

TOM ALLABAUGH,)	AGBCA No. 2004-109-1
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Appellant)	
)	
Representing the Appellant:)	
)	
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)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

October 14, 2004

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

By letter dated November 24, 2003, Tom Allabaugh of Columbia Falls, Montana (contractor), filed this appeal with the Board, involving the U. S. Department of Agriculture, Forest Service (Government). The contractor had been providing services, as well as chain saws, a sawyer vehicle, and a 4x4 1/1 ton pickup truck after accepting a dispatch order under its Emergency Equipment Rental Agreement, No. 56-0385-3-0183, at the Ball Fire in the Flathead National Forest in Montana.

According to the contractor, on August 29, 2003, in the pickup truck, the contractor departed the Ball Fire camp for his residence, in order to obtain supplies which were not available at the fire camp. As the contractor returned on the morning of August 30, the contractor maintains that he spotted a moose crossing the road, applied his brakes and lost control of the vehicle. The contractor submitted to the Government a letter which explains the contractor's view of the facts surrounding the incident. The contracting officer treated the letter as a claim to recover \$8,374.99 (for the repair and towing of the vehicle) plus medical expenses. Finding that the contractor departed from the fire camp at his own discretion, without the approval of the Government, the contracting officer concluded that the contractor was acting independently and not within the scope of duties as a

sawyer at the time of the incident. The contracting officer denied the claim, stating a contract interpretation that did not permit recovery relating to the accident. This appeal ensued.

The contractor maintains that this Board has jurisdiction over this matter pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, as amended (CDA). Following the submission of the appeal file and complaint, the parties engaged in informal discovery. After the contractor (through counsel) was not available for a scheduled telephone conference, the presiding judge issued orders to show cause if the contractor seeks to pursue the appeal, with such orders informing the parties that the appeal would be dismissed with prejudice should a response not be provided. By their silence, neither counsel for the contractor nor the contractor indicated a desire to pursue this appeal.

DECISION

The Board dismisses with prejudice this appeal.

JOSEPH A. VERGILIO
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

**Issued at Washington, D.C.
October 14, 2004**