

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Christopher H. White) ASBCA No. 56259
)
Under Contract No. N62645-05-C-4107)

APPEARANCE FOR THE APPELLANT: Mr. Christopher H. White

APPEARANCES FOR THE GOVERNMENT: Thomas N. Ledvina, Esq.
Navy Chief Trial Attorney
Julia P. Hatch, Esq.
Trial Attorney
Naval Medical Logistics Command
Fort Detrick, MD

OPINION BY ADMINISTRATIVE JUDGE TING
PURSUANT TO RULE 12.3

Christopher H. White (White), a civilian physical therapist and an Army reserve officer, entered into a personal services contract with the Naval Medical Logistics Command (NMLC) to provide physical therapy services at the Branch Medical Clinic in Brunswick, Maine. In March 2007, White was ordered to active duty for 365 days by the Secretary of the Army pursuant to a Presidential Executive Order in support of Operation Iraqi Freedom. The parties disagreed with respect to how many days of paid leave White was entitled to under the contract. The contracting officer denied White's claim for compensation for the one-year period when he was on authorized absence from the clinic performing active duty responsibilities in Iraq. White timely appealed the decision and elected to proceed pursuant to Rule 12.3 of the Board's rules. Both entitlement and quantum are before us.

FINDINGS OF FACT

1. On 27 December 2004, White entered into Contract No. N62645-05-C-4107 (Contract 4107) with the NMLC to provide comprehensive physical therapy services at Branch Medical Clinic, in Brunswick, Maine (R4, tab 1). At the time, White was a Lieutenant Colonel in the Army Reserves (compl., encl. 2). The base contract period ran from 3 January to 30 September 2005 (R4, tab 1; tr. 76, 124).

2. Contract 4107's Statement of Work mentions that "[t]he health care worker(s) is (are) serving at the military treatment facility under a personal services contract entered

into under the authority of section 1091 of Title 10, United States Code” (R4, tab 1 at 7 of 26, ¶ 1.7).

3. Under his contract, White was required to provide physical therapy services to “active duty military personnel, their dependents, eligible Navy civilian employees, and other eligible beneficiaries” (R4, tab 1 at 7 of 26, ¶ 1.2). White was required to be on duty during certain hours in the assigned clinical area for 40 hours each week, Monday through Friday (*id.* at 8 of 26, ¶ 2.1).

4. The contract includes FAR 52.217-9, OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000), which enabled the Navy to extend the contract for five option periods ending in January 2010 (*id.* at 22 of 26). His hourly rate increased over the potential period of the contract from \$37.50 during the base contract period to \$45.62 during the last option period (*id.* at 3-6 of 26).

5. The contract incorporates by full text FAR 52.217-9, TERMINATION (PERSONAL SERVICES) (APR 1984):

The Government may terminate this contract at any time upon at least 15 days’ written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days’ written notice to the Contracting Officer.

(*Id.* at 23 of 26) The contract also incorporates by full text FAR 52.232-3, PAYMENT UNDER PERSONAL SERVICES CONTRACTS (APR 1984) (the “Payment” clause):

The Government shall pay the Contractor for the services performed by the Contractor, as set forth in the Schedule of this contract, at the rates prescribed, upon submission by the Contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract....

(*Id.* at 22 of 26)

6. Section 3 of the contract pertains to “ABSENCES AND LEAVE.” It contains the following relevant paragraphs:

3.6 Authorization for planned absences may be granted by the Commanding Officer to the health care worker to attend continuing education courses and for performance of active

duty responsibilities. This is in addition to absences specified in 3.1 above. The health care worker shall be compensated by the Government for these periods of authorized planned absences....

....

3.9 Documented military leave for military reservists will be allowed, not to exceed 15 calendar days per calendar year, and may be taken intermittently, e.g., one day at a time. Military leave will be compensated leave. The health care worker shall follow the policy of the MTF/DTF with respect to notification of scheduled military duties to the Commanding Officer^[1].

(R4, tab 1 at 8-9 of 26)

7. At the hearing, White asked Contracting Officer Representative Kristen Downer (COR Downer) what was meant by the term “performance of active duty responsibilities” in ¶ 3.6 of the contract. The following exchanges indicate there is no disagreement, and White understood that he is on active duty when he performs normal reserve training:

Q [White] And we reference back to the contract in paragraph 3.6. We’ve gone to that several times now. Can you tell me what is meant by performance of active duty responsibilities? What does that mean?

A [COR Downer] I, too, was active duty. I was active duty for three years and I’m also currently a reservist for the Navy, so I’m pretty familiar with those terms, as ambiguous as they can come across.

