



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

ORDER DIRECTING RESPONDENT TO FILE COMPLAINT:
February 24, 2016

CBCA 5188

RALPH MUHAMMAD,

Appellant,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Ralph Muhammad, pro se, Centreville, IL.

William D. Robinson and Sarah K. Bloom, Commercial Law Branch, Federal Bureau of Prisons, Department of Justice, Washington, DC, counsel for Respondent.

LESTER, Board Judge.

ORDER

On February 10, 2016, the Board docketed an appeal from a contracting officer's decision dated November 4, 2015. In her decision, the contracting officer terminated for cause a contract, contract number DJBP04090000024, through which the appellant, Ralph Muhammad, had provided chaplaincy services at the United States Penitentiary in Marion, Illinois. The notice of termination indicated that "[t]he reason for the termination . . . is due to a violation of security," without further explanation. In his notice of appeal, Mr.

Muhammad represents that “[n]o one from the [agency] ever detailed to [him] the reason for the termination.”

Board Rule 6(b) contemplates that, after a contractor appeals a contracting officer’s decision to the Board, the contractor will file a complaint, “setting forth its claim or claims in simple, concise, and direct terms,” within thirty calendar days after the appeal is docketed. 48 CFR 6101.6(b) (2014). A decision terminating for cause a contract, however, is a government claim, not a contractor claim. *Malone v. United States*, 849 F.2d 1441, 1443 (Fed. Cir. 1988); *Lisbon Contractors, Inc. v. United States*, 828 F.2d 759, 764-65 (Fed. Cir. 1987); *Aurora, LLC v. Department of State*, CBCA 2872, 16-1 BCA ¶ 36,198, at 176,648 (2015). It is “[o]nly because of the unique procedural requirements of the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109 (2012), that all appeals to the Board [must] be initiated by the contractor,” even if the appeal is from a government claim and even if the Government, rather than the contractor, bears the ultimate burden of proof. *JR Services, LLC v. Department of Veterans Affairs*, CBCA 4826, slip op. at 6 (Feb. 3, 2016) (citing 41 U.S.C. § 7104). Even though Board Rule 6(b) only specifically references the contractor’s need to set forth “its claim” in a complaint, we typically anticipate that a contractor appealing from a decision on a government claim will “file[] a complaint with enough information about the government claim to form a sufficient predicate for the government’s answer and allow for adequate framing of the issues.” *Id.* (quoting *Highland Al Hujaz Co.*, ASBCA 59746, et al., 15-1 BCA ¶ 36,041, at 176,032).

Nevertheless, “the central purpose of the complaint is to provide the [responding party],” as well as the tribunal, ““fair notice of what the . . . claim is and the grounds upon which it rests.”” *Rodriguez v. F&B Solutions, LLC*, 20 F. Supp. 3d 545, 547 (E.D. Va. 2014) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957))); see *Self Directed Placement Corp. v. Control Data Corp.*, 908 F.2d 462, 466 (9th Cir. 1990) (complaint must “provide defendant and the court with a fair idea of the basis of the complaint and the legal grounds claimed for recovery”); *Schoolfield v. Department of Correction*, No. 91-CIV-1691, 1994 WL 119740, at *2 (S.D.N.Y. Apr. 6, 1994) (“The complaint must disclose adequate information . . . to allow the court and the defendants to understand the charges and underlying theories of law”); Fleming James, Jr., *The Objective and Function of the Complaint: Common Law, Codes, Federal Rules*, 14 Vand. L. Rev. 899, 920 (1961) (objective in requiring the submission of a complaint is “to give the defendant and the court accurate factual notice”). To provide that “fair notice,” the pleader must “disclose adequate information” in the complaint “regarding the basis for the claim for relief” and not merely “a bare averment that he wants relief and is entitled to it.” 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1202, at 94-95 (3d ed. 2004); see *Rodriguez*, 20 F. Supp. 3d at 547 (“legal allegations [in the complaint] must be supported by some factual basis sufficient to allow the [other party]

to prepare a fair response”). The Federal Rules of Civil Procedure, to which we can look for assistance in interpreting our own rules, *see Yates-Desbuild Joint Venture v. Department of State*, CBCA 3350, et al., 15-1 BCA ¶ 36,027, at 175,984 n.2, do not require the complaint to set out in detail *all* facts upon which the claim is based, but, “[w]ithout *some* factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only ‘fair notice’ of the nature of the claim, but also ‘grounds’ on which the claim rests.” *Twombly*, 550 U.S. at 555 n.3 (emphasis added).

To ensure that the tribunal has sufficient notice of the claim and its grounds, and as our rules permit, the Board may, “[i]n appropriate cases, . . . exercise its discretion to direct the government to file the complaint, if doing so will facilitate efficient resolution of the appeal.” *JR Services*, slip op. at 6 (quoting *BAE Systems Land & Armaments Inc.*, ASBCA 59374, 15-1 BCA ¶ 35,817, at 175,146 (2014)); *see Northrop Grumman Corp.*, DOT BCA 4041, 99-1 BCA ¶ 30,191, at 149,413 (1998) (“resolution of this appeal would be facilitated if the Government were to file the initial pleading setting forth the precise basis of its claim”); 48 CFR 6101.1(d) (permitting the Board to “make such rulings and issue such orders and directions as are necessary to secure the just, informal, expeditious, and inexpensive resolution of every case before the Board”); *id.* 6101.6(a) (requiring appellant to file complaint “[e]xcept as the Board may otherwise order”). “Such situations can arise if relevant information concerning the basis for the claim resides with the government, and not the appellant.” *JR Services*, slip op. at 6 (quoting *BAE Systems*, 15-1 BCA at 175,146); *see Beechcraft Defense Co.*, ASBCA 59173, 14-1 BCA ¶ 35,592, at 174,395 (“we conclude that the proceedings would be facilitated by the government setting forth in an initial pleading, the facts and rationale for its [contracting officer’s] decision” asserting a government claim “and the position the government is taking before this Board”).

“[T]he nature of a default termination” typically “lends itself to that type of switch in responsibility.” *JR Services*, slip op. at 6; *see RO.VI.B Srl*, ASBCA 56198, 09-1 BCA ¶ 34,068, at 168,456 (identifying prior board order directing “the government to file the initial pleading since default termination is considered a government claim”). It is the Government that will generally be in the best position to identify the factual basis upon which the contracting officer terminated the contract, as well as any other basis not identified in the contracting officer’s decision upon which the Government may rely before the Board to support the default termination. *See JR Services*, slip op. at 6-7. Accordingly, it will often be more efficient from a procedural standpoint, as well as more useful to the Board, to have the Government rather than the contractor file the initial complaint in an appeal from a default termination.

That seems particularly true in this appeal. Mr. Muhammad has indicated in his notice of appeal that the agency never detailed to him the reason for the termination of his contract.

The only thing that the contracting officer states in her decision terminating the contract is that there was “a violation of security,” without identifying the specific violation that allegedly occurred or the factual circumstances supporting it. Although the record currently before the Board is extremely sparse, the agency seems in a far better position to provide “fair notice” of the basis of and grounds supporting the termination decision than is Mr. Muhammad. Further, Mr. Muhammad is proceeding pro se in this appeal. We generally hold pro se appellants “to less stringent standards than formal pleadings prepared by an attorney,” *House of Joy Transitional Programs v. Social Security Administration*, CBCA 2535, 12-1 BCA ¶ 34,991, at 171,975, and can expect that many pro se appellants, lacking expertise in drafting pleadings, will submit complaints that may be “inartfully pleaded.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Because the goal in requiring the submission of a complaint is to ensure that both the parties and the Board have fair notice of the grounds for the termination decision at issue, we exercise our discretion, *sua sponte*, to have the agency submit the complaint in this appeal. See *LGT Corp.*, ASBCA 44066, 93-3 BCA ¶ 26,184, at 130,341 (*sua sponte* ordering agency to file complaint).

For the foregoing reasons, we direct the Government to file the complaint in this appeal. The Board will issue a schedule for that submission and the appellant’s response by separate order.

HAROLD D. LESTER, JR.
Board Judge