GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:

A.S. McGAUGHAN CO., INC.	)	
	)	CAB No. D-926
Under Contract No. 87-0038-AA-2-0-LA	)	

For the Appellant: Charles F. Mitchell, Esquire. For the Government: Mark D. Back, Assistant Corporation Counsel.

Opinion by Administrative Judge Terry Hart Lee, with Administrative Judges Zoe Bush and Benjamin B. Terner concurring.

OPINION AND ORDER ON MOTION TO DISMISS

On August 25, 1992, A.S. McGaughan Co., Inc. ("appellant") filed an appeal from a written "presumption of denial" of its claims, issued on April 15, 1991, and received by appellant on April 22, 1991.

On October 7, 1992, the District of Columbia ("appellee" or "District") filed a motion to dismiss, on the ground that the Board lacks jurisdiction over the appeal based on the allegation that the appeal was untimely filed. Citing D.C. Code §1-1188.5(c) and (d), the District argues that the 90-day limitation for appeal to the Board runs either from the date on which a contractor receives a decision on its claim by the Director, Department of Administrative Services (DAS) or from the date on which a failure of the Director to render a decision is deemed to be a denial of the claim. Furthermore, relying on the Board's decision in Belcon, Inc., CAB No. D-829, June 14, 1990, 38 DCR 3090 (May 1991), the appellee argues that in the absence of the DAS decision, the time for appeal begins to run from the contractor's receipt of DAS' written presumption of denial, setting forth the contractor's right of appeal. As a result, the District contends that the latest date on which the appellant should have filed its appeal was July 21, 1991.

On November 9, 1992, appellant submitted its memorandum of points and authorities in opposition to the motion to dismiss. Therein, appellant contends that the District's argument is based on two incorrect premises: (1) that the time for appeal to the Board begins to run when DAS' failure to issue a decision is deemed to be a denial of the claim; and (2) that the April 15, 1991, letter to appellant, notifying it of the status of its claim, constituted a final written decision within the meaning of 27 DCMR §3806.7 (July 1988).

Appellant's argument is based in part on its interpretation of D.C. Code §§1-1189.3 through 1-1189.5 and the implementing regulations. Specifically, appellant asserts that nothing in the Procurement Practices Act of 1985, D.C. Code §§1-1181.1, et seq. (PPA) or the implementing regulations provides that the contractor's right to appeal from a "deemed denial" of its claim is mandatory or that the 90-day limitation period set forth in D.C. Code §1-1189.4(a) begins when the right to appeal from a "deemed denial" of the claim accrues.

Citing the decision of the United States Court of Appeals for the Federal Circuit in Pathman Construction Co. v. United States, 817 F.2d 1573 (Fed. Cir. 1987), and comparing the language contained in D.C. Code §1-1188.5(d) with that contained in section 6(c)(5) of the Contract Disputes Act of 1978, 41 U.S.C. §605(c)(5) (CDA), appellant contends that the "deemed denied" provision of the statute merely authorizes a contractor to file an appeal. It does not mandate such an action.

Appellant further contends that appellee's reliance on Belcon is misplaced because not only did the Board defer analysis of D.C. Code §1188.5(d), but it expressly stated that the position of the appellant (Belcon) conformed to the weight of authority.

Finally, appellant states that the April 15, 1991, letter from the Director, DAS, advising it of the status of its claim, cannot be considered a final decision which would trigger the commencement of the 90-day limitations period. This is so because it does not conform to the requirements for a final decision within 27 DCMR §3806.7, supra.

On November 17, 1992, the District submitted a reply memorandum in support of its motion to dismiss. Therein, appellee asserts that appellant mischaracterized the District's position and failed to point out the critical differences between the PPA and the CDA.

First, the District states that it did not claim that the April 15, 1991, letter from DAS to appellant constituted a final written decision. Appellee believes that a final written decision by DAS is not relevant to its argument. It reiterated its position, relying on Belcon, that the time for appeal began to run from the date of receipt of the April 15, 1991, letter which informed appellant of its right to appeal based on a "presumption of denial" of its claim.

Second, the District argues that Pathman and the decisions in accord, which interpreted the provisions of the CDA, are distinguishable from the PPA because of the intermediate level of review provided in the PPA, and also because the appeal rights are different under the CDA.

