



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITH PREJUDICE: November 8, 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.

Before Board Judges **SOMERS**, **GOODMAN**, and **LESTER**.

LESTER, Board Judge.

In this appeal, appellant, Ralph Muhammad, challenges a decision by a contracting officer of the Federal Bureau of Prisons (BOP) dated November 4, 2015, in which the BOP contracting officer terminated for cause a contract through which Mr. Muhammad was providing chaplaincy services at the United States Penitentiary in Marion, Illinois. In both his notice of appeal, docketed on February 10, 2016, and in his June 9, 2016, answer to the complaint that we asked the Government to file, *see Ralph Muhammad v. Department of*

Justice, CBCA 5188, 16-1 BCA ¶ 36,267, at 176,919 (directing BOP, rather than Mr. Muhammad, to file the complaint in this appeal), Mr. Muhammad's only challenge was to the termination for cause, and his only requested relief was to convert the termination for cause into one for the Government's convenience.

Now pending before the Board is a motion from BOP requesting dismissal of the appeal with prejudice. BOP represents that the parties have executed a bilateral modification converting the termination for cause into a termination for the convenience of the Government, which BOP believes resolves the appeal in full. Attached to BOP's motion is a copy of the executed bilateral modification converting the termination into one for BOP's convenience. In that modification, Mr. Muhammad agrees that he has been paid in full for all services rendered under the contract and expressly releases BOP from further monetary liability.

BOP was unable to get Mr. Muhammad, who is appearing pro se and may not be comfortable with the procedural aspects of proceedings before the Board, to join in its motion. Nevertheless, "[i]t is well settled that '[w]here an appeal has been rendered moot by the contracting officer granting all of the relief requested in the claim on appeal, the Board should dismiss it with prejudice since there is no longer a dispute between the parties on the appealed claim.'" *Military Aircraft Parts*, ASBCA 60490, 16-1 BCA ¶ 36,422, at 177,568 (quoting *Lasmer Industries, Inc.*, ASBCA 56946, et al., 11-1 BCA ¶ 34,671 at 170,801). Further, where the appellant joins in a settlement of the matter in dispute, "the case has become moot as a result of the voluntary act of the [appellant]." *Aqua Marine Supply v. AIM Machining, Inc.*, 247 F.3d 1216, 1220 (Fed. Cir. 2001). While there may be some room for disagreement about whether and when dismissal of a case before the Board that becomes moot should be with prejudice or without prejudice, see *Sylvan B. Orr v. Department of Agriculture*, CBCA 5299, slip op. at 21-22 (Oct. 18, 2016), it is clear that, when mootness results from a bilateral settlement through which "the claims are permanently withdrawn, 'a dismissal with prejudice is indicated.'" *Smith International, Inc. v. Hughes Tool Co.*, 839 F.2d 663, 664 (Fed. Cir. 1988) (quoting *Deakins v. Monaghan*, 484 U.S. 193, 200 (1988)).

Here, by mutual agreement of the parties, the contracting officer has issued a contract modification providing Mr. Muhammad with the relief that he requested that the Board provide: conversion of his termination for cause into a termination for convenience. Given that Mr. Muhammad has executed that bilateral contract modification and provided the Government with a release, there is nothing left for us to decide. Because the mootness here arises out a bilateral settlement between the parties, we dismiss this appeal with prejudice.

Decision

For the foregoing reasons, this appeal is **DISMISSED WITH PREJUDICE**.

HAROLD D. LESTER, JR.
Board Judge

We concur:

JERI KAYLENE SOMERS
Board Judge

ALLAN H. GOODMAN
Board Judge