

SA FORESTRY,)	AGBCA No. 98-146-1
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Appellant)	
)	
Representing the Appellant :)	
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Parphivey Snegirev)	
30330 S. Molalla Avenue)	
Molalla, Oregon 97038)	
)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

December 29, 1998

OPINION BY ADMINISTRATIVE JUDGE HOWARD A. POLLACK

This appeal arises out of a tree thinning contract (Contract No. 53-0281-3-134) between the United States Department of Agriculture, Forest Service (FS), St. Maries Ranger District, Idaho Panhandle National Forest and SA Forestry of Molalla, Oregon (SA or Appellant). SA was terminated for default by letter of July 15, 1994. SA did not appeal that termination. Thereafter, work was reprocured and by decision of November 5, 1997, the FS issued a final decision where it assessed reprocurement costs of \$13,325.96 (\$14,373 cost of reprocurement less contract balance of \$1,047.04). The Appellant filed a timely appeal, which the Board received on February 6, 1998.

In its appeal, Appellant blamed the default on an accident in which he was involved with a logging truck, which he asserted made him unable to work. He also claimed that actions were taken against him because of prejudice and his inability to speak English. The appeal letter was submitted in English, however, reflected spelling and grammatical errors which one might expect from an individual whose first language was not English. The letter, however, clearly set out the Appellant's position.

By docketing letter of February 10, 1998, the Board directed Appellant to file its Complaint within 30 days of receipt of the notice of docketing. No response was received and therefore, the Board issued an Order to Show Cause dated May 20, 1998. In its Order, the Board noted its understanding

that Appellant's first language was not English. The Board then went on to advise Appellant that although the Board recognized that Appellant was not represented by counsel and might not fully understand Board procedures, if Appellant wished to pursue the appeal, Appellant would have to comply with Board rules and meet time deadlines. To further accommodate Appellant, the Board stated that it was prepared to designate Appellant's appeal letter as Appellant's Complaint. The Board, however, set a precondition, which was the requirement that Appellant contact the Board by telephone for purposes of setting up a conference call. At the time of the Order, the Board had no telephone number for Appellant. Appellant was given 10 days to respond and again advised that if Appellant had difficulty understanding the Board's instructions, Appellant should seek competent counsel. Finally, the Order provided that failure to respond as directed "may" result in dismissal of the appeal for failure to prosecute. The Order to Show Cause was received by Appellant, as evidenced by the notice of receipt dated May 23, 1998.

Thereafter, the Board was provided a letter from the Government counsel to Appellant wherein the FS proposed a settlement to Appellant. With that letter, the Board also received a letter from the Government counsel advising that the FS would await filing its response to the designated complaint until the parties held the conference call which the Board had addressed in its Order to Show Cause.

The Board still did not hear from Appellant and as a consequence, issued a second Order to Show Cause, dated October 23, 1998 (Certified Receipt Request No. P 368 425 301, received by Appellant on October 26, 1998). In this Show Cause, the Board expressly stated, "Should the Board receive no response, including a telephone number at which Appellant can be contacted, the Board intends, without further notice to Appellant to dismiss the appeal for failure to prosecute. Such dismissal will bar further action on Appellant's claim." Appellant was given 15 days to respond and to date no response has been received.

DECISION

Pursuant to the Board's Order to Show Cause of October 23, 1998, this appeal is dismissed with prejudice.

HOWARD A. POLLACK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D. C.
December 29, 1998