JUANITA CRUMP-DONAHUE,	)	**AGBCA No. 2004-110-1**
	)	
Appellant	)	
	)	
Representing the Appellant:	)	
	)	
Juanita Crump-Donahue, pro se	)	
1010 South Hughes Street	)	
Little Rock, Arkansas 72204	)	
	)	
Representing the Government:	)	
	)	
Byron W. Waters, Esquire	)	
Office of the General Counsel	)	
U.S. Department of Agriculture	)	
Room 3311B, South Building	)	
1400 Independence Avenue, S.W.	)	
Washington, D.C. 20250	)	

RULING OF THE BOARD OF CONTRACT APPEALS

March 4, 2004

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK.

On December 12, 2003, the Board received from Juanita Crump-Donahue of Little Rock, Arkansas (Appellant or Ms. Crump-Donahue), two letters, one of which had several pages of attachments. The first was an undated letter to the Board with the subject lines, "ATTACHED APPEAL COMPLAINT" and "question of the appropriateness of filing appeal under the Contract Disputes Act." Therein, Appellant expressed her lack of certainty that the dispute was a contract dispute. She requested permission to change her appeal to a "non-contract" appeal, if certain information which she had requested (from an unidentified source or sources) deemed it appropriate. The second document was identified as a "COMPLAINT" submitted, pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 603-611, as amended. This complaint referenced a complaint and correspondence with the U. S. Department of Agriculture (USDA), Office of Inspector General (OIG) and Office of Civil Rights (OCR), as well as litigation which had been dismissed by the Court of Federal Claims "because USDA Office of Inspector General had not responded to my requests for a determination and I had not exhausted my interagency options." Appellant seeks a 250 million

dollar tax free settlement.

By letter dated December 17, 2003, the Board informed the parties of having docketed the matter, stating that the question of jurisdiction would be addressed before any further proceedings were scheduled. Between that date and January 6, 2004, the Appellant sent numerous additional faxes to the Board. Some of these documents pertained to issues other than the jurisdictional question which the Board intended to address first. In addition, Government counsel entered an appearance and indicated the intention to file a dispositive motion. By letter dated January 6, 2004, the Board set a schedule for the Government to file the motion and Appellant to respond.

The Board now has before it the following documents presenting argument on the question of jurisdiction: (I) Appellant's December 18, 2003 letter, "(1) Requesting Permission to proceed Appeal Under the Contract Disputes Act (CDA) (41 U.S.C. 601-613) and (2) Present Argument in support of Board's Jurisdiction" with attachments; (II) Appellant's January 5, 2004 letter, "Legal Argument Justifying the Board of Contract Appeals' Jurisdiction over Promise to Pay Claim AGBCA No. 2004-110-1 (Hotline Complaint [sic] PS-0300-113)"; (III) Appellant's undated "Additional [sic] to Jurisdictional Argument dated December 18, 2003"; (IV) Appellant's January 14, 2004 letter, "USDA Rule 6 Board of Contract Appeals, AGBCA No. 2004-110-1 (request Board to consider and determine appeal from contracting officer's decision relating to an oral or quasi-contract Appellant and Office of Inspector General entered into on February 22 and 23, 1999)"; (V) Government Motion to Dismiss for Lack of Jurisdiction dated February 20, 2004 (Government motion); and (VI) Appellant's Motion That Government's Motion to Dismiss Appellant's Appeal for Lack of Jurisdiction be Denied dated February 25, 2004 (Appellant's motion).

Findings of Fact

The facts underlying this matter are that in 1999, Appellant contacted the USDA OIG by e-mail to provide information on alleged wrongdoing involving Farm Service Agency (FSA) personnel and the lessors of a farm in Arkansas. The alleged scheme was that the lessors had forged the names of at least two of the co-owners of the farm in order to deprive them of FSA program payments on the farm. Appellant's mother and aunts were among the co-owners. After some telephone and fax communications between Appellant and OIG personnel, she sent a February 23, 1999 letter, which is at the heart of her jurisdictional arguments. The letter is addressed to OIG Hotline - Attention Operator 03. Therein, she made the following statement identified by her as a "Proposal":

> If OIG Civil Rights Office will give me enough of a settlement to purchase a home in a security focused neighborhood, along with enough to live on for retirement, I will give OIG permission to use my name in any manner they choose for the good of the case. I have worked very hard on this investigation. I have been able to do so secretly because of my medical condition. Basically, I am a loner, and I am homebound most of the time. I feel that because of my investigative work, OIG, the FBI, and USDA *Civil Rights* have been saved a lot of time and expense trying to make the connections or make sense of this case. Due to people's fear, the information I have submitted could never have surfaced. I am sure that we are

> saving the government financially, as well as in manpower.

She then provided the following "Conclusion":

> If you are interested and think this is a fair offer, please call, fax, or write me, I am interested in whatever decision you make. This proposed offer I make is separate from the compensation that is just for the Woodard Sister's [sic]. Although I would like their settlement to be "tax free" too. They are senior citizens who have suffered greatly because of these crimes.
>
> I appreciate your concern and your asking my permission to use my name in advance.

