CBCA 65, 08-1 BCA ¶ 33,782, at 167,200 (denying motion to dismiss appeal), a petition is useful only to shorten an extension that a contracting officer has granted himself within the sixty-day CDA window. *E.g.*, *Rudolph & Sletten*, 120 Fed. Cl. at 141-42 n.2; *Volmar Construction, Inc.*, ASBCA 60710-910, 16-1 BCA ¶ 36,519, at 177,904. If the contracting officer does not act on the claim within sixty days, or if he extends the deadline but misses it (one of which must have happened here), the contractor’s effective options are to exercise its immediate right to appeal or to await a decision on its claim. *Cf. Savannah River Nuclear Solutions, LLC v. Department of Energy*, CBCA 5636, 17-1 BCA ¶ 36,750, at 179,119 (“If petitioner believed the contracting officer’s actions had resulted in a deemed denial of its claim, it was not

prevented from filing a notice of appeal of a deemed denial of its claim and titling it as such.”). The Board has no role at this juncture in perfecting CTA’s right to appeal.

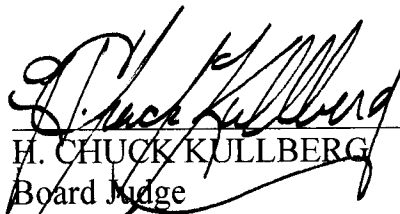
Decision

The petition is **DENIED**.


KYLE CHADWICK
Board Judge

We concur:


ALLAN H. GOODMAN
Board Judge


H. CHUCK KULLBERG
Board Judge