



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: December 19, 2022

CBCA 7109

GERALD E. PAULUS, JR.,¹

Appellant,

v.

AGENCY FOR INTERNATIONAL DEVELOPMENT,

Respondent.

Gerald E. Paulus, Jr., pro se, Mesa, AZ.

John B. Alumbaugh and Eugene J. Benick III, Office of the General Counsel, Agency for International Development, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **KULLBERG**, and **ZISCHKAU**.

ZISCHKAU, Board Judge.

Appellant, Gerald E. Paulus, Jr., appeals a decision by the United States Agency for International Development (USAID) to terminate his personal services contract for cause after a co-worker reported harassment by him. Mr. Paulus argues that his termination for

¹ Because the personal services contract at issue here was between USAID and Gerald Edward Paulus, Jr., and did not involve any other corporate entity, the caption has been corrected to reflect this by changing appellant's name, which the Board in its notice of docketing recorded as "Gerald E. Paulus dba ET/ENERGY TECHNOLOGIES, LC," to "Gerald E. Paulus, Jr."

cause should either be invalidated or be changed to a termination for convenience because USAID's grounds for the termination are not supported and he was not provided written notice of the reasons for his termination. He also seeks compensation for the leave and other benefits that he claims he accrued prior to the termination. We conclude that USAID has met its burden for sustaining the termination for cause and further conclude that Mr. Paulus is not entitled to other compensation. Accordingly, we deny the appeal.

Background

In 2020, USAID contracted with Mr. Paulus to serve as a project management specialist in Afghanistan. As modified, the personal services contract called for a base performance period from April 6, 2020, through January 30, 2022, with three option years.

Mr. Paulus and the co-worker who subsequently reported the harassment met in February 2021 during the course of their duties. On March 4, 2021, after helping the co-worker carry packages to the co-worker's apartment, Mr. Paulus began messaging the co-worker. The co-worker gave minimal replies and never provoked the messaging coming from Mr. Paulus. Mr. Paulus continued to message the co-worker and made requests to spend time with the co-worker, which the co-worker declined. After more texts seeking personal information about the co-worker, the co-worker told Mr. Paulus that the co-worker was increasingly uncomfortable with his texting. Mr. Paulus offered to stop texting, and the co-worker replied yes to that offer. However, Mr. Paulus continued to message the co-worker afterwards. On March 8, 2021, the co-worker reported Mr. Paulus' behavior to a supervisor. The Regional Security Office (RSO) Threat Intelligence and Investigations branch was informed of the co-worker's complaint and immediately began investigating the complaint about Mr. Paulus. On March 8, RSO special agents met with the co-worker and Mr. Paulus separately. The co-worker reported that Mr. Paulus had messaged the co-worker, emailed and attempted a phone call to the co-worker, and viewed the co-worker's LinkedIn profile. The co-worker felt threatened by Mr. Paulus and said that his communications were inappropriate. The agents then interviewed Mr. Paulus, informing him that he needed to cease any contact with the co-worker and that failure to comply with this directive could result in removal from the post and being sent back to the United States on the next flight. Mr. Paulus agreed not to contact the co-worker.

However, the next day, March 9, 2021, while passing by the co-worker in the embassy compound, Mr. Paulus approached and called out to the co-worker and said that he was sorry and that the co-worker did not need to fear him. The co-worker reported this contact to the RSO. Later that day, one of the RSO security agents spoke with Mr. Paulus and reminded him that just the day before he was ordered to stay away from the co-worker and had agreed to do so. Mr. Paulus replied that he meant no harm and that if he has to be sent home so be

it. He asked the agent if he could write a statement, and the agent agreed to receive his statement by email. On March 10, Mr. Paulus sent a lengthy, written statement by email to the security agent explaining the situation from his point of view, stating that the RSO's instruction to avoid any contact with the co-worker was wrong and "counter to the basic rules of humanity." Mr. Paulus copied the co-worker on this email.

On March 10, 2021, the RSO determined that "it would be in the best interest of [the] post" if Mr. Paulus was either asked to leave voluntarily or ordered to leave. On that same day, the Embassy's accountability and suitability board determined that it was no longer suitable for Mr. Paulus to hold a position on the post. The RSO informed the contracting officer responsible for human resources of the RSO and accountability board determinations that Mr. Paulus could no longer stay at the post and would have to be sent back home promptly.

The original contracting officer, the newly assigned contracting officer, the post's mission director, the deputy mission director, and the RSO discussed how to proceed, and it was agreed that the mission director and deputy and a contracting officer would meet the next morning with Mr. Paulus. By the time of the March 11 morning meeting, the new contracting officer had concluded that, based on the accountability board's determination that Mr. Paulus was unfit to remain at the post for his misconduct and failure to follow the directions of the RSO, there were sufficient grounds to terminate for cause Mr. Paulus' contract. At the March 11 meeting, attended by the mission director, the deputy mission director, the contracting officer, and Mr. Paulus, Mr. Paulus was informed that his contract was being terminated for cause due to the decision of the accountability board and his failure to abide by the directions of the RSO not to contact the co-worker. The meeting went on for perhaps an hour or more, as Mr. Paulus complained that he had done nothing wrong meriting termination. The mission director told Mr. Paulus that he could challenge the termination decision if he wanted to do so but that he had to depart from the Embassy post on the next available flight. Mr. Paulus asked, at the end of the meeting, if everyone in the meeting could keep the basis of his termination confidential. Mr. Paulus was instructed to restrict to his quarters and the cafeteria until his flight departure.

The contracting officer issued a termination letter to Mr. Paulus on March 13, 2021. The letter states in relevant part: "As a result of the findings of the Embassy's Accountability & Suitability Board, the U.S. Personal Services Contract between you and USAID/Afghanistan is terminated for cause effective March 16, 2021 pursuant to Section C General Provisions 16A(1). . . . Please coordinate your checkout from post. . . . All outstanding final payments associated with your service will be computed in accordance with the pertinent provisions of the contract." Mr. Paulus departed the post on March 15.

On April 22, 2021, Mr. Paulus appealed his termination. Mr. Paulus argues that his actions did not merit a termination for cause, that USAID did not provide a written statement of the reasons for the termination in the termination notice, and that USAID did not establish beyond a reasonable doubt the facts warranting the termination. Mr. Paulus seeks reinstatement, back pay, and compensation for accrued benefits.

The parties submitted this case pursuant to Board Rule 19, 48 CFR 6101.19 (2021), on the written record and after closing briefs by the parties. Appellant filed a motion requesting that the Board direct respondent to refrain from making certain statements about appellant and enjoin respondent from issuing a debarment filing against appellant pending the Board's decision on this case.

Discussion

Mr. Paulus mainly argues that the termination for cause should either be invalidated or be changed to a termination for convenience because he was not provided written notice of the reasons for his termination and the facts do not support the termination for cause. The termination provision in the contract provides in relevant part:

16. TERMINATION (NOV 1989)

(This is an approved deviation to be used in place of the clause specified in FAR 52.249-12.)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part:

(1) For cause, which may be effected immediately after establishing the facts warranting the termination, by giving written notice and a statement of reasons to the contractor in the event (i) the Contractor commits a breach or violation of any obligations herein contained, (ii) a fraud was committed in obtaining this contract, or (iii) the contractor is guilty (as determined by USAID) of misconduct in the Cooperating Country. Upon such a termination, the contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which the contractor performs services hereunder, whichever is earlier. No costs of any kind incurred by the contractor after the date such notice is delivered shall be reimbursed hereunder except the cost of return transportation (not including travel allowances), if approved by the Contracting Officer. If any costs

relating to the period subsequent to such date have been paid by USAID, the contractor shall promptly refund to USAID any such prepayment as directed by the Contracting Officer.

Appeal File, Exhibit 1 at 32-33.

The provision of the Contract Disputes Act dealing with the contents of a contracting officer's decision, 41 U.S.C. § 7103(e) (2018), states that "the contracting officer's decision shall state the reasons for the decision reached and shall inform the contractor of the contractor's rights as provided in this chapter. Specific findings of fact are not required. If made, specific findings of fact are not binding in any subsequent proceeding." As quoted above, Mr. Paulus' contract with USAID provides that a termination for cause "may be effected immediately after establishing the facts warranting termination, by giving written notice and a statement of reasons to the contractor."

Here, Mr. Paulus was given the reasons for his termination at the meeting of March 11, 2021, with the mission director, deputy mission director, and contracting officer. As spelled out during the meeting, and supported by the exhibits in the record, Mr. Paulus repeatedly sent messages to the co-worker, and when the co-worker told Mr. Paulus to stop communicating, he failed to do so. After the co-worker complained about the inappropriate messaging, the post's RSO directed Mr. Paulus to cease all contact with the co-worker and informed him that he could be removed from the post and sent home if he failed to do so. Mr. Paulus agreed, but, the next day, Mr. Paulus called out to the co-worker on a street within the post, telling the co-worker that he was sorry and that the co-worker did not need to fear him. Then, after being confronted with this violation of the RSO's previous day's order, Mr. Paulus asked the RSO if he could make a written statement. When he submitted his statement by email to the RSO, Mr. Paulus copied the co-worker on the email. The RSO determined the same day that Mr. Paulus was not fit to remain on the post. The accountability board similarly concluded that Mr. Paulus had to be removed from the post. In summary, these are the facts and the reasons that were presented to Mr. Paulus during the meeting to explain why his contract was being terminated for cause. Although not all of these facts were spelled out in the written notice of termination dated March 13, 2021, the termination notice states that the termination was based on the findings of the accountability board. There can be no reasonable argument that Mr. Paulus was unaware of the basis of USAID's termination for cause based on the March 11 meeting and the written termination notice. All of the facts summarized above are supported by the record. In our view, these facts justify the termination for cause. *See Cooper/Ports America, LLC v. Secretary of Defense*, 959 F.3d 1373, 1377 (Fed. Cir. 2020) (sufficiency generally considered in the context of the communication between the parties) (citing *Empire Energy Management Systems, Inc. v. Roche*, 362 F.3d 1343, 1356 (Fed. Cir. 2004)); *Cherokee General Corp. v.*

United States, 150 Fed. Cl. 270, 280 (2020); *Emiabata v. United States*, 139 Fed. Cl. 418, 422 (2018), *aff'd*, 792 F. App'x 931 (Fed. Cir. 2019); *5860 Chicago Ridge, LLC v. United States*, 104 Fed. Cl. 740, 756 (2012).

Mr. Paulus has raised other arguments throughout these proceedings, such as whether the contracting officer had authority to issue the termination notice, whether the contracting officer knew the facts regarding the matter and personally made the decision, and whether the contracting officer considered the alternatives to and consequences of a for-cause termination. None of these arguments changes our conclusion that the termination was justified.

Other Claims

Mr. Paulus requests that the Board direct respondent to refrain from making certain statements about appellant and enjoin the agency from issuing a debarment filing against him pending the Board's decision in this case. Regarding the request for injunctive relief, we have no authority to grant such relief. See *YRT Enterprises LLC v. Department of Justice*, CBCA 1501, 17-1 BCA ¶ 36,809, at 179,407-08.

Additionally, appellant makes a claim in his notice of appeal for unpaid accrued sick and vacation leave. Appellant first raised this claim to the contracting officer in an email dated April 14, 2021, stating, "One final question, who is the person that I may contact to be reimbursed for my leave and/or any other benefits accrued as this has not been settled to date." The contracting officer responded, stating, "So, if you should choose to submit a voucher for such costs, the costs would not be reimbursed." While Mr. Paulus has not asserted a sum certain with regard to his accrued leave, the agency had a basis to calculate the amount (his accrued leave times his rate of pay), and therefore we find that he has asserted a claim for his accrued leave and received a decision from the contracting officer rejecting his claim.

We conclude that Mr. Paulus is not entitled to his accrued leave. Under the contract, a termination for cause effectively terminates his right to compensation by the agency as of the date of termination. The Termination clause provides, at paragraph (a)(1), for termination for cause and states: "Upon such a termination, the contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which the contractor performs services hereunder, whichever is earlier." In contrast, the clause, at paragraph (a)(2), includes a termination for convenience provision by which the "contractor's right to compensation shall cease when the period specified in such notice expires except that the contractor shall be entitled to any unused vacation leave." Additionally, the clause provides, at paragraph (a)(3), for a termination for convenience due

to the contractor's illness. Under that provision, upon termination, "the contractor shall not be entitled to compensation except to the extent of any unused vacation or sick leave." As the Termination clause did not carve out any exceptions for unused sick or vacation leave for a termination for cause, any right that Mr. Paulus had to compensation for his accrued leave ceased the moment his termination for cause became effective.

Decision

The appeal is **DENIED**.

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge

We concur:

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

H. Chuck Kullberg
H. CHUCK KULLBERG
Board Judge