



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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MOTION FOR RECONSIDERATION DENIED: June 3, 2014

CBCA 3359-R

WESTERN STATES FEDERAL CONTRACTING, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Robert J. Berens and Adam D. Melton of Langley, LLP, Phoenix, AZ, counsel for Appellant.

Stephen F. Butea, Office of Regional Counsel, Department of Veterans Affairs, Clarksburg, WV, counsel for Respondent.

Before Board Judges **McCANN**, **SHERIDAN**, and **KULLBERG**.

**SHERIDAN**, Board Judge.

This matter is before the Civilian Board of Contract Appeals (CBCA) on a motion for reconsideration, alteration, or amendment of dismissal filed by appellant, Western States Federal Contracting, LLC (Western States). Western States is a Delaware limited liability company (LLC), doing business as a foreign LLC in the state of Arizona. On February 11, 2014, we found that we lacked jurisdiction to entertain this appeal because Western States had failed to prove that it was an LLC in good standing in Delaware, the state in which it was organized. *Western States Federal Contracting, LLC v. Department of Veterans Affairs*, CBCA 3359, 14-1 BCA ¶ 35,530. The facts surrounding the Board's orders dealing with appellant's standing to maintain its appeal are set forth in the underlying decision.

Familiarity with those facts is assumed. Now, Western States has shown that it is in good standing in Delaware; however, this does not warrant granting the motion for reconsideration.

### Background

On September 30, 2009, Western States entered into contract VA258-C-0320 with the Department of Veterans Affairs (VA) for, among other things, the alteration and expansion of the fire alarm and sprinkler system at the VA Medical Center, in Phoenix, Arizona. On April 26, 2012, Western States submitted a claim to a VA contracting officer alleging 699 days of VA-caused delay and seeking \$461,706.01 in damages for extended home office overhead and \$299,146 in other delay damages. When a timely final decision was not forthcoming, Western States appealed this matter as a deemed denial to the Board.

Mr. Jose Perea filed a notice of appearance on behalf of Western States. Shortly thereafter, respondent filed a motion to strike the appearance of Mr. Perea. In its motion, the Government alleged that Mr. Perea had not proven that he met the Board's requirements for representation of the LLC and that, even if Mr. Perea could represent the LLC before the Board, the LLC needed to be in good standing in its state of formation, Delaware, in order to maintain this action at the Board. The VA argued that an LLC that is not in good standing "may not maintain any action, suit or proceeding in any court of the State of Delaware until such domestic LLC . . . has been restored and has the status of a domestic limited liability company . . . in good standing." Del. Code Ann. tit. 6, § 18-1107(1) (2012).

After the Board made repeated requests that appellant show it is in good standing in Delaware, on February 11, 2014, we dismissed this appeal for lack of jurisdiction because appellant, as an LLC lacking good standing in its state of formation, did not have standing to maintain its action at the Board.

On March 13, 2014, Adam D. Melton, Esquire, entered his appearance on behalf of appellant and filed a "Motion for Reconsideration, Alteration, or Amendment of Dismissal of Appeal." Attached to the motion was proof that Western States is now in good standing in Delaware—a tax financing statement from the Delaware Division of Corporations showing that \$1366 was paid in satisfaction of all taxes due and owing and a printout from the Delaware Division of Corporations showing that, as of March 11, 2014, the status of Western States was "Good Standing." In addition, on March 18, 2014, appellant submitted to the Board a supplement to its motion for reconsideration wherein it provided an official (signed by the Delaware Secretary of State) certificate of good standing.

Appellant, in its motion for reconsideration, submits that changed circumstances justify relief from the Board's initial dismissal. Respondent, in its opposition, argues that the grounds for granting reconsideration are limited, and appellant's circumstance does not fit the mold.

### Discussion

Board Rule 26 (48 CFR 6101.26 (2012)) provides that reconsideration may be granted for any of the reasons stated in Rule 27(a). These reasons include, among other things, newly discovered evidence which could not have been earlier discovered through due diligence, fraud, misinterpretation, or other misconduct of an adverse party, or excusable mistake. Pursuant to our Rules, "[a]rguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration." *Beyley Construction Group Corp. v. Department of Veterans Affairs*, CBCA 5-R, et al., 08-1 BCA ¶ 33,784; *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 50-R, 07-2 BCA ¶ 33,618. Reconsideration is a matter within the discretion of the Board. *Beyley*, 08-1 BCA at 167,203 (citing *Flathead Contractors, LLC v. Department of Agriculture*, CBCA 118-R, 07-2 BCA ¶ 33,688).

Further, an appellant's belated conclusion that additional arguments might have been made or other evidence might have been highlighted is not a basis for the Board to allow reconsideration. *Mitchell Enterprises, Ltd. v. General Services Administration*, CBCA 402-R, 07-2 BCA ¶ 33,644. "While the Board will look at clear errors, be they of fact or law, the Board will not use reconsideration to allow a party to retry a case or introduce facts and arguments that it failed to present at the original hearing or put forward in its briefing." *Flathead Contractors*, 07-2 BCA at 166,778.

Here, appellant was warned of the danger that the Board would dismiss its appeal for lack of jurisdiction if Western States did not produce proof of the LLC's good standing in Delaware. When Western States failed to produce the required evidence, the appeal was dismissed for lack of jurisdiction. Western States has failed to establish that any of the reasons to grant reconsideration exist here. The fact that Western States may now be in good standing in Delaware is not a compelling reason to grant reconsideration. Had appellant acted diligently, and returned itself to good standing earlier, it may have avoided the dismissal of its action.

Decision

The appellant's motion for reconsideration is **DENIED**.

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PATRICIA J. SHERIDAN  
Board Judge

We concur:

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R. ANTHONY McCANN  
Board Judge

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H. CHUCK KULLBERG  
Board Judge