NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2010-1255

ROBINSON QUALITY CONSTRUCTORS,

Appellant,

v.

John McHugh, SECRETARY OF THE ARMY,

Appellee.

Appeal from the Armed Services Board of Contract Appeals in no. 55784,
Administrative Judge Peter D. Ting.

ON MOTION

Before MAYER, LOURIE, and BRYSON, Circuit Judges.

BRYSON, Circuit Judge.

ORDER

The Secretary of the Army moves to dismiss Robinson Quality Constructors'
appeal from the Armed Services Board of Contract Appeals (ASBCA) as untimely.

Robinson appeals from a January 5, 2009 decision of the ASBCA dismissing
Robinson's appeal for lack of jurisdiction. Robinson received the decision on January
7, 2009. On June 4, 2009, the ASBCA denied Robinson's motion for reconsideration.
Robinson had previously filed an appeal, no. 2010-1034, seeking review by this court of
the same ASBCA decision. However, the prior appeal was dismissed by this court on
March 4, 2010 for failure to file a brief. Robinson filed this appeal on March 16, 2010.

An ASBCA decision is final unless a contractor appeals to this court within 120 days after its receipt of the ASBCA decision. 41 U.S.C. § 607(g)(1). This filing period is mandatory and jurisdictional. Placeway Const. Corp. v. United States, 713 F.2d 726, 728 (Fed. Cir 1983); see also Bowles v. Russell, 551 U.S. 205 (2007) (the timely filing of a notice of appeal in a civil case is a jurisdictional requirement that cannot be waived). Robinson's most current appeal from the ASBCA decision was not filed within 120 days from the date it received the decision. We must therefore dismiss this appeal as untimely.

Accordingly,

IT IS ORDERED THAT:

(1)   The motion to dismiss is granted.

(2)   Each side shall bear its own costs.

FOR THE COURT

__MAY 0 3 2010__
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: D. Lynn Whitt, Esq.
        Domenique Kirchner, Esq.

s19

ISSUED AS A MANDATE: __MAY 0 3 2010__