Q Yes.

A I took that as a reservist member being recalled for either a two-week training evolution, a weekend evolution or a recall for active duty purposes for deployment.

¹ MTF/DTF means Medical Treatment Facility/Dental Treatment Facility. Whether White complied with the MTF procedure is not in issue (tr. 51-52).

Q I think that's how I interpreted it. Okay. No further questions.

(Tr. 102-103)

8. On 22 September 2005, the CO issued Modification No. P00002 exercising the FY 06 option (Option Period 1) subject to availability of funds. The performance period for this option ran from 1 October 2005 to 30 September 2006. (R4, tab 3)

9. The record shows that on 15 February 2006, the year before he was mobilized for his one-year tour in Iraq, White requested and received approval from the OIC to perform "Army Reserve Annual Training" for the period 26 March to 6 April 2006, with travel on 25 March and 7 April 2006. Since 25-26 March and 5-6 April 2006 were weekend days, White requested 10 days to perform reserve training. White's request was made pursuant to ¶ 3.9 (the military leave provision) of the contract. The record shows that on 22 March 2006, White requested and received approval from the OIC to perform "Temporary Active Duty" (TAD) for the periods 1-5 May and 16-19 May 2006. None of the nine days fell on a weekend. White's request was made pursuant to ¶ 3.6 of the contract. (R4, tab 11, encls. 4 and 5)

10. On 6 September 2006, the CO issued Modification No. P00006 exercising the FY 07 option (Option Period 2) subject to availability of funds. The performance period for this option ran from 1 October 2006 to 30 September 2007. (R4, tab 7, compl. at encl. 3) When Option Period 2 began, the Navy had received funding for the entire fiscal year (1 October 2006 to 30 September 2007) (tr. 28).

11. White received notification before 8 January 2007 that "there would be a mobilization coming" (tr. 78-79). On 8 January 2007, White submitted to his supervisor, Commander Sallyanne Jarvis (Jarvis), and to OIC Tony Stockton (OIC Stockton) a document entitled "NOTIFICATION OF ABSENCE for Active Duty Military Mobilization." This document stated: "IAW contract N62645-05-C-4107 paragraph 3.6, I request authorization to perform Active Duty Military responsibilities." The duration for the request was stated to be "365 days + pre-mobilization." Jarvis and OIC Stockton both signed the authorization. (Compl. at encl. 2) OIC Stockton testified that since White was activated by Presidential Executive Order, he "would have no authority to tell him he couldn't go at all" (tr. 48).

12. Before his deployment, White discussed with OIC Stockton whether, under his contract, he (White) would continue to be compensated for his job at Branch Medical Clinic while on active duty for the Army. OIC Stockton read the contract, and "thought it read very ambiguous." He told White he would put the question to the contracting officer's representative (COR). (R4, tab 15; tr. 41) In connection with authority or

promise to make payment, OIC Stockton testified that he had “no ability to obligate the Government to anything” (tr. 42).

13. On 12 January 2008, COR Downer asked Tameka N. Davis, a contract specialist at NMLC to clarify the meaning of “military leave” as used in Paragraph 3.9 of the contract:

Under “3.9 in Absences and Leave” there is an authorization of nte 15 days of compensated military leave. I’m trying to find the definition of military leave to see if this includes reservist deployments. Our contractor is under the impression that he will continue to be compensated from us during the duration of his year long deployment. From 3.9 it appears the compensation will only be for 15 days.

(R4, tab 9)

14. Citing 5 U.S.C. § 6323(a), Davis’ e-mail reply on the same day advised:

5 U.S.C. 6323 (a) provides 15 days per fiscal year for active duty, active duty training, and *inactive duty training*.^[2] An employee can carry over a maximum of 15 days into the next fiscal year.

....

5 U.S.C. 6323 (b) provides 22 workdays per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or a State Governor. This leave is provided for employees who perform military duties in support of civil authorities in the protection of life and property or who perform full-time military service as a result of a call or order to active duty in support of a contingency operation* as defined in section 101(a)(13) of title 10, United States Code.

(R4, tab 9, asterisked text defining contingency operation omitted in original) Davis advised “You [sic] person is most likely entitled to both (15 days/FY and 22 days/CY) = 37 days total if he/she hasn’t used some already. Also, he/she can accrue annual leave while on this type of leave” (*id.*). It is not disputed, and the contracting officer

² 5 U.S.C. § 6323 provides 15 days per fiscal year for “active duty, inactive-duty training. . . .”

acknowledged, that 5 U.S.C. § 6323 was not referenced in Contract 4107 at time of award (tr. 11).

