



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

“RESUBMITTED” MOTION FOR SUMMARY RELIEF DENIED:
February 19, 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, has filed a “resubmission” of its motion for summary relief along with an objection to the closing by respondent, Department of Veterans Affairs (VA), of one of the contracts at issue in this appeal. In support of its motion, appellant asserts that the VA withheld evidence and misled the Board concerning facts relevant to the appeal including in the VA’s response to appellant’s motion for reconsideration. Appellant also objects to the agency’s closing of one of the contract files at issue in this appeal, which occurred in December 2019, after the Board had denied this appeal. Appellant relies on

48 CFR 4.804-1(c)(1) (2019) which states that contract files should not be closed if the contract is in litigation or under appeal.

We deny the “resubmitted” motion as untimely because the period for summary judgment briefing has passed. To the extent that the motion is actually one for reconsideration, the Board may reconsider its decisions “for a reason recognized in Rule 59 of the Federal Rules of Civil Procedure.” 48 CFR 6101.26(a). However, relief under this Rule allowing for altering or amending a judgement or decision is “an extraordinary measure,” *Leidos, Inc. v. Hellenic Republic*, 881 F.3d 213, 217 (D.C. Cir. 2018), “discretionary[,] and need not be granted unless the [Board] finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996) (per curiam) (quotation marks omitted). Here, appellant seems to urge the Board to reconsider its decision based on “newly discovered evidence” of wrongdoing by the VA. However, appellant provides no evidentiary support for its allegation of wrongdoing, only conclusory assertions. Such assertions cannot serve as a basis for the Board to alter its decision. Finally, we note that, even if the agency closed the contract file prematurely, appellant has not demonstrated why such action would be material to the Board’s decision on appellant’s claims. *See, e.g., Epps v. Howes*, 573 F. Supp. 2d 180, 185 (D.D.C. 2008) (movant for reconsideration bears the burden of proving “the proffered evidence is ‘of such a material and controlling nature as will probably change the outcome’” (quoting *In re Korean Air Lines*, 156 F.R.D. 18, 22 (D.D.C. 1994))); *see also Walker Development & Trading Group Inc. v. Department of Veterans Affairs*, CBCA 5907-R, 19-1 BCA ¶ 37,465, at 182,010 (movant for reconsideration had “burden to prove any substantive errors in the [Board’s] decision which might deserve reconsideration”). Thus, appellant has not shown grounds for reconsideration.

Appellant’s motion is **DENIED**.

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