

LIBERTY HEALTHCARE
CORPORATION

CONTRACT NO. V539P-2566

VABCA-4636

VA MEDICAL CENTER
CINCINNATI, OHIO

Sam Zalman Gdanski, Esq., Montebello, New York, for the Appellant.

Kenneth B. MacKenzie, Esq., Trial Attorney; *Charlma Jones, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

ORDER DISMISSING APPEAL

1. On May 8, 1995, the Board docketed the above-cited appeal based on the Appellant's May 2, 1995 Notice of Appeal. The Notice of Appeal stated, "[w]e submitted a claim . . . We have heard nothing further, and therefore request that the Board consider this a deemed denial." The Appellant did not, at that time, provide a copy of the claim it filed with the Contracting Officer.

2. On December 14, 1995, in response to the Government's Motion to Dismiss the above-captioned appeal, the Board issued a Decision. Based on the record before the Board at that time, the Board stated in *Liberty Healthcare*, VABCA 4636, 96-1 BCA ¶ 28,133 at 140,452 - 453:

Based on the foregoing, we conclude that, by any reckoning, we have a proper appeal before us, founded on the fact that well over two years ago the Contractor submitted to the Contracting Officer (1) a written demand, (2) seeking as a matter of right, (3) the payment of \$182,725.99, which demand included the necessary certification for claims over \$50,000.

* * * * *

Accordingly, the Board is satisfied that it has jurisdiction in the captioned appeal.

3. On June 4, 1996, the Board conducted a telephone conference, during which the Government indicated that all or a portion of the August 27, 1993 claim for \$182,725.99 had already been paid. In response to this information, the Board issued an Order directing the Appellant to file a statement clarifying its position. The Appellant was to explain whether the subject of this appeal was reflected in the Appellant's August 27, 1993 letter seeking payment of \$182,725.99, or the subject of the appeal was a claim unrelated to the August 27, 1993 request for payment.

4. On July 11, 1996, the Board received the Appellant's response which stated that "the amount covered in the August 27, 1993 letter is *not the substance of the same claim made*

with the appropriate certification furnished in 1994, by Liberty Healthcare." (emphasis added) The Appellant went on to say that "I have reviewed our files and I do not see a copy of the earlier submission, other than the acknowledgment by the contracting officer, that he has denied the claim." Thus, the Appellant was not able to present the Board with a copy of this second claim, nor with any other documents to support its argument that a second claim had ever been presented to the Contracting Officer.

5. As noted in our December 14, 1995 Decision, this Board had jurisdiction over one claim: the August 27, 1993 claim for \$182,725.99. The Appellant now maintains that the dispute before the Board concerns a second claim of unknown date and amount. However, Appellant was unable, when Ordered by this Board, to produce a copy of this claim or proof that this claim was presented to the Contracting Officer.

6. This Board is unable to assert jurisdiction over a claim which has not been presented to the Contracting Officer. The filing of a certified claim by a contractor with the Contracting Officer is the essential first step in the chain of events which may ultimately give the contractor the right to file an appeal with the board of contract appeals. Unless this first step is taken, this Board lacks jurisdiction to consider the merits of any claim which the contractor may seek to bring before it. The record currently before the Board contains no evidence that the Appellant ever submitted any claims to the Contracting Officer, other than the August 27, 1993 claim. *Paragon Energy v. United States*, 645 F.2d 966 (Ct.Cl. 1981); *Sharman Co., Inc. v. United States*, 2 F.3d 1564 (Fed.Cir. 1993); *Regional Ambulance Service*, VABCA Nos. 2832 & 2833, 89-1 BCA 21,365.

7. Given the facts before the Board and the failure of the Appellant to provide evidence to support its position, we conclude that we are without jurisdiction to consider this matter. Accordingly, the appeal of Liberty Healthcare Corporation, VABCA- 4636, is hereby dismissed for lack of jurisdiction, pursuant to Board Rule 5.

IT IS SO ORDERED

DATE: **July 16, 1996**

MORRIS PULLARA, JR.
Administrative Judge
Panel Chairman

We Concur:

GUY H. MCMICHAEL III
Chief Administrative Judge

DAN R. ANDERS
Administrative Judge