15. On 16 January 2007, the COR reported by e-mail to her supervisor, Diane M. Holt (Holt), Comptroller and Director of Resources at Naval Healthcare New England (NHCNE): “[l]ooks like he [White] is eligible to receive 37 total paid days plus any leave days.” Holt, in turn, advised OIC Stockton that “37 days is the limit...I do not know if he has used any time now...but it is not for the entire time.” OIC Stockton forwarded the e-mail he received from Holt to White on 17 January 2007. (R4, tab 11, encl. 3) Thereafter, COR Downer advised White by e-mail on 23 February 2007 that he could submit an invoice for 266.7 hours of annual leave and 291 hours of military leave which would “take care of everything you are owed” (R4, tab 10).

16. On 16 March 2007, White was mobilized under Presidential Executive Order of 14 September 2001³ for a period of active duty not to exceed 365 days in support of Operation Iraqi Freedom (OPIF007) (R4, tab 11 at encl. 1). White’s orders (M-03-700210), issued pursuant to 10 U.S.C. § 12302⁴ by the Army’s Human Resources Command in St. Louis, Missouri, by order of the Secretary of the Army, stated in part:

PURSUANT TO PRESIDENTIAL EXECUTIVE ORDER
OF 14 SEP 2001, YOU ARE RELIEVED FROM YOUR
PRESENT RESERVE COMPONENT STATUS AND ARE
ORDERED TO REPORT FOR A PERIOD OF ACTIVE
DUTY NOT TO EXCEED 25 DAYS FOR MOBILIZATION
PROCESSING.

....

REPORT DATE: NO LATER THAN 16 MAR 2007 BUT
NO EARLIER THAN 16 MAR 2007
PERIOD OF ACTIVE DUTY: NOT TO EXCEED 0365
DAYS UNLESS EXTENDED OR TERMINATED BY

³ Under Executive Order No. 13223, dated 14 September 2001, the President of the United States authorized the Department of Defense to order any unit and any member of the Ready Reserve to active duty up to 24 consecutive months to respond to threats of further attacks on the United States after the terrorist attacks on the World Trade Center in New York City and on the Pentagon.

⁴ 10 U.S.C. § 12302 authorizes the President of the United States to order any unit or member in the Ready Reserve to active duty for not more than 24 consecutive months in time of national emergency.

PROPER AUTHORITY. TO BE REFRAD NLT 14 MAR
2008
PURPOSE: PARTIAL MOBILIZATION – OPERATION
IRAQI FREEDOM

(R4, tab 11 at encl. 1)

17. Dissatisfied with Holt's decision, White submitted a claim to the contracting officer, Charles Tama (CO Tama), at NMLC. In his 31 May 2007 letter to CO Tama, White cited Paragraph 3.6 of his contract which stated that the Commanding Officer may authorize planned absences to healthcare workers for performance of active duty responsibilities in which case "the health care worker shall be compensated by the Government for these periods of authorized absence." White's letter stated that "I obtained authorization from the Commanding Officer prior to the mobilization as required by Paragraph 3.6." White maintained:

I entered into this contract with the understanding that Paragraph 3.6 would allow full compensation during potential Active Duty mobilization and consequently accepted the agreed upon terms. My military status as an Army Reserve Officer was disclosed during contract negotiations, as was the potential for my Active Duty mobilization. I do not understand the basis of the 37 military day limitation, as it is not specified within the language of the contract, nor was it disclosed during the contract negotiations.

The 37 day limitation appears to include 15 days military leave for Reservists as identified in Paragraph 3.9. In Contract Year 2006, I exercised the Reserve allowance provided in paragraph 3.9 during Army Reserve Annual Training (Enclosure 4)[.] Additionally that year, I exercised the Active Duty provision of paragraph 3.6 during Temporary Active Duty (TAD). (Enclosure 5) Both requests were authorized by the OIC and the invoices were paid as submitted. Thus, precedence was established in exercising paragraph 3.6 (Active Duty) distinct, separate, and additional to paragraph 3.9 (Reserves).

(R4, tab 11) The record does not indicate on what date CO Tama received White's 31 May 2007 claim. We find that the CO would have received it on 6 June 2007.

18. Kelly L. Sherman, Supervisory Contracting Officer (CO Sherman) at NMLC advised White by e-mail on 18 July 2007:

In reference to your request for additional military leave, Section 3.9 takes precedence over Section 3.6. The amount of time granted for Military Leave is a standard Federal approved amount. In addition, Section 3.6 states that the Commanding Officer “MAY” grant authorization for planned absences. It appears that you did not receive pre-approval for additional paid leave.