Third, the appellee argues that the language in the CDA which is comparable to that set forth in D.C. Code §1-1189.4(a) does not take into account the "deemed denied" decision scenario contemplated in D.C. Code §1-1189.4(a). In essence, the appellee claims that under the CDA, the limitation period for appeal begins to run on a "deemed denied"

decision on receipt of a written final decision by the contractor; while under the PPA, actual receipt of a written final decision by the contractor is not necessary.

Finally, the appellee asserts that Belcon adopted a "reasonableness" standard in determining the time in which the limitations period begins to run. Contends the District, while it may have been reasonable for the contractor in Belcon to have expected a final decision after six days of hearing before DAS, appellant here has shown nothing which would rebut the conclusion that it failed to assert its rights in a timely manner.

On November 20, 1992, appellant filed its Reply Memorandum in Opposition to the District's Motion to Dismiss. Therein, appellant contends that with respect to the District's assertion that a final written decision by DAS is irrelevant to its argument, the appellee actually wants the Board to give some "procedural effect" to the April 15, 1991, letter as a proper final decision. Appellant claims that nothing in the PPA or the implementing regulations permits the Board to create this type of "hybrid" situation.

Appellant also asserts that the District's attempt to distinguish the two-step appeal process under the CDA from the three-step process under the PPA is neither compelling nor relevant. Appellant declares that the interpretation of the nearly identical language of both statutes is the relevant issue.

With respect to appellee's argument concerning the introductory language of D.C. Code §1-1189.4(a), appellant contends that this language does nothing more than acknowledge a contractor's right to appeal from a "deemed denial" of its claim, and that if anything, the language indicates that an appeal from a deemed denial is not governed by the 90-day limitations period.

Finally, appellant argues that the facts of this case establish that it meets the "standard of reasonableness" enunciated in Belcon.

DECISION

Section 904(a) of the PPA, D.C. Code §1-1189.4(a), states:

> Except as provided in section 805, within 90 days from the date of receipt of a decision of the Director, the contractor may appeal the decision to the Board. (emphasis added).

Section 805(c) and (d) of the PPA, D.C. Code §1-1188.5(c) and (d), states:

> Within 90 days of receipt of a claim over $50,000, the Director shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

> Any failure by the Director to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal on the claim as otherwise provided in this title. (emphasis added).

The only decision of the Board, or our appellate tribunal, that we can find that even broaches an interpretation of sections 904(a) and 805(c) and (d) of the PPA is Belcon, Inc., supra, 38 DCR 3090. There, at pages 3092-3093, the Board stated:

> Although we defer our analysis and decision of whether §1-1188.5(d) mandates a 90-day appeal period, as DPW argues, or merely authorizes an appeal within a reasonable time, Belcon's position, the weight of argumentation lies heavily with Belcon.

The footnote following that statement says:

> Although the PPA was not enacted so as to conform to federal law and precedent, we note that §1-1188.5(d) does use identical language dealing with deemed decisions as that contained in the federal Contract Disputes Act of 1978, 41 USC [sic] §605(c)(3) and §605(c)(5). Every court decision and federal government contract law board cited by the parties interprets this language (a deemed decision will 'authorize the commencement of an appeal') as Belcon advocates. (emphasis added).

Id. at 3093.

Consequently, we will review the comparable language of the CDA and the pertinent federal decisions to assist us in rendering our decision in this matter.

Section 6(c)(1) of the CDA states:

> A contracting officer shall issue a decision on any submitted claim of $50,000 or less within sixty days from his receipt of a written request from the contractor that a decision be rendered within that period. For claims of more than $50,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable.

Section 6(c)(2) states:

> A contracting officer shall, within sixty days of receipt of a submitted certified claim over $50,000--

(A) issue a decision; or

(B) notify the contractor of the time in which a decision will be issued.

Section 6(c)(5) states:

Any failure by the contracting officer to issue a decision on a contract claim within the period required will be deemed to be a decision by the contracting officer denying the claim and will authorize the commencement of an appeal or suit on the claim as otherwise provided in this Act. . . . (emphasis added).

41 U.S.C. §605(c)(1), (2) and (5). Section 7 of the CDA provides that within 90 days from the date of receipt of the contracting officer's decision under section 6, the contractor may appeal the decision to any agency board of contract appeals. 41 U.S.C. §606. Section 10(a)(1) and (3) of the CDA provides that in lieu of an appeal of a contracting officer's decision to an agency board, the contractor may bring suit directly on the claim in the United States Claims Court, within 12 months from the date of receipt of the decision by the contractor. 41 U.S.C. §609(a)(1) and (3).

