

Memorandum

September 16, 1983

B-210316-O.M.

TO : Associate Director, AFMD/Claims - David E. Bryant

FROM : Acting General Counsel - *Harry R. Van Cleve*
Harry R. Van CleveSUBJECT: Request from Treasury for offset against award
rendered to PBN, Inc. - B-210316-O.M.

Please find attached the file received from Kenneth Gubin of the Bureau of the Mint, Treasury Department, concerning a claim against PBN Plastics Corporation (PBN). It appears that the General Services Administration Board of Contract Appeals (GSBCA) rendered a decision in favor of PBN in the amount of \$116,000 against the Bureau of the Mint in a dispute involving a Bureau of the Mint contract (No. TM-SF-79-978). That contract had been terminated by the Mint for default. The award by GSBCA to PBN represents amounts due it for services rendered to the Mint up to the point of termination.

At the time of the contract's termination, the Mint asserted a claim in the amount of \$371,159.14 against PBN for excess procurement costs. PBN never appealed that determination. We understand that the Mint attempted to assert a counterclaim before the GSBCA against PBN to recover those excess procurement costs. However, the GSBCA refused to take jurisdiction over the counterclaim and, instead, noted in its decision that the award to PBN was granted subject to the Government's reservation of its right to set off the excess procurement costs. PBN Plastics Corporation, GSBCA No. 6014-TD, October 21, 1982. Although PBN's assignee (PBN is now defunct) has apparently not yet requested payment of the GSBCA award, the Mint sent the matter to us for setoff, pursuant to 4 C.F.R. § 102.3(d), and section 3728 of revised title 31 of the U.S. Code (formerly 31 U.S.C. § 227).

Section 102.3(d) of 4 C.F.R. provides that "collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with [31 U.S.C. § 3728.]" Under 31 U.S.C. § 3728, GAO is authorized to collect debts owed to the United States by means of setoff against "judgments" rendered against the United States and presented to the Comptroller General for payment. We think 31 U.S.C. § 3728 should apply as well to monetary awards by boards of contract appeals.

This opinion is based upon our interpretation of the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq., which governs the authority and operations of the boards. Section 11 of that Act provides that boards of contract appeals may:

"[A]dminister oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board." 41 U.S.C. § 610.

In section 8, Congress also specified that the boards of contract appeals are authorized to "grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims." 41 U.S.C. § 607(d). Finally, and most significantly, section 13 of the Contract Disputes Act, 41 U.S.C. § 612, provides that monetary awards by boards of contract appeals are payable from the permanent judgment appropriation (31 U.S.C. § 1304), subject to reimbursement by the agency whose funds were used for the contract.

Read together, these sections strongly suggest that Congress generally intended that monetary awards by boards of contract appeals be treated in a manner similar to the treatment accorded to court judgments. For this reason, we conclude that awards rendered by boards of contract appeals may be subjected to offset pursuant to 31 U.S.C. § 3728 in the same manner as are judgments of the courts. Compare B-135984, May 21, 1976 (section 3728 applies to administrative awards under the Federal Torts Claims Act).

Because PBN's assignee (Walter E. Heller & Company, Southeast, Inc.) has not yet requested payment of the award made by the GSBICA, no action need be taken on this matter at this time. However, should a request for payment be received in the future, it is also our opinion that, by failing to appeal the Mint's original claim for excess procurement costs, PBN and its assignee have agreed that the claim is valid and have, in effect, already consented to an offset under section 3728 against the GSBICA award to PBN.

Should you have any questions about this matter, please contact Neill Martin-Rolsky at 275-5544..

Attachment

SET-OFF

Boards of contract appeals awards