(R4, tab 12)

19. White was deployed for active duty from 16 March 2007 to 14 March 2008. Thus, his deployment began during Option Period 2 (FY 07 option) (compl. at encl. 1). On 10 September 2007, when White was deployed in Iraq, the CO issued Modification No. P00008 exercising the FY 08 option (Option Period 3) subject to availability of funds. Modification No. P00008 states “All other terms and conditions of the contract remained unchanged” (R4, tab 14). The performance period for this option ran from 1 October 2007 to 30 September 2008 (*id.*). When Option Period 3 began, the Navy had received funding for the entire year (tr. 28). According to the Navy, although the NMLC CO could have terminated the contract by not exercising the option for Option Period 3, it chose not to do so “because our personal services contracts are based on the same policies and rules that federal civil servants adhere to and in good faith, we wanted Mr. White to have a job to come back to and his performance was good during the time he performed” (tr. 26).

20. White acknowledged that when he was deployed for active duty between 16 March 2007 and 14 March 2008, he was not able to provide physical therapy services at the Branch Medical Clinic. Furthermore, the Army paid him for his service on active duty during his year-long deployment. (Tr. 86). During White’s deployment, the Navy entered into two “backfill” contracts to cover the services White would otherwise have provided⁵ (exs. G-1, G-2). Upon White’s return, the Navy terminated the second “backfill” contract so that White could resume his services. (Tr. 90, 97-98)

⁵ The first backfill contract ran from 12 March 2007 to 31 October 2007 at \$70 per hour (ex. G-1). The second backfill contract ran from 1 November 2007 to 31 October 2008 at \$70 per hour (ex. G-2). Comptroller Holt testified that NMLC had “latitude” in its budget when there was a need to support the clinic’s mission (tr. 115).

21. In a 25 September 2007 memorandum for the record, OIC Stockton explained the leave authorization action he took nine months earlier:

1. On 8 January 2007, I signed the acknowledgement [sic] that Mr. White was being ordered to active duty for 13 months. I did not make any promises to him concerning pay. The memorandum I signed was acknowledging his absence due to official recall orders from the Army. This is the same memorandum used when Mr. White needed to take leave. I signed Mr. White's memorandum as the Officer in Charge, acknowledging his pending absence.

(R4, tab 15)

22. CO Sherman issued her final decision by letter dated 15 November 2007. She found White "entitled to payment for...annual leave balance at the time of deployment, and military leave consistent with statutes 5 U.S.C. 6323(a) and (b) which is 37 days." She found that White was entitled to "all annual leave accrued while using ...[his] regular and military leave and taken in accordance with the contract." In denying White's claim, CO Sherman gave four reasons: First, she contended that Paragraphs 3.6 and 3.9 both pertain to military leave and must be read together, and reading these two paragraphs together, "the contract would only permit 15 days of compensated military leave." Second, citing 5 U.S.C. § 6323(a) and (b), the CO contended that "[i]t is the Navy's intent to provide personal services contract health care workers the same military leave compensation to which civil servants are entitled under federal law," and thus, "any approval of compensated military leave in excess of 37 days would be inconsistent with Title 5 and the Navy's intent regarding parity for personal services contract workers." Third, the CO contended that White's active duty leave was not approved by the Commanding Officer as required in ¶ 3.6 of the contract because OIC Stockton "only signed acknowledgment of the pending absence due to official recall orders from the Army...[and] did not agree to compensated leave, nor did he have the authority to do so." Fourth, CO Sherman argued that when White was deployed in March 2007, Option Period 2 expired on 30 September 2007, and the CO therefore had no authority to commit funds beyond that date. She argued that "FY08 funds were not authorized to be obligated before 1 October 2007." (R4, tab 18; tr. 129) White timely appealed the decision by notice dated 25 November 2007.

23. CO Sherman testified that because personal services contractors are supervised by the government, it is typically NMLC's policy to apply some of the rights under Title 5 to personal services contractors (tr. 35). She acknowledged, however, that "Title 5 specifically applies to civil servants," and White was not a "federal civil

employee” (tr. 11-12, 34-35). For purposes of Contract 4107, we find that White was not a member of the federal civil service.

24. White computed his total claim as follows:

FY 07 (832 hours x \$40.56/hours)	\$33,745.92
FY 08 (664 hours x \$42.18/hours)	28,007.52
Appealing Holt’s decision to the CO (