In several of Appellant's filings listed above, she has admitted that she did not receive a response to this proposal. Her claim of jurisdiction is based on the premise that this offer was accepted by unspecified conduct of OIG.

She also claims that a February 12, 2001 letter from OIG to the USDA OCR served as a CDA certification of her claim. The OIG letter forwarded a letter and documentation from Ms. Crump-Donahue to the OCR "for whatever action you believe to be appropriate," concluding that no response to OIG was necessary. The letter and documentation was described as concerning Ms. Crump-Donahue's civil rights complaint. The subject line of the letter named individuals in Lonoke County, Arkansas. The context of the letter makes it clear that the complainant is Ms. Crump-Donahue. The final sentence reads: "The typed complaint should not be provided to the subject; however, you may discuss with the subject all relevant issues to completely resolve the complaint." Ms. Crump-Donahue has interpreted the letter to be making reference to resolution of her claim that her February 23, 1999 proposal had been accepted and a contract entered into. Her February 25, 2004 Motion provides the following interpretation of the above-quoted sentence:

> In a letter dated February 12, 2001, Special Agent-in-Charge Brian L. Haaser, Assistant Inspector General, Program Investigation Division determined Appellant's allegations were true and instructed the Office of Civil rights to "completely resolve the complaint."

The Government's Motion to Dismiss

The Government's Motion to Dismiss for Lack of Jurisdiction (1) describes the nature of the proceeding before the Board; (2) provides a detailed description of the prior proceeding before the Court of Federal Claims; and (3) argues that the Board lacks jurisdiction either on a theory of issue preclusion, or in the alternative, because Appellant has not, at the Board, alleged facts sufficient to show the existence of a contract. The motion bases its issue preclusion argument on the ground that Appellant had been afforded the opportunity at the court to show the existence of a contract for CDA purposes, and whether a Contracting Officer's (CO) decision had been issued and had failed to do so. The Government asserts that judicial economy would dictate that she not be granted another

opportunity. Regarding its argument that Appellant has not alleged facts sufficient to overcome a challenge to Board jurisdiction, the Government contends that Appellant's evidence rises no higher than to demonstrate her interest in entering into a contract with OIG as expressed in her February 23, 1999 letter, but that she has shown no acceptance of her offer by anyone with authority to bind the Government.

Appellant's Arguments in Opposition to Dismissal

Appellant's arguments are spread over the submissions listed above. Her February 25, 2004 opposition will be discussed first and then, as necessary, arguments contained in the earlier filings. In the February 25 document, Appellant provides background in which she contends she entered into a "relationship of trust" with OIG which was "finalized on February 24, 1999, when OIG began using Appellant's information." She also alleges that on the same date, February 24, 1999, USDA OIG cut off all communications with her. Appellant alleges that she then made contact weekly concerning her expected compensation, receiving little or no response. By the February 12, 2001 letter quoted above, OIG referred the matter to OCR. In her Motion, Appellant repeats her interpretation of the above quoted language as being a determination that her allegations were true and an instruction to OCR to "completely resolve the complaint." From Appellant's viewpoint, OIG and OCR were from then on mired in a dispute over which organization should pay her. Appellant was apparently filing Freedom of Information Act (FOIA) requests during this period. By letter dated January 10, 2002, the Director of the USDA OIG Information Management Division responded to six FOIA requests providing a redacted Report of Investigation and explaining that the FOIA does not require response to questions. The letter also stated that OIG had entered into no contract regarding this and that while Appellant was referring to the matter as confidential, her actions in sending letters about it to numerous agencies in several governmental departments belied that statement. Appellant's Motion asserts that this letter led her to the conclusion that all USDA administrative remedies had been exhausted, and she therefore filed suit in the U. S. Court of Federal Claims. On the Government's Motion, the suit was dismissed without prejudice for want of jurisdiction. Appellant acknowledges that the Judgment entered September 16, 2003 made reference to the Rules of the Court of Federal Claims (RCFC) 58.1 regarding appeal.[1] However, the submission then states that appeal was made to the Board pursuant to the Board's rules.

[1] RCFC 58.1 provides that review of a decision shall be obtained by filing with the clerk an original and the requisite number of copies of a Notice of Appeal within the time and manner prescribed for appeal to United States Courts of Appeals as provided in Rule 3 of the Federal Rules of Appellate Procedure.

Appellant's Motion then provides reference to and a discussion of the legal standard for review of a motion for summary judgment.[2] Following that, it outlines five issues. It is unnecessary for our purposes here to restate those issues verbatim. They are repetitious and can be summarized as presenting three issues: (1) whether the filing at the court bars an appeal to the Board; (2) whether a quasi-contract exists between Appellant and OIG which is legally binding against the Government under the CDA; and (3) whether the Board has jurisdiction to decide implied-in-law quasi-contracts. In the discussion portion of Appellant's motion, she argues that Appellant provided service to the Government resulting in a quasi or implied-in-law contract. Appellant defends against the Government's issue preclusion argument on the ground that the case before the Court of Federal Claims pertained to an implied-in-fact theory and Appellant bases her case here on the existence of an implied-in-law contract. Finally, Appellant argues that the Board has jurisdiction to adjudicate implied-in-law contracts.

