

DESIGNED MOBILE SYSTEMS

INDUSTRIES, INC.,

CONTRACT NO. V101DC0058

**VABCA-4486**

VA MEDICAL CENTER  
PALO ALTO, CALIFORNIA

J. J. Bagnani, Designed Mobile Systems Industries, Inc., Newark, California, for the Appellant.

John Manfredonia, Esq., Trial Attorney; Phillipa L. Anderson, Esq., Deputy Assistant General Counsel; and William E. Thomas, Jr., Esq., Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

### ORDER DISMISSING APPEAL

1. The Board, in its October 11, 1994 ORDER TO SHOW CAUSE, noted that, from the documents before it, the appeal appeared to be untimely. Correspondence received by the Board from the Contractor indicated that the Contractor received the Final Decision on June 23, 1994. However, the Notice of Appeal was postmarked September 27, 1994, or ninety-six (96) days after the receipt of the Final Decision. The Contract Disputes Act (CDA), 41 U.S.C. § 601 et seq., provides in §606 that:

Within ninety days from the date of receipt of a contracting officer's final decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.  
[emphasis supplied]

The time limitation on the filing of an appeal, as a statutory waiver of sovereign immunity, must be strictly construed. Thus, the Board is without discretion to assume jurisdiction over an appeal not filed within ninety days. *Cosmic Construction Co. v. United States*, 697 F.2d 1389 (Fed. Cir. 1982); *Olympus Corporation*, VABCA No. 3550, 92-2 BCA 24,856; *Surgical Appliance Industries, Inc.*, VABCA No. 3674, 93-1 BCA 25,364.

2. We granted the Appellant until October 24, 1994, to SHOW CAUSE why this appeal should not be dismissed for lack of jurisdiction, pursuant to Board Rule 5. As of this date, no reply has been received from the Appellant.

3. Given the facts before the Board and the failure of the Appellant to respond, we conclude that we are without jurisdiction to consider the matter. Accordingly, the appeal of Designed Mobile Systems Industries, Inc., VABCA-4486, is hereby dismissed pursuant to Board Rule 5.

IT IS SO ORDERED

DATE: November 1, 1994

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GUY H. MCMICHAEL III  
Chief Administrative Judge  
Panel Chairman

We concur:

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MORRIS PULLARA, JR.  
Administrative Judge

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JAMES K. ROBINSON  
Administrative Judge