

MARK J. JUEL,)	AGBCA No. 97-187-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Mark J. Juel, <u>pro se</u>)	
1226 Lincoln Street)	
Rhineland, Wisconsin 54501)	
)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

October 29, 1997

OPINION BY ADMINISTRATIVE JUDGE EDWARD HOURY

This matter arose under Lease No. 57-56A1-9-01370I, between the Forest Service, U. S. Department of Agriculture and Mark J. Juel (Appellant) of Rhineland, Wisconsin. The lease covered the parking garage for the Nicolet National Forest Supervisor's Office. After an inspection by the city inspector for compliance with building codes, the garage was shut down. Thereafter, the Contracting Officer (CO) advised Appellant of the cancellation of its lease.

By letter dated July 22, 1997, Appellant advised the Board of a dispute between himself and the Forest Service over property damage to Appellant's garage. Appellant further advised that the Forest Service had erroneously paid Appellant for the balance of the lease and that Appellant was refusing to return the money because of the damages to his building and the failure of the Forest Service to clean up the garage. Appellant went on to state that he had been directed to the Board by the CO and

that he wanted the Forest Service to pay for the property damages (a sum exceeding the excess rent paid).

By letter dated August 4, 1997, the Board docketed Appellant's appeal and stated:

The matter presented appears to be a claim for damages to the leased property by Appellant, and a claim for excess payments under the lease by the Forest Service. These are both matters over which the Board generally has authority to exercise jurisdiction under the CDA. However, prior to the Board's exercise of jurisdiction, there must be a written claim, and an appeal filed within 90 days of the receipt of the CO's final decision. These conditions do not appear to have been met in this instance. Moreover, if the Government is seeking the return of a lease overpayment, a CO's decision on this matter is also necessary.

Therefore, since the Board does not maintain a suspense file, the matter docketed as AGBCA No. 97-187-1 will be dismissed within 30 days without prejudice to Appellant's satisfying the above conditions.

By letter dated August 18, 1997, Appellant responded to the Board's letter. He enclosed a copy of a letter from the CO dated August 26, 1996, denying any liability to Appellant and demanding return of the lease overpayment. The CO did not characterize the letter as a final decision or advise Appellant of his appeal rights. The August 26, 1996 letter was apparently in response to Appellant's attempt to take the Forest Service into a state small claims court.

The Board responded to the above in a letter dated August 28, 1997, sent to both parties stating:

The August 26, 1996 letter from the Contracting Officer (CO) to Appellant is a Government claim for payment. It is not a CO's final decision. If the Board considered this letter a CO's final decision, the Board would be without jurisdiction to consider the matter further, because Appellant did not appeal such decision to the Board within 90 days. See the last paragraph of our August 4, 1997 docketing letter.

If the parties want the Board to adjudicate their disputes, you must comply with the requirements of the Contract Disputes Act (CDA) as indicated in the docketing letter. Also as indicated in the docketing letter, the present appeal will be dismissed without prejudice to the Appellant's and/or the Government satisfying the CDA requirements for Board jurisdiction.

The Board might have considered the CO's August 26, 1996 letter to have been a "deemed denial" of a claim by Appellant, and Appellant's July 22, 1997 letter, to have been an appeal from the deemed denial. However, it is not clear that Appellant ever filed a written claim with the CO.

Moreover, regarding the Government's claim, the CO did not advise Appellant of its appeal rights. Therefore, the CDA requirements for Board jurisdiction have not been met.

In order to grant the Board jurisdiction, Appellant must file a written claim with the CO and timely appeal a CO final decision denying such claim. The Government may assert its claim for return of the overpayment in the same CO final decision or draft a separate decision specifically for that purpose.

DECISION

AGBCA No. 97-187-1 is dismissed without prejudice.

EDWARD HOURY
Administrative Judge

Concurring:

MARILYNN M. EATON
Administrative Judge

HOWARD A. POLLACK
Administrative Judge

**Issued at Washington, D.C.,
October 29, 1997**