Appellant's earlier filings contain an assortment of other arguments. She cites 41 U.S.C. § 117 as authority for the enforcement of various defective contracts. She relies on the general grant of contracting authority to the Inspector General 7 CFR 2610.1. She claims that the February 12, 2001 letter from OIG to OCR amounts to a CDA certification of her claim. She cites a number of sections of the CDA as support for various of her assertions.

DISCUSSION

Appellant alleges that we have jurisdiction to adjudicate her claim pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, as amended. The burden is upon Appellant to establish jurisdiction. Do-Well Machine Shop v. United States, 870 F.2d 637, 639 (Fed. Cir. 1989). The CDA grants the Board jurisdiction to decide appeals from decisions by CO's "relative to a contract." 41 U.S.C. § 607(d). Appellant has alleged that she had an implied-in-law contract with the OIG. Indeed, Appellant's factual assertions, if proven, would result in a showing that she provided service, the Government received benefits and therefore that the Government should pay a reasonable price for the benefit received. This argument is applicable to an implied-in-law contract. The problem with it is that our jurisdiction, which under the CDA is concurrent with that of the Court of Federal Claims, extends only to actual contracts, express or implied-in-fact. Contracts based on equitable considerations and thus, implied-in-law, fall outside that jurisdiction. United States v. Amdahl Corp., 786 F.2d 378, 393 (Fed. Cir. 1986); Chavez v. United States, 15 Cl.Ct. 535 (1988); Farmers Grain of Esmond, AGBCA No. 88-192-1, 91-1 BCA ¶ 23,732; Walter Gould, AGBCA No. 88-229-

[2] On page 6 of Appellant's submission, she refers to the Government Motion to Dismiss for Lack of Jurisdiction as the "Government's Motion to Dismiss or a Summary Judgment for Lack of Jurisdiction."

1, 89-3 BCA ¶ 22,131; Le Prix Electrical Distributors, Ltd., AGBCA No. 81-218-1, 82-1 BCA ¶ 15,653.

Appellant does not argue here the existence of an express contract or an implied-in-fact contract. If she had, however, we would decline to address it as the decision of the Court of Federal Claims has already considered her failure to plead the existence of either. Juanita M. Crump-Donahue, CFC No. 03-192C (Sept. 16, 2003). Under the principle of res judicata, known as issue preclusion, issues which are actually and necessarily determined by a court of competent jurisdiction are normally conclusive in a subsequent suit involving the parties to the prior litigation. International Order of Job's Daughters v. Lindeburg & Co., 727 F.2d 1087, 1090 (Fed. Cir. 1984); Mother's Restaurant, Inc. v. Mama's Pizza, Inc., 723 F.2d 1566, 1569 (Fed. Cir. 1983); Restatement (Second) of Judgments § 27 (1980). A court generally will invoke issue preclusion if (1) the issue previously adjudicated is identical with that now presented, (2) the issue was "actually litigated" in the prior case, (3) the determination of that issue was necessary to the earlier judgment, and (4) the party being precluded was fully represented in the prior action. Thomas v. GSA, 794 F.2d 661, 664 (Fed. Cir. 1986); Mother's Restaurant, Inc., 723 F.2d at 1569; Commonwealth Aluminum Corp. v. United States, 19 Cl.Ct. 300 (1990); Cities of Burbank, Glendale and Pasadena, California, EBCA No. C-303364, et al., 2004 WL 171534 (E.B.C.A.). Those conditions were satisfied in the action before the Court of Federal Claims. The court considered Appellant's letter of February 23, 1999, which she proffered as evidence of a contract. The court found that, at best, the letter of February 23, 1999 to the OIG hotline only hinted at the possibility of an implied contract. The court found that, as plaintiff there, Ms. Crump-Donahue had failed to make allegations satisfying any of the requirements necessary to plead an implied-in-fact contract with the United States, i.e., mutuality of intent, consideration, and lack of ambiguity in offer and acceptance. (Citations omitted.) Before the Board, she has done even less to prove an express or an implied-in-fact contract as she has asserted the existence of an implied-in-law contract over which we lack jurisdiction.

We have considered and reject Appellant's other arguments. Her reliance on 41 U.S.C. § 117 is misplaced; on its face that statute applies to the termination of war contracts. The general contracting authority of the Inspector General set out at 7 CFR 2610.1 is of no avail without allegations that an authorized party entered into a contract supported by mutuality and consideration. Finally, her assertion that the February 12, 2001 referral from OIG to OCR constitutes a CDA certification reveals her misunderstanding of the meaning and purpose of CDA certification by which a contractor certifies his or her claim; a CDA certification is not an endorsement of validity by a government official.

RULING

The Board grants the Government's motion. This matter is dismissed for lack of jurisdiction.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
March 4, 2004