



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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MOTION FOR RECONSIDERATION DENIED: November 13, 2019

CBCA 5907-R

WALKER DEVELOPMENT & TRADING GROUP INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Terrance Walker, President of Walker Development & Trading Group Inc., Reno, NV, appearing for Appellant.

David G. Fagan, Office of General Counsel, Department of Veterans Affairs, Portland, OR, counsel for Respondent.

Before Board Judges **BEARDSLEY**, **GOODMAN**, and **CHADWICK**.

**BEARDSLEY**, Board Judge

Walker Development & Trading Group Inc. (Walker) seeks reconsideration under Board Rule 26 (48 CFR 6101.26 (2018)) of the Board's decision to grant summary judgment in favor of the Department of Veterans Affairs (VA) and deny Walker's appeal. *See Walker Development & Trading Group Inc. v. Department of Veterans Affairs*, CBCA 5907, 19-1 BCA ¶ 37,376. Familiarity with the Board's decision is presumed.

Walker had a contract to perform bulk laundry services for VA healthcare systems in southern California. The Board held that the VA properly terminated Walker's contract for cause. Walker argues that the Board's decision should be reconsidered on the basis that the

Board failed to consider certain facts in reaching its decision, failed to draw inferences in favor of Walker, and failed to use the correct legal standard. The Board has carefully considered Walker's allegations and denies Walker's motion for reconsideration.

### Discussion

It is Walker's burden to prove any substantive errors in the decision which might deserve reconsideration. *CH2M-WG IDAHO, LLC v. Department of Energy*, CBCA 6147-R, 19-1 BCA ¶ 37,408, at 181,852; *see also Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 50-R, 07-2 BCA ¶ 33,618, at 166,501. "Arguments and evidence previously presented are not grounds for reconsideration." Rule 26; *see also CH2M-WG IDAHO*, 19-1 BCA at 181,852; *Bryan Concrete & Excavation, Inc. v. Department of Veterans Affairs*, CBCA 2882-R, 16-1 BCA ¶ 36,549, at 178,033.

We considered in our initial decision facts raised again here, such as Walker's request for guidance from the contracting officer either as to Walker's inability to perform or the requirements for folding category 2 laundry items. The Board found that the VA did give guidance to Walker repeatedly, but even if the VA did not, its failure to do so (even with Walker's potential subcontractors waiting for this information to decide if they could perform) did not hinder Walker's performance or violate the duty of good faith and fair dealing. In its motion for reconsideration, Walker re-characterizes its argument, stating that the VA's failure to give guidance had a "net effect" on Walker's ability to perform and that the Board should find that such a net effect hindered Walker's ability to perform. These facts, however, were previously argued and considered in the light most favorable to Walker, do not support a finding that the VA hindered Walker's performance, and do not warrant reconsideration of the decision. A motion to reconsider is not a second chance at trying the case. *See CH2M-WG IDAHO*, 19-1 BCA at 181,852; *Americom Government Services, Inc. v. General Services Administration*, CBCA 2294-R, 17-1 BCA 36,590, at 178,212 (2016); *Ryll International, LLC v. Department of Transportation*, CBCA 1143-R, 12-1 BCA ¶ 35,029, at 172,144.

Walker has also again raised its claim of entitlement to a cure notice. The VA, however, was not required to issue a cure notice prior to terminating Walker's contract for late delivery. 48 CFR 12.403(c), 52.212-4(m); *see Asheville Jet Charter & Management, Inc. v. Department of the Interior*, CBCA 4079, 16-1 BCA ¶ 36,373, at 177,300. Nonetheless, as noted by the Board in its decision, the contracting officer asked Walker if it could meet the delivery date and perform the contract. Walker responded with a plan to complete, but the next day stated that it "would not be able to service the VA accounts." The contracting officer deemed this assurance of future performance to be inadequate and properly issued the termination for cause but only after Walker failed to deliver.

Walker also suggests that the Board failed to consider the fact that on July 31, 2017, “the VA announced it was deobligating the contract.” The Board did not fail to consider this announcement. The Board did not find the announcement significant, given that the contract was not terminated until August 1, 2017, when Walker failed to perform.

Walker fails to assert an intervening change in controlling law, newly discovered evidence, a clear error of law or facts, or a manifest injustice. Walker merely reargues its position based on facts and law already considered by the Board.

Decision

For the reasons aforementioned, the Board **DENIES** the **MOTION FOR RECONSIDERATION**.

*Erica S. Beardsley*

ERICA S. BEARDSLEY

Board Judge

We concur:

*Allan H. Goodman*

ALLAN H. GOODMAN

Board Judge

*Kyle Chadwick*

KYLE CHADWICK

Board Judge