

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**PHI APPLIED PHYSICAL SCIENCES, INC.,**  
*Appellant,*

v.

**JOHN MCHUGH, SECRETARY OF THE ARMY,**  
*Appellee.*

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2013-1627

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Appeal from the Armed Services Board of Contract Appeals in No. 56581, Administrative Judge Robert T. Peacock.

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**ON MOTION**

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Before RADER, *Chief Judge*, LOURIE and TARANTO, *Circuit Judges.*

RADER, *Chief Judge.*

**O R D E R**

The Secretary of the Army (“Secretary”) moves to dismiss this appeal as untimely. PHI Applied Physical Sciences, Inc. (“PHI”) has not responded.

On April 30, 2013, the Armed Services Board of Contract Appeals (“ASBCA”) issued its underlying decision in PHI’s case. PHI received ASBCA’s decision on May 6, 2013. PHI’s notice of appeal was received by this court on September 6, 2013; 123 days after PHI received the decision.

A contractor must file a notice of appeal from an ASBCA decision within 120 days after receipt of the decision. *See* 41 U.S.C. § 7107(a)(1)(A). This filing period is mandatory and jurisdictional. *See Placeway Const. Corp. v. United States*, 713 F.2d 726, 728 (Fed. Cir. 1983) (“We have no authority to waive this statutorily imposed period and thus we have no jurisdiction to hear this appeal.”). Because PHI’s appeal was not filed within 120 days, we must dismiss.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted. The appeal is dismissed.
- (2) Each side shall bear its own costs.

FOR THE COURT

/s/ Daniel E. O’Toole  
Daniel E. O’Toole  
Clerk of Court

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ISSUED AS A MANDATE: December 11, 2013