

EBBCO, INC.

CONTRACT NO. V598C-1159

VABCA-5234

VA MEDICAL CENTER  
LITTLE ROCK, ARKANSAS

*Irwin L. Eberhart, Sr.*, President, EBBCO, Inc., England, Arkansas, for the Appellant.

*Philip Leber, Esq.*, Trial Attorney; *Charlma O. 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 FOR FAILURE TO PROSECUTE**  
(Pursuant to Board Rule 31)

1. The appeal of EBBCO, Inc., Docket No. 5234, from a final decision of the Contracting Officer dated October 18, 1996, was received and docketed on January 8, 1997.
2. On March 4, 1997, Appellant was ordered to show cause, by April 7, 1997, why its appeal should not be dismissed for failure to prosecute. Appellant had failed to file its COMPLAINT or to respond to attempts by the Board to contact it. The date for responding was extended to April 28 due to a change in Appellant's mailing address.
3. On April 4, the Board received a copy of Appellant's April 3 letter to the Government Trial Attorney which made it clear that Appellant intended to prosecute the appeal but was not clear how to proceed. Accordingly, the Board rescinded its ORDER TO SHOW CAUSE, supplied Appellant with information on how to file its COMPLAINT, and allowed Appellant until April 7 in which to do so.
4. On May 27, 1997, having received no COMPLAINT or other communication from the Appellant, the Board issued an ORDER TO SHOW CAUSE allowing Appellant until Friday, June 27, 1997 in which to show cause why the appeal should not be dismissed for failure to prosecute. No response has been received.
5. **Board Rule 31, Dismissal Or Default For Failure To Prosecute Or Defend**, reads as follows:

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to paragraph (ii) of this section (Rule 35). If good cause is not shown, the Board may take appropriate action.

*See generally, National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 640-41, 96 S. Ct. 2778, 2779-80, 49 L.Ed.2d 747 (1976); *Metadure Corp. v. United States*, 6 Cl. Ct. 61 (1984); *Transcriptionists-On-Call*, VABCA No. 3723, 93-2 ¶ 25,670.

6. Accordingly, the appeal of EBBCO, Inc., VABCA No. 5234, is hereby DISMISSED WITH PREJUDICE for failure to prosecute.

IT IS SO ORDERED

DATE: **July 2, 1997**

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DAN R. ANDERS  
Administrative Judge