



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: February 6, 2020

CBCA 5698-R

STOBIL ENTERPRISE,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Billie O. Stone, Chief Executive Officer of Stobil Enterprise, San Antonio, TX, appearing for Appellant.

Mary A. Mitchell, Office of General Counsel, Department of Veterans Affairs, Houston, TX, counsel for Respondent.

Before Board Judges **KULLBERG**, **SULLIVAN**, and **RUSSELL**.

RUSSELL, Board Judge.

Appellant, Stobil Enterprise (Stobil), has filed a motion for reconsideration of the Board's decision in *Stobil Enterprise v. Department of Veterans Affairs*, CBCA 5698, 19-1 BCA ¶ 37,428. Familiarity with this decision is presumed.

Background

In its appeal, Stobil sought a price adjustment for increased labor costs under Federal Acquisition Regulation (FAR) clauses implementing provisions of the Service Contract Act (SCA), 41 U.S.C. §§ 6701 – 6707 (2012), and the Fair Labor Standards Act (FLSA),

29 U.S.C. § 206.¹ Stobil additionally sought its costs for equipment and supplies lost or damaged during contract performance and administrative costs (associated with both its claim for increased labor costs and its claim for lost or damaged equipment and supplies). Stobil also sought relief based on the Department of Veterans Affairs' (VA) alleged failure to conduct a contractor performance evaluation.

Discussion

We granted the VA's motion for summary judgment and denied Stobil's motion for summary judgment. In our decision, we held that the Board lacked jurisdiction over Stobil's performance evaluation claim, that Stobil's claim for damaged or lost equipment and supplies (and associated administrative costs) was barred by release language in a bilateral contract modification signed by the parties, and that Stobil's claim for increased labor costs was not supported by the type of evidence required to defeat the VA's motion for summary judgment or, in the case of Stobil's own motion, to receive summary judgment in its favor.

Reconsideration is available under Board Rule 26. 48 CFR 6101.26 (2019). "Arguments and evidence previously presented are not grounds for reconsideration." Rule 26(a). Reconsideration is not automatic; the Board has significant discretion when deciding whether or not to grant a motion for reconsideration. *CH2M-WG IDAHO, LLC v. Department of Energy*, CBCA 6147-R, 19-1 BCA ¶ 37,408, at 181,852 (citing *URS Energy & Construction, Inc. v. Department of Energy*, CBCA 2260-R, 12-2 BCA ¶ 35,147, at 172,522). Reconsideration may be granted for several reasons, including "newly discovered evidence which could not have been earlier discovered, even through due diligence." *Oregon Woods, Inc. v. Department of the Interior*, CBCA 1072-R, 09-1 BCA ¶ 34,063, at 168,431, *aff'd sub nom. Oregon Woods, Inc. v. Salazar*, 355 F. App'x 403 (Fed. Cir. 2009). Such relief may also be granted when there is "an intervening change in controlling law, . . . a clear error of law or facts, or a manifest injustice." See *Walker Development & Trading Group Inc. v. Department of Veterans Affairs*, CBCA 5907-R, 19-1 BCA ¶ 37,465, at 182,010. It is the burden of the moving party to prove that Board reconsideration would be the appropriate exercise of this discretion. *CH2M-WG IDAHO*, 19-1 BCA at 181,852.

In its motion for reconsideration, Stobil again argues for entitlement to a performance evaluation. However, Stobil does not establish any specific error in the Board's decision that it lacked jurisdiction over this claim. Stobil, instead, depends on its prior motions and claims as the bases for reconsideration and relies on previously presented arguments. According to

¹ The SCA was located at 41 U.S.C. §§ 351 – 357 (2006) when the parties entered the contract at issue in this appeal.

Rule 26, this is not grounds for reconsideration. Advancing arguments already made and reintroducing old evidence are not sufficient grounds for altering a decision. *CH2M-WG IDAHO*, 19-1 BCA at 181,852.

Stobil also argues for reconsideration on its claim for wage payments. While Stobil argues that earlier evidence properly supports its claim for wage reimbursement, the Board considered that evidence in its prior holding. *See Walker Development & Trading Group Inc.*, 19-1 BCA at 182,010 (“A motion to reconsider is not a second chance at trying the case.”). Additionally, the materials provided by Stobil with its motion for reconsideration do not show that, or create a genuine issue in dispute on whether, the VA owes Stobil additional compensation on the company’s wage claim. Further, the materials, available to Stobil during the briefing of the parties’ summary judgment motions, are not “newly discovered evidence” that can serve as grounds justifying reconsideration. *Id.* Stobil has also not indicated any specific “change in controlling law, . . . a clear error of law or facts, or a manifest injustice” supporting its request for reconsideration. *Id.* Therefore, the Board finds that reconsideration is not appropriate for Stobil’s claim for SCA and FLSA-related labor costs.

Decision

Appellant’s motion for reconsideration is **DENIED**.²

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge

We concur:

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

² Appellant has also timely filed an application for *en banc* review. That application will be addressed by the Board separately consistent with Rule 28.