Section 903 of the PPA, D.C. Code §1-1189.3, states, in pertinent part:

The Board shall be the exclusive hearing tribunal for, and shall have jurisdiction to review and determine de novo:

* * *

(2) Any appeal by an aggrieved party from a determination by the Director which is authorized by this act.

Section 904(a) of the PPA, D.C. Code §1-1189.4(a), states:

Except as provided in section 805, within 90 days from the date of receipt of a decision of the Director, the contractor may appeal the decision to the Board. (emphasis added).

Section 805(c) and (d) states:

Within 90 days of receipt of a claim over $50,000, the Director shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

Any failure by the Director to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will

authorize the commencement of an appeal on the claim as otherwise provided in this title. (emphasis added).

D.C. Code §1-1188.5(c) and (d).

While there are certainly differences between the two statutes with respect to the obligations of the contracting officer to render a decision within a required time period and in a particular manner versus the obligations of the Director, DAS to take virtually the same actions on a contractor's claim, there is virtually no difference between the statutes concerning a contractor's rights where the statutorily-authorized official fails to issue a decision within the required period of time. Indeed, under both the CDA and PPA, where such a failure occurs, it is deemed to be a denial of the claim and will authorize commencement of an appeal.

Furthermore, under the CDA, the required time period in which the contracting officer must issue a decision (on a certified claim over $50,000) is 60 days. 41 U.S.C. §605(c)(2)(A). Under the PPA, that time period for the Director is lengthened to 90 days. D.C. Code §1-1188.5(c). Under both statutes, once the authorized official issues a written decision on a claim within the respective time limitations, the contractor has 90 days from its date of receipt of the written decision to appeal to the board of contract appeals. Compare D.C. Code §1-1189.4(a) with 41 U.S.C. §606. However, where no decision is issued (and the deciding official does not take advantage of his/her right to an extension of time)[1/] within the required time period, commencement of an appeal is authorized. Compare D.C. Code §1-1188.5(d) with 41 U.S.C. §605(c)(5).

Here, the District argues that section 1-1188.5(d) of the D.C. Code authorizes appeal where no decision is issued, but only within 90 days of the contractor's receipt of notice that no decision will be issued, relying on the language of section 1-1189.4(a). Appellant, on the other hand, argues that the 90-day time limit of section 1-1189.4(a) is applicable only to receipt of a written decision from the Director and that the language of section 1-1188.5(d) does not mandate an appeal but merely permits one, if the contractor so desires.

We conclude that the language of the PPA, its legislative history and its basic purposes show that the 90-day limitations period begins to run only after the Director, DAS has issued a written final decision on the contractor's claim. Stated another way, where the Director, DAS does not issue a decision within the 90-day statutory time period, a contractor is permitted, but not required, to commence an appeal. Pathman Construction

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[1/]By statute, a contracting officer in the federal sector is required to extend the 60-day time period by notifying the contractor of the time within which a decision will be issued on a claim over $50,000, if a decision cannot be made within that time period. 41 U.S.C. §605(c)(2)(B). However, the PPA's implementing regulations give the Director, DAS the authority (but not a mandate) to extend the time for issuing a decision, either by consent of the parties or by a determination by the Director that "compelling reasons" require additional time. 27 DCMR §3806.5(a) and (b).

Co., Inc. v. United States, 817 F.2d 1573, supra.

The plain language of D.C. Code §1-1188.5(d) provides the contractor with an option, or permission, to go forward with an appeal when the Director, DAS has not issued a timely decision. Pathman, supra, at 1577; The Vemo Company v. United States, 9 Cl. Ct. 217, 220 (1985). As stated in Pathman at 1577 and adopted herein, with respect to the Director, DAS:

> . . . The provision is designed to enable the contractor to obtain a judicial determination of its claim (or a determination by a board of contract appeals, if the contractor follows that procedure) without awaiting the decision of a contracting officer who has failed to render a decision within the specified time limits. . . .

Furthermore, nothing in the language of section 1-1188.5(d) evinces an intent on the part of the District of Columbia Council to compel a contractor to use it. Thus, the contractor's right to institute an appeal under the "deemed denied" provision is permissive, not mandatory.

