



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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**THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER AND  
IS BEING PUBLICLY RELEASED IN ITS ENTIRETY ON OCTOBER 24, 2025**

DENIED: October 16, 2025

CBCA 8381

NORTH EAST MOBILE HEALTH SERVICES,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Jeana M. McCormick and Jennifer S. Riggle of Drummond Woodsum, Portland, ME, counsel for Appellant.

Jennifer L. Hedge, Office of General Counsel, Department of Veterans Affairs, Pittsburgh, PA, counsel for Respondent.

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

**BEARDSLEY**, Board Judge.

North East Mobile Health Services (NEMHS) challenges the change to the calculation of the costs paid by the Department of Veterans Affairs (VA) for the second leg of a round-trip wheelchair transport. NEMHS elected disposition of this appeal by two Board judges under the accelerated procedure in Board Rule 53. 48 CFR 6101.53 (2024). Both parties moved for summary judgment. For the foregoing reasons, the Board denies NEMHS's motion for summary judgment, grants the VA's motion for summary judgment, and denies the appeal.

### Background

On September 27, 2019, the VA and NEMHS entered into a contract under which NEMHS was to provide “non-personal wheelchair transportation services to beneficiaries of the Togus Maine VA Medical Center.” Respondent’s Exhibit 5 at 1. “Service [was] to include transport to and from Togus VA as well as [to the] Community Based Outpatient Clinics (CBOC’s) in Bangor, Rumford, Lewiston & Saco.” *Id.* at 6. The contract’s base period of performance ran from October 1, 2019, to September 30, 2020, with four option periods. The VA exercised all of the options on this contract with an end date of September 30, 2025. Respondent’s Statement of Undisputed Material Facts (SUMF) ¶ 32.

“NEMHS provides both one-way and round-trip transportation services” under the contract. Appellant’s SUMF ¶ 3. For one-way trips of twenty-five miles or less, the VA paid NEMHS a base rate, and, for one-way trips over twenty-five miles, the VA paid NEMHS a base rate for the first twenty-five miles plus a mileage rate for miles traveled over the twenty-five-mile threshold. *Id.* ¶¶ 10-11. NEMHS, however, billed the second leg of a round trip differently than the first leg, even though the contract does not specify a mileage reimbursement formula for round trips. *Id.* ¶ 12. “Beginning with the first invoice submitted under the [contract] and continuing through approximately at least November of 2024, NEMHS billed for round-trip loaded transports as follows: for the out leg, it billed for a base trip rate and all mileage over 25 miles for that leg, and for the return leg, it billed for a base trip rate and all mileage for that leg.” *Id.* ¶ 20. Starting with NEMHS’s October 2024 invoice, the VA refused to pay NEMHS for the full return leg mileage because it determined that each trip, under the contract, was a separate one-way trip to which the one-way rates should apply. *Id.* ¶¶ 48-52.

As an example, for a seventy-five-mile one-way trip, the contract required that NEMHS charge the VA the base rate (\$204) for the initial twenty-five miles of the trip and then charge \$7 per mile for the next fifty miles of the trip or for each mile over the twenty-five mile threshold (\$350) for a total of \$554 for a seventy-five-mile one-way trip. Respondent’s SUMF ¶¶ 28, 29, 55, 57-61, 70. For what NEMHS classified as the return leg of a round trip (also seventy-five miles long), NEMHS charged the VA the base rate (\$204) for the initial twenty-five miles of the seventy-five-mile total and charged the VA for all seventy-five miles of the return leg ( $\$7 \times 75 = \$525$ ), for a total of \$729. *Id.* ¶¶ 55, 62-63, 68-70. In effect, this double-charged the VA—\$204 base rate + \$7 per mile—for the first twenty-five miles of the return leg of the round trip. *See id.*

During this contract, NEMHS asserts that “VA transportation supervisors and finance officials” indicated to NEMHS that NEMHS should bill for the full mileage for each return

leg of a round trip loaded transport. Appellant's SUMF ¶ 22; *see id.* ¶¶ 21, 23. NEMHS points to two occasions in the record in which "VA officials [with a copy to the COR] would affirmatively identify NEMHS's [failure to bill for all of the mileage on the return leg of a round trip loaded transport] and instruct NEMHS to re-submit the invoice with the full mileage for the return leg." Appellant's SUMF ¶ 24; *see id.* ¶¶ 25-27. "If, on occasion, the VA did not pay for all mileage on the second leg of a round-trip transport," NEMHS would raise the issue, and the VA would pay it. *Id.* ¶ 29. While the contracting officer representative (COR) was "responsible for reviewing and approving invoices," *id.* ¶ 23, the contract states that "[o]rdering officers have no authority to modify any term of this basic contract" and "[a]ny deviation from the terms of the basic contract must be approved in writing by the Contracting Officer responsible for this contract." Respondent's Exhibit 5 at 9. In addition, the VA issued a COR delegation memorandum for this contract, which states that "**CORs cannot** make any agreement with the contractor requiring the obligation of public funds (they cannot sign any contract, including delivery orders, purchase orders, or modify a contract, or in any way obligate payment of funds by the Government)." Respondent's SUMF ¶10 (emphasis in original); *see id.* ¶¶ 7-9.

The contract "does not specifically address the mileage reimbursement formula for round-trip loaded transports." Appellant's SUMF ¶ 12. Instead, the contract provided:

The intent is to establish an "all inclusive" price to the extent possible by establishing a fixed price per trip for routine transports. Base trips are defined as being within a 25-mile radius of the pick-up point. Therefore, pricing is established on a per trip basis with additional line items to cover mileage over the 25-mile radius, or special scenarios.

Respondent's Exhibit 5 at 6. The contract defined "Base Rate" as constituting "full compensation for one-way trips which do not exceed the 'Mileage Threshold.'" *Id.* at 18. The mileage threshold is twenty-five miles.

Payment for mileage traveled beyond a base trip (25 miles) will be limited to "One Way Only" for the distance over which the patient is transported. Such mileage costs will be paid in addition to the applicable rate per trip for any trip entirely within the county limits. Trip mileage shall be determined by the latest edition of the Google Maps. The Contractor shall receive the base rate quoted in the schedule for all one-way trips ordered. The base rate shall constitute full compensation for one-way trips which do not exceed the mileage threshold as defined herein.

*Id.* at 7. The mileage rate for transportation services is defined as

the rate paid for each mile traveled beyond the specified Mileage Threshold. This rate applies to loaded, one-way transportation as well as no load trips outside the 25-mile radius of any of the identified Campus locations. In no event shall the Contractor receive this rate for miles traveled within the specified mileage threshold.

*Id.* at 19. The Contract's Price/Cost Schedule provided the following line items for each year:

- Item 0001: "Wheelchair van transportation: Base Trip within 25 miles from the pick-up point" . . . .
- Item 0002: "Mileage rate beyond the base trip 25 mile radius from the pick up point (one way only)."

*Id.* at 21; *see id.* at 21-23 (using the same language for items in the option years).

The contract only uses the term "round trip" one time in forty-two pages, appearing in the specification for waiting time:

For time lost in waiting at either end or both ends of a trip due to causes beyond their control (patient not ready for pick up) the Contractor will be reimbursed at the rate of one-fourth the hourly rate quoted in their bid for each quarter hour or fraction thereof in excess of one-quarter hour from the time Contractor reports to the designated person. **For Round Trips**, a scheduled pick up time will be given for the Contracted Driver to return to pick up patient.

Respondent's Exhibit 5 at 6.

From 2009 to 2014 and from 2016 to 2021, the VA contracted with NEMHS to provide ambulance services in the state of Maine. Appellant's SUMF ¶¶ 32-33. These ambulance services contracts required some wheelchair transportation services, for which the VA would pay "a base rate plus full mileage" for both legs of a round trip. *Id.* ¶ 35. However, the language of these contracts was similar to but not exactly the same as the contract here. For instance, one contract stated:

The Contractor shall receive the base rate quoted in the schedule for all one-way trips ordered. The base rate shall constitute full compensation for one-way trips which do not exceed the mileage threshold as defined herein. *The Contractor shall also receive reimbursement of mileage charges for any mileage less than the mileage threshold.*

Declaration of Robert Russell (June 24, 2025), Exhibit C at 112 (emphasis added).

### Discussion

#### Standard of Review

Summary judgment is appropriate when there is no genuine issue as to any material fact, and the movant is entitled to judgment as a matter of law. Rule 8(f) (48 CFR 6101.8(f)); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Genuine issues of material fact exist where a rational finder of fact could resolve an issue in favor of either party and the resolution of that issue would impact the outcome of the case under governing law. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

“The fact that both parties have moved for summary judgment[,]” as in this appeal, “does not mean that the [Board] must grant judgment as a matter of law for one side or the other. . . .” *Mingus Constructors, Inc.* [v. *United States*], 812 F.2d [1387, 1391 (Fed. Cir. 1987)]. Rather, “each motion is evaluated on its own merits and reasonable inferences are resolved against the party whose motion is being considered.” *Marriott International Resorts, L.P. v. United States*, 586 F.3d 962, 968-69 (Fed. Cir. 2009).

*Wu & Associates, Inc. v. General Services Administration*, CBCA 6760, 21-1 BCA ¶ 37,965, at 184,383. “Interpretation of contract language is primarily a matter of law, and disagreements concerning the legal interpretation of contract documents do not create factual disputes that preclude summary judgment.” *Ben Holtz Consulting, Inc.*, CBCA 7637, 23-1 BCA ¶ 38,463, at 186,946 (citing *South Texas Health System v. Department of Veterans Affairs*, CBCA 6808, 23-1 BCA ¶ 38,420, at 186,704; *Partnership for Response & Recovery, LLP v. Department of Homeland Security*, CBCA 3566, 14-1 BCA ¶ 35,805, at 175,114; *M.A. Mortenson Co. v. Brownlee*, 363 F.3d 1203, 1205 (Fed. Cir. 2004)).

Contract Interpretation

The NEMHS's billing for the return leg of a round trip double-charges the VA for the first twenty-five miles of the return leg. NEMHS contends that this double-charge is proper because the contract does not specify a mileage reimbursement formula for round trips and is, therefore, ambiguous. We disagree.

“Contract interpretation begins with the language of the written agreement.” *Coast Federal Bank, FSB v. United States*, 323 F.3d 1035, 1038 (Fed. Cir. 2003) (en banc). “Ambiguity exists [only if] contract language can reasonably be interpreted in more than one way.” *LAI Services, Inc. v. Gates*, 573 F.3d 1306, 1314 (Fed. Cir. 2009). “If the plain language of the contract is unambiguous on its face, the inquiry ends, and the contract’s plain language controls.” *Airclaims, Inc. v. Department of the Interior*, CBCA 2554, 12-2 BCA ¶ 35,156, at 172,535. Only if the contract language is ambiguous may we turn to extrinsic evidence to determine the contract’s meaning. *Greco v. Department of the Army*, 852 F.2d 558, 560 (Fed. Cir. 1988). Contract language should be interpreted in a manner that gives meaning to all parts and leaves no superfluous language. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991).

NEMHS contends that there are multiple interpretations of the contract language regarding mileage reimbursement rendering the contract ambiguous. Specifically, NEMHS contends that “each leg of a round-trip loaded transport is a distinct trip for purposes of the base rate, while the 25-mile exclusion applies only to the first (‘out’) leg of a round-trip loaded transport.” Appellant’s Motion for Summary Judgment (Appellant’s MSJ) at 16. Another interpretation posited by NEMHS is that “the Contract allows only a single base rate for a round-trip loaded transport, but the 25-mile exclusion would not apply at all to round-trips (even the first leg).” *Id.* These interpretations, however, are not reasonable because they presume that the contract contemplates “round trip” as a separate billing category and still allow for NEMHS to double-charge the VA for the initial twenty-five miles of the return leg of a round trip. Not only do the contract’s provisions for mileage reimbursement not mention “round trips” or “out legs,” they do not contemplate round trips as a separate billing category or contain the round-trip mileage reimbursement billing formula promoted by NEMHS. Instead, the only reasonable interpretation of the contract’s plain language is that all trips are to be billed as one-way trips.

The contract defines the mileage rate as “the rate paid for each mile traveled beyond the Mileage Threshold” and stipulates that “[i]n no event shall the Contractor receive this rate for miles traveled within the specified mileage threshold.” Respondent’s Exhibit 5 at 19. Accordingly, the contract unambiguously prohibits mileage rate reimbursement for the initial

twenty-five-miles. Additionally, the contract's definition of a "completed trip" supports the VA's interpretation that all trips are billed as one-way trips. A completed trip is "considered complete when the patient is delivered by [the] driver to the requested destination." *Id.* at 7. Given that the trip is complete upon reaching the requested destination and round trips are not mentioned in the provisions related to mileage reimbursement, the contract must contemplate multiple one-way trips only and not round trips.

NEMHS argues that because each relevant provision of the contract describes the reimbursement formula (applying the twenty-five-mile limit) for one-way trips only, it would contradict the plain meaning of the contract to apply the limit to each leg of a round trip. NEMHS argues that "[i]f the 25-mile exclusion applies to both legs of a round-trip, the language stating that the 25-mile exclusion applies 'one way only' would be rendered meaningless." Appellant's MSJ at 15. However, the contract language contradicts this interpretation, stating that "[p]ayment for mileage traveled beyond a base trip (25 miles) will be limited to 'One Way Only' for the distance over which the patient is transported." Respondent's Exhibit 5 at 7. The contract states further that "pricing is established on a per trip basis with additional line items to cover mileage over the 25-mile radius, or special scenarios." *Id.* at 6. The contract contemplates mileage reimbursement only for one-way trips, and, therefore, each leg of a round trip is considered a one-way trip for which NEMHS would be paid the base rate and additional mileage for the miles traveled over twenty-five miles. The terms "one way only" and "per trip basis" are not, therefore, rendered meaningless.

### Course of Dealing

NEMHS contends that the VA's compliance with its billing scheme for the return leg of a round trip substantiates the parties' common understanding that the terms of the contract permitted this process. "This course of dealing argument may have been persuasive had we determined that the contract's terms were ambiguous, but where the terms are clear, extrinsic evidence is not required. 'Extrinsic evidence will not be received to change the terms of a contract that is clear on its face.'" *King & George, LLC v. General Services Administration*, CBCA 7891, 25-1 BCA ¶ 38,833, at 188,950 (quoting *Government Marketing Group v. Department of Justice*, CBCA 71, 08-1 BCA ¶ 33,834, at 167,454).

NEMHS also contends that the VA has "waived its right" not to "pay full mileage for the return leg of a round-trip loaded transport . . . by its decades-long course of performance." Appellant's MSJ at 29. We disagree.

“A course of dealing is defined as ‘a sequence of previous conduct between the parties to an agreement which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.’ . . . The emphasis is on a sequence of events; a single transaction cannot constitute a course of dealing.” *CFP FBI-Knoxville, LLC. v General Services Administration*, CBCA 5210, 17-1 BCA ¶ 36,648, at 178,476 (quoting *IAP World Services, Inc. v. Department of the Treasury*, CBCA 2633, 12-2 BCA ¶ 35,119, at 172,445). The element of mutual understanding is missing here, however. See *Eastern Ambulance Service, Inc.*, VABCA 2078, 86-2 BCA ¶ 18,852 (finding that mutual understanding is necessary to establish a course of dealing). NEMHS relies on only two other contracts to establish a common basis of understanding for interpreting this contract’s mileage reimbursement provisions. However, neither past contract has the exact billing scheme as this contract, and one has language (not found in the contract at issue here) that could support the mileage reimbursement scheme for round trips that NEMHS promotes. Moreover, the billing practices of NEMHS changed over the course of these contracts, diminishing the argument that there was a common basis of understanding as to the mileage reimbursement allowed under the contract.

“Establishing a course of dealing requires a reflection of a joint or common basis of understanding held by both parties”—that is, actual knowledge by both parties. *United Computer Supplies, Inc. v. United States*, 43 Fed. Cl. 351, 358 (1999) (citing *Sperry Flight Systems Division of Sperry Rand Corp. v. United States*, 548 F.2d 915, 923 (Ct. Cl. 1977) (finding that by accepting certain prices on past occasions, the Government failed to show that it “thereby intended to commit itself to continue such a practice into the future.”), *aff’d*, 230 F.3d 1382 (Fed. Cir. 2000)); see *General Engineering & Machine Works*, ASBCA 38788, 92-3 BCA ¶ 25,055, at 124,871 (“In order for a contractor to successfully rely upon a prior course of dealing, it must establish that both parties had actual knowledge of that prior conduct and of the manner in which it affected contract performance.”), *aff’d sub nom. General Engineering & Machine Works v. O’Keefe*, 991 F.2d 775 (Fed. Cir. 1993). There is no evidence that the VA knowingly agreed to be double-billed for the return leg of a round trip. In addition, there was no knowing failure by the contracting officer to enforce the contract terms. Although the COR and others approving the invoices may have acquiesced to NEMHS’s billing scheme, there is no evidence that the contracting officer knowingly agreed to the billing scheme or changed the contract terms. There is also no basis to assert that the COR had authority to change the contract terms. The contract and the delegation of authority memorandum specifically noted that only the contracting officer could modify the contract’s terms. See *Winter v Cath-dr/Balti Joint Venture*, 497 F.3d 1339, 1346 (Fed. Cir. 2007). NEMHS has failed to establish a course of dealing that changed the unambiguous contract terms relating to mileage reimbursement.



