

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of Industrial Marine, Inc.

ASBCA No. 63975 · No. ASBCA No. 63975 · Decided May 5, 2026

SUMMARY

The Armed Services Board of Contract Appeals granted the government's motion to dismiss Claim 2 of Industrial Marine, Inc.'s complaint. The Board held that the claim for compensation for work removed from the contract's scope was not previously presented to the contracting officer, involved materially different operative facts from the delay-cost claim, and was uncertified despite exceeding \$100,000; Claim 1 remained pending.

CASE DETAILS

COURT	Armed Services Board of Contract Appeals
WRITING FOR THE COURT	Owen C. Wilson; Michael N. O'Connell; David B. Stinson
JURISDICTION	Armed Services Board of Contract Appeals
DECIDED	May 5, 2026
DOCKET	ASBCA No. 63975
DISPOSITION	dismissed
PROCEDURAL POSTURE	The government moved to dismiss Claim 2 of Industrial Marine's complaint for lack of subject-matter jurisdiction under the Contract Disputes Act, arguing that the claim had not been submitted to the contracting officer for a final decision and was materially different from the claim previously presented. The Board granted the motion and dismissed Claim 2; Claim 1 remained pending.
STANDARD OF REVIEW	The appellant bears the burden of establishing the Board's jurisdiction by a preponderance of the evidence. The Board determines jurisdiction as of the time the notice of appeal was filed.
PRECEDENTIAL VALUE	published
PARTIES	Industrial Marine, Inc. v. United States, Department of the Navy

TOPICS

- government contracts
- contract disputes act
- appellate jurisdiction
- appellate procedure

PRACTICE AREAS

government contracts

contract disputes act

administrative law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Board had jurisdiction over Claim 2 when Industrial Marine had not presented that claim to the contracting officer for a final decision before filing it with the Board.
2. Whether Claim 2 was the same claim, or arose from the same operative facts and sought similar relief, as the delay and inflation claim presented to the contracting officer.
3. Whether the Board had jurisdiction over Claim 2 despite the absence of certification for a claim exceeding \$100,000.

HOLDINGS

1. The Board lacked jurisdiction over Claim 2 because Industrial Marine did not establish by a preponderance of the evidence that it had submitted that claim to the contracting officer for decision before presenting it to the Board.
2. Claim 2 was jurisdictionally distinct from Claim 1 and from the claims presented to the contracting officer because it concerned payment for work removed from the contract's scope, whereas the earlier claim concerned delay costs and inflation for work that was completed.
3. Even if Claim 2 had been presented to the contracting officer, the Board would lack jurisdiction because the claim exceeded \$100,000 and was not certified.

KEY QUOTATIONS

“The CDA requires all claims by contractors to be presented to the CO for issuance of a final decision for the Board to have jurisdiction over such appeals.” (at 7)

“Though contractors can appeal a claim to the Board on a deemed denial basis, as the government notes, for the Board to have jurisdiction, such an appeal still must be based upon a proper CDA claim.” (at 8)

“Unlike a defective certification, claims completely lacking certification cannot be remedied while pending at the Board and must be dismissed for lack of jurisdiction.” (at 9)

FACTUAL BACKGROUND

The Navy awarded Industrial Marine a contract for evaluation, repair, and modification of shuttle assemblies. Industrial Marine exchanged emails with government personnel seeking additional compensation for alleged government-caused delays and inflationary costs, but the record did not show that it submitted to the contracting officer a claim for the \$191,683.65 sought in Claim 2 for work allegedly removed from the contract's scope. The contracting officer did not issue a final decision on the delay-cost requests and stated that she could not issue a contracting officer's final decision. Industrial Marine later asserted Claim 2 before the Board, describing compensation for work not completed after the government decided not to proceed with repairs.

PROCEDURAL HISTORY

Industrial Marine's September 20, 2024 correspondence was docketed as a notice of appeal on September 24, 2024. After the government initially questioned whether a proper CDA claim had been submitted, it later did not contest submission of a claim, and the Board permitted the appeal to proceed. Industrial Marine filed a complaint asserting a delay-cost claim and a separate claim for work allegedly removed from the contract's scope. The government moved to dismiss the second claim, and the Board granted the motion, lifted the stay, and directed the government to answer as to Claim 1 within 30 days.

DISPOSITION

dismissed

CASES CITED

- Tolliver Grp., Inc. v. United States, 20 F.4th 771, 775 (Fed. Cir. 2021)
- CCIE & Co., ASBCA Nos. 58355, 59008, 14-1 BCA ¶ 35,700 at 174,816
- Hanley Indus., Inc., ASBCA No. 58198, 14-1 BCA ¶ 35,500 at 174,015
- Elizabeth Constr. Co., ASBCA No. 60723, 17-1 BCA ¶ 36,839 at 179,519
- Haines v. Kerner, 404 U.S. 519, 520 (1972)
- Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995)
- SkyQuest Aviation, LLC, ASBCA No. 62586, 21-1 BCA ¶ 37,784 at 183,374
- Islands Mech. Contractor, Inc., ASBCA No. 59655, 17-1 BCA ¶ 36,721 at 178,809
- Rsch. Analysis & Maint., Inc., ASBCA No. 63259, 23-1 BCA ¶ 38,450 at 186,871
- Parwan Grp. Co., ASBCA No. 60657, 18-1 BCA ¶ 37,082 at 180,495
- Case Healthcare Sols., Inc. d/b/a Case HCS of Reston, Va., ASBCA No. 63051, 24-1 BCA ¶ 38,602 at 187,654
- JAAAT Tech. Servs., LLC, ASBCA No. 61792 et al., 21-1 BCA ¶ 37,878 at 183,943
- Keene Corp. v. United States, 508 U.S. 200, 207 (1993)
- Cobeal Consulting Grp., ASBCA No. 63815, 25-1 BCA ¶ 38,742 at 188,340-41
- Eurostyle Inc., ASBCA No. 45934, 94-1 BCA ¶ 26,458 at 131,654