In addition, if the District of Columbia Council had intended a contractor to bring an appeal within 90 days of the Director's failure to issue a timely decision, presumably it would have said so explicitly. For example, section 805(a) of the PPA, D.C. Code §1-1188.5(a) provides that all claims by a contractor shall be in writing and shall be submitted to the Director for a decision. Similarly, section 805(e)(1), D.C. Code §1-1188.5(e)(1) (concerning a contractor's inability to support its claim, attributable to misrepresentation of fact or fraud) provides that a contractor shall be liable to the District for a certain amount in costs. However, in section 805(d), D.C. Code §1-1188.5(d), the District of Columbia Council used the permissive language "will authorize."[2/]

As in Pathman, our conclusion is further buttressed by the language in D.C. Code §1-1188.5(c) and 27 DCMR §3806.7 (which requires receipt by the contractor of a final written decision of the Director within 90 days of the Director's receipt of a claim over $50,000). As the Federal Circuit so aptly pointed out:

> 'In a "deemed denied" situation, there is no "decision of the contracting officer" that the contractor receives. The concept of "receipt . . . of the decision of the contracting officer" involves the actual physical receipt of that

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[2/]To lend support to its decision in Pathman, the Federal Circuit cited the definition of the word "authorize" as set forth in Webster's Ninth New Collegiate Dictionary 117 (1985) (cited in Blake Construction Co., Inc., VABCA Nos. 2443, 2444, 87-1 BCA ¶19,523) as meaning "sanction", "empower", "justify", all in sense permissive. We have no reason to dispute this definition. See Webster's II New Riverside University Dictionary 139 (1984) ("authorize" means: [1] "To give authority or power to"; [2] "To approve or permit: SANCTION"; [3] "To be sufficient grounds for.").

decision by the contractor. . . .'

Pathman, supra, at 1577 citing Turner Construction Company v. United States, 9 Cl. Ct. 214, 216 (1985). The Federal Circuit went on to say:

> '[t]here can be no . . . actual "receipt" of a decision which does not truly exist but whose existence is only "deemed" for the purpose of authorizing suit on the undecided claims.'

In essence, "[t]he 'receipt' of the contracting officer's decision by the contractor is the critical event that starts the running of the limitations period." (emphasis added). Pathman, supra, at 1577. The legislative history of the PPA of 1985 does not specifically address the intent of the District of Columbia Council in enacting the 90-day limitation for the Director's decision on claims over $50,000. The only indication of the District of Columbia Council's intent of which we are aware is contained in the October 16, 1985, COUNCIL OF THE DISTRICT OF COLUMBIA REPORT ("REPORT") which accompanied Bill 6-191, "District of Columbia Procurement Practices Act of 1985." As part of the Background and Purpose section of the REPORT, there is a brief description of the authority of the Director. It states, in part:

> . . . The Director has the authority to render decisions on claims arising from an aggrieved contractor, thus providing an administrative mechanism for resolving disputes. Appeals of these decisions are made to the Contract Appeals Board.

Our review of this "administrative mechanism for resolving disputes", as well as the entire PPA, leads us to conclude that the disputes provisions were modeled almost exclusively on the CDA of 1978 and that the procurement regulations set forth in Title 27 of the DCMR were modeled in large measure on the Federal Acquisition Regulations (FAR), 48 C.F.R. Chapter 1.[3/]

[3/]In its reply to appellant's opposition to the District's motion to dismiss, the District argues that the PPA is distinguishable from the CDA because of the intermediate level of review found in the PPA. Presumably, the appellee is referring to a decision by the contracting officer, prior to submitting a formal claim to the Director, DAS. That distinction certainly does exist, but it is not found in the statute; and given the dearth of legislative history on this "intermediate level of review", we can surmise that the District of Columbia Council wished to emphasize administrative resolution over litigation.

Section 3803 of 27 DCMR sets forth the requirements for a contractor's presentation of its claim to the contracting officer. These requirements encompass an attempt at an informal resolution, to submission of a formal claim to the contracting officer, to further attempts at resolution, to issuance of a final decision by the contracting officer. There is no right to appeal to the Board from a final decision of the contracting officer. However, the contractor may appeal thereafter to the Director, DAS within 60 days of receipt of the contracting officer's final decision or within 10 days after the 60-day time period in which the contracting

(continued...)

