



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: October 9, 2025

CBCA 8151-R, 8162-R, 8163-R

GDM A-E, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Italia A. Carson, Polaris Law Group, P.C., North Pole, AK, counsel for Appellant.

Neil S. Deol, Office of General Counsel, Department of Veterans Affairs, Decatur, GA; and Kathleen Ramos, Office of General Counsel, Department of Veterans Affairs, Arlington, TX, counsel for Respondent.

Before Judges **GOODMAN**, **KULLBERG**, and **KANG**.

GOODMAN, Board Judge.

Appellant, GDM A-E, Inc., moves for reconsideration of our decision *GDM A-E, Inc. v. Department of Veterans Affairs*, CBCA 8151, 8162, 8163, 25-1 BCA ¶ 38,911, dismissing these consolidated appeals for failure to state a claim. We deny the motion.

Grounds for Reconsideration

The Board stated the grounds for reconsideration in *Y2Fox, Inc. v. Department of State*, CBCA 7805-R, 24-1 BCA ¶ 38,647 at 187,873, *dismissed*, No. 25-1001 (Fed. Cir. Nov. 14, 2024):

A motion for reconsideration is not an opportunity for a litigant to reargue its case. Reconsideration is warranted only in “extraordinary circumstances.” *Caldwell v. United States*, 391 F.3d 1226, 1235 (Fed. Cir. 2004). “The three primary grounds that justify reconsideration are: (1) an intervening change in the controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice.” *Delaware Valley Floral Group, Inc. v. Shaw Rose Nets, LLC*, 597 F.3d 1374, 1383 (Fed. Cir. 2010) (internal quotation marks omitted). The Board “will not address new arguments or evidence that the moving party could have raised before the [original] decision issued.” *Banister v. Davis*, 590 U.S. 504, 508 (2020). Arguments that were forfeited because they were not timely asserted cannot be resurrected on reconsideration. See *Philip Morris Products S.A. v. International Trade Commission*, 63 F.4th 1328, 1336-37 (Fed. Cir. 2023); *Caldwell*, 391 F.3d at 1235; *Hazani v. United States International Trade Commission*, 126 F.3d 1473, 1476-77 (Fed. Cir. 1997).

Appellant’s Motion

First Basis for Reconsideration

Appellant presents three bases for its motion. The first basis was titled:

The Board Misapprehended Appellant’s “Totality of the Circumstances” Argument that Drastic Increases in ECCs^[1] Necessitating Additional Drawings Indicate Scope Changes Were Required in Each Contract.

Motion for Reconsideration at 3.

Appellant states in support of this assertion:

[Appellant] did not assert that either increased ECC prices or design drawings necessitated [that the contracting officers (COs)] change the scope of work in the three contracts. Rather, Appellant offered these grounds, in toto, as indicia of a change from the scope of work at contract award. In other words, the combination of these facts supported a finding of a change to the contracts

¹ ECC is the abbreviation of “estimated construction contract.” We assume appellant is indicating “estimated construction contract price.”

necessitating a change in scope of work to address the increased magnitude of the project.

....

Appellant asserts the increased ECCs and design drawings greatly modified the original scope such that the COs should have modified the contracts to change the scope of the work or materials to account for the increased work. Such changes to the contracts entitled Appellant to additional compensation.

Id. at 3-4.

Appellant is rearguing evidence and issues previously considered by the Board. Appellant states:

The Board's decision addressed Appellant's argument that the Agency should have changed the scope of work or materials by focusing separately on the grossly elevated ECC prices and the increased number of designs required under the three contracts during performance. The Board concluded that an increase in ECC alone is not a ground for an increase in design fee. Separately, the Board concluded that an increase in the actual number or complexity of design drawings did not support the conclusion that there had been a change in the scope of work entitling the contractor to an additional fee. "Accordingly, there was no change, actual, constructive, or cardinal."

Id. at 3.

Appellant concludes that the Board "misapprehended" what it now characterizes as its "totality of the circumstances" argument because the Board "focused separately" on the issues. Appellant has merely reargued issues and evidence previously presented and then disagreed with the Board's conclusion, which is not sufficient to justify reconsideration. *Y2Fox, Inc.*, 24-1 BCA at 187,873.

Second Basis for Reconsideration

In its motion for reconsideration, appellant states the second basis for reconsideration as "The Board Misapplied FAR 52.236-22 and Legal Precedent When It Failed to Acknowledge the Limits of a CO's Discretion." Appellant argues:

Given the flawed ECCs resulted in an increase in design drawings of almost 50%, this should have prompted the COs to consider whether the original scope of work should be modified. Appellant asserts it was both unfair and unreasonable for the Agency to benefit from this increased work without authorizing a change in scope or materials or adjusting the ECC as is permitted under the Design Within Funding Limitations clause.

Motion for Reconsideration at 5-6.

In *GDMA-E, Inc.*, 25-1 BCA at 189,404, the Board considered appellant's arguments with respect to the funding limitations clause and concluded otherwise, citing *Michael Roth & Associates, Architects & Planners Inc.*, 133 Fed. Cl. 279 (2017), which interpreted the regulation at issue and which appellant also cites in its motion. Again, rearguing issues and evidence previously presented and merely disagreeing with the Board's conclusion does not justify reconsideration. *Y2Fox, Inc.*, 24-1 BCA at 187,873.

Third Basis for Reconsideration

As appellant's third basis for reconsideration, it argues that reinstating appellant's claims will prevent manifest injustice from the Board's misapprehension of the facts. Motion for Reconsideration at 6. In support of this basis for reconsideration, appellant reiterates its argument for its second basis:

[T]he agency [benefitted] by receiving additional work without paying Appellant's 6% fee on the increased ECCs. In other words, the agency received additional services without having to increase funding.

Motion for Reconsideration at 6.

This Board did not misapprehend facts; rather, we drew conclusions from those facts that were not favorable to appellant. Once again, rearguing issues and evidence previously presented and disagreeing with the Board's conclusion does not justify reconsideration. *Y2Fox, Inc.*, 24-1 BCA at 187,873.

Decision

The motion for reconsideration is **DENIED**.

Allan H. Goodman

ALLAN H. GOODMAN

Board Judge

We concur:

H. Chuck Kullberg

H. CHUCK KULLBERG

Board Judge

Jonathan L. Kang

JONATHAN L. KANG

Board Judge