### Waiver

Waiver is “an intentional relinquishment of a known right,” *Alliance Business Enterprises LLC v. General Services Administration*, CBCA 1101, 08-2 BCA ¶ 33,994[, at 168,118] (citing *United Technologies Corp.*, ASBCA 46880, et al., 97-1 BCA ¶ 28,818), that “must be ‘supported by clear, decisive, and unequivocal conduct or statements of [authorized] government officials.’” *Id.* (quoting *Adelaide Blomfield Management Co. v. General Services Administration*, GSBCA 12851, 95-1 BCA ¶ 27,514).

*Transworld Systems Inc. v. Department of Education*, CBCA 6049, 22-1 BCA ¶ 37,994, at 184,513 (2020).

NEMHS has failed to show how the VA intentionally waived its right to enforce the contract terms. The Government’s failure to catch the mistake earlier does not mean that it waived its right to recover or correct NEMHS’s double-billing. Further, to establish waiver, NEMHS “must show that it detrimentally changed its position in reliance on the supposed waiver.” *Transworld Systems*, 22-1 BCA at 184,514 (citing *Sam’s Electric Co.*, GSBCA 9359, 90-3 BCA ¶ 23,128; *Towncenter Management Corp.*, GSBCA 4574-R, 80-1 BCA ¶ 14,363). NEMHS only suggests that it may have changed its position (i.e., by negotiating other benefits under the contract or declining to bid at all) had it realized that the VA would adhere to the contract terms, not that it detrimentally changed its position. The mere fact that the VA paid the double-billing for years before enforcing the contract’s terms is insufficient to show detrimental reliance. *Id.* (citing *Futuronics, Inc.*, DOT CAB 67-15, 68-2 BCA ¶ 7079).

### Breach of Good Faith and Fair Dealing

NEMHS alleges that the VA breached its duty of good faith and fair dealing by making a “sudden reversal of its interpretation of the [contract] and its adoption of identical language in both the solicitation and final versions of the [contract] is a quintessential bait-and-switch.” Appellant’s MSJ at 25. “The covenant of good faith and fair dealing cannot be used to expand a party’s duties outside of what is within the contract and does not create a right or obligation where one does not already exist.” *Brightwood Management Partners v. Department of Veterans Affairs*, CBCA 7351, 23-1 BCA ¶ 38,294, at 185,920. Here, the VA is simply enforcing the terms of the contract and rectifying a situation in which it has been paying more for services than required.

### Equitable Estoppel

Equitable estoppel requires: “(1) misleading conduct, which may include not only statements and actions but silence and inaction, leading another to reasonably infer that rights will not be asserted against it; (2) reliance upon this conduct; (3) due to this reliance, material prejudice if the delayed assertion of such rights is permitted.” *Mabus v. General Dynamics C4 Systems, Inc.*, 633 F.3d 1356, 1359 (Fed. Cir. 2011). Additionally, NEMHS must show some form of affirmative misconduct to invoke equitable estoppel against the Government. *CFP FBI-Knoxville*, 17-1 BCA at 178,477.

NEMHS cannot show affirmative misconduct because it cannot establish that the contracting officer had actual knowledge of the over-billing situation. Despite NEMHS’s allegations that the VA “engaged in a years-long project of active deception of [NEMHS] and concealment of the VA’s interpretation of the relevant contract language,” Appellant’s MSJ at 32, there is no evidence to support this allegation. The VA is not equitably estopped from enforcing the contract as written.

### Recovery

The VA can recover the money under this contract that it was not contractually obligated to pay.

It is well-settled that the Federal Government is entitled to recover funds that “its agents have wrongfully, erroneously, or illegally paid.” *United States v. Wurts*, 303 U.S. 414, 415 (1938)). An erroneous payment is one “made as a result of an unauthorized agreement, or one not authorized by the terms of the parties’ agreement.” *Maykat Enterprises, N.V.*, GSBCA 7346, 84-3 BCA ¶ 17,510. As defined in the FAR, an erroneous payment “to a contractor to which the contractor is not currently entitled under the terms and conditions of the contract,” including an overpayment, is considered a contract debt that the Government can recoup. 48 CFR 32.601(a), (b)(8), (b)(12). It matters not that the Government was responsible for the error at issue. *Lodge 2424, International Association of Machinists & Aerospace Workers v. United States*, 564 F.2d 66, 71 (Ct. Cl. 1977).

*Transworld Systems Inc.*, 22-1 BCA at 184,509-10.

Decision

For the foregoing reasons, appellant's motion for summary judgment is denied, and respondent's motion for summary judgment is granted. The appeal is **DENIED**.

*Erica S. Beardsley*

ERICA S. BEARDSLEY

Board Judge

I concur:

*Jonathan D. Zischkau*

JONATHAN D. ZISCHKAU

Board Judge