Turning again to section 805(c) of the PPA, that section states:

> Within 90 days of receipt of a claim over $50,000, the Director shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

In comparison, section 6(a)(2) of the CDA provides that for a certified claim over $50,000, the contracting officer has within 60 days of receipt of a claim to issue a decision (or to notify the contractor when such a decision would be issued). Section 6(a)(4) requires the contracting officer to issue a decision within a reasonable time during this 60-day period, "taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor."[4/] Thus, the language of section 805(c) of the PPA is almost verbatim to the language in sections 6(a)(2) and 6(a)(4) of the CDA; and outside of the longer period of time for issuance of the Director's decision under the PPA versus that given to the contracting officer under the CDA, there is nothing in either statute to our knowledge that requires the contractor to appeal after the time limit for rendering a decision has expired. Furthermore, we can find nothing in the legislative history that would lead us to conclude that the 90-day limitation is automatically extended (or relaxed) simply because a case may be large or complex or both.[5/]

[3/](...continued)
officer fails to issue a written decision on the formal claim. Id. §§3803.5 and 3804.1.

Because we are dealing here with the right to appeal to the Board, we fail to see the government's point concerning the significance of this level of review.

It is interesting to note that under our procurement regulations, the contracting officer has 60 days in which to issue a decision on a contractor's formal claim, with no requirement or authority to extend that 60-day time period. This is the same period of time for issuance of a contracting officer's final decision under the CDA.

[4/]See R.G. Robbins Co., Inc., ASBCA No. 26521, 82-1 BCA ¶15,643 at 77,273-77,274 (wherein the ASBCA stated that the "reasonable time" within which the contracting officer must render a decision is more or less within the 60-day time period, depending on the facts and circumstances.

[5/]The District asks us to apply the "reasonableness standard" enunciated in Belcon to the facts of this case, arguing that while it may have been reasonable for the contractor in Belcon to have expected a DAS final decision after six days of hearing, appellant here has shown nothing to rebut the conclusion that it failed to assert its rights in a timely manner.

Simply stated, we cannot make sense of this argument. Apparently, Belcon adopted a "reasonableness standard" as a "substitute standard" for the period beyond the 90-day time limitation for DAS to issue a final decision, where a case may be sizeable or complex and cannot be decided within the statutory time frame. (continued...)

We must assume that the District of Columbia Council purposely adopted the language of the CDA and was well aware of the intent and purpose of the CDA and FAR in developing our statute and regulations. Therefore, by reading the statutes in pari materia, and in view of the purposes of both statutes and the glaring similarities between them, it is most unlikely that the District of Columbia Council intended that the 90-day period to file an appeal to the Board begins on the "deemed denial" of a claim, ". . . which by definition the contracting officer never furnished to the contractor and which the contractor never received." Pathman, supra, at 1578.

Moreover, one of the major purposes of the PPA is "[t]o insure the fair and equitable treatment of all persons who deal with the procurement system of the District government." D.C. Code §1-1181.1(a)(7). One way of doing so was the establishment of the administrative mechanism for the Director to resolve contract disputes. In our opinion, the position espoused by the District herein would impede, rather than promote, that purpose. Application of the government's position would force a contractor to appeal to the Board before it had an adequate chance to resolve the factual and legal issues with the agency involved. In this regard, the PPA expressly recognizes that many claims submitted to the Director are sizeable and complex and require detailed and protracted analysis before the parties can negotiate a settlement. Further, initial submissions may often be inadequate and more information is often required before a claim can be resolved.

Unlike the CDA, however, the PPA does not require the Director to notify the contractor if he/she cannot make a decision within 90 days. Neither does the applicable provision of the regulations. 27 DCMR §3806.5. In fact, the regulations provide that the Director may obtain consent of the parties to extend the statutory 90-day time limit, or he/she may determine in writing (with notice to the contractor) that "compelling reasons" necessitate a longer period. Nevertheless, if either course of action is taken, and a written notice of extension is issued, a claim is presumed denied ". . . if a decision has not been issued within sixty (60) calendar days after the expiration of the applicable statutory deadline under §3806.4."[6/] Id.

Thus, under the PPA and implementing regulations, a contractor has three options: (1) it can wait 90 days for a Director's decision and then appeal to the Board if no decision is received; (2) it can wait an additional 60 days beyond the 90-day period, assuming that

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[5/](...continued)
Belcon, supra, at 3092. However, Belcon does not at any point indicate the Board's consideration of applicability of the regulations which permit the Director to extend the period for issuance of a decision, by issuing a written notice of extension based on either consent of the parties or by a written determination of "compelling reasons". 27 DCMR §3806.5. This failure to recognize the Director's regulatory authority to extend the time period by written notice bodes ill for the value of the decision as precedent.

[6/]Section 3806.4 of 27 DCMR refers the reader to section 805 of the PPA, which sets a 60-day time limit for a decision on claims under $50,000 and a 90-day time limit for a decision on claims over $50,000.

the Director follows 27 DCMR §3806.5 and then appeal from a "presumed denial"; or (3) it can wait for a written Director's decision, no matter how long it may take.[7/] All that is necessary to start the 90-day time period running is the Director's issuance of a written final decision on a claim. Absent such a decision, the contractor's options come into play.

We agree with the Federal Circuit in Pathman that "[t]he government cannot take advantage of its own failure to perform its statutory obligations." Id. at 1579. While the record does not reflect when appellant herein submitted its claim to the Director, it was at least 90 days prior to the April 15, 1991, letter. Furthermore, that letter is clear in two regards: (1) a final decision was delayed because of the resignation of the Claims Officer; and (2) the notice of the right to appeal was expressly permissive, to wit: . . . you may file an appeal of the Contracting Officer's decision with the Contract Appeals Board based on a presumption of denial of your claim." (emphasis added). Had the appeal right been mandatory, the Director would certainly have so stated.

In its motion to dismiss, the District, placing reliance on Belcon, argues that in the absence of a Director's decision, the time for appeal begins to run from the contractor's receipt of DAS' written presumption of denial of a claim. This argument necessarily implies two things: (1) that the Director is required to notify the contractor in writing of a presumption of denial; and (2) that the Director's notice constitutes a final decision, appealable to the Board pursuant to D.C. Code §1-1189.4(a). Neither implication has merit.[8/]

First, neither the statute nor the regulations requires the Director to notify the contractor, in writing or otherwise, of a presumption of denial of its claim. Indeed, the meaning of the word "presumption" denotes "acceptance" or "belief". In legal parlance, it means: "An inference as to the truth of an allegation or proposition based on probable reasoning in the absence of or prior to actual proof or disproof." (emphasis added). Webster's II New Riverside University Dictionary 982 (1984). Consequently, a "presumption of denial" stands on its own; notice of such is incongruous with the word's accepted meaning.[9/]

[7/]Nowhere in the PPA is the Director, DAS given the option of deciding not to issue a decision on a claim.

[8/]In its reply to the appellant's opposition to the District's motion to dismiss, the appellee contends that it did not claim (in the motion to dismiss) that the April 15, 1991, letter constituted a final written decision of the Director, DAS. Appellee went on to declare that a final written decision by DAS is not relevant to its argument. If the District actually believes its own argument, then the April 15, 1991, letter is only that--a letter advising appellant of the status of its claim--and nothing more. In this regard, the support for the District's motion dissolves.

[9/]Essentially, under the statute and regulations, there is no such thing as a "deemed denied decision." This is so because where a presumption of a denial occurs, there is no decision on a claim, i.e., there is no conclusion reached or judgment made on a matter under consideration.

Second, a "presumption of denial" of a claim simply cannot, under the applicable regulations, constitute the Director's final written decision. 27 DCMR §3806.7. The regulations set out six requirements for the Director's decision. Here, the April 15, 1991, letter to appellant, advising it of the status of the claim, simply does not comply with the regulatory requirements. Where that is the case, the running of the limitations period is not triggered. Vepco, Inc., ASBCA No. 26993, 82-2 BCA ¶15,824; R.G. Robbins Co., Inc., ASBCA No. 26521, 82-1 BCA ¶15,643. See Pathman, supra, at 1578.

Therefore, based upon all of the facts and circumstances and the authorities cited herein, the District's motion to dismiss is DENIED; and it is hereby

ORDERED, that in accordance with Rule 203, the District file its Appeal File, within 30 days of receipt of this Order; and it is

FURTHER ORDERED, that in accordance with Rule 204, the appellant shall file its complaint with the Board, within 30 days of receipt of this Order; and it is

FURTHER ORDERED, that in accordance with Rule 203.3, the appellant supplement the District's Appeal File, if necessary; and it is

FURTHER ORDERED, that in accordance with Rule 205, the District file its Answer to the appellant's complaint.

DATE: December 10, 1992

TERRY HART LEE
Administrative Judge

CONCUR:

ZOE BUSH
Chief Administrative Judge

BENJAMIN B. TERNER
Administrative Judge

Copies to: Charles F. Mitchell, Esquire
Dunnells, Duval & Porter
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3202

Mark D. Back, Assistant
Corporation Counsel
Public Works Division
2000 14th Street, N.W., 6th Fl.
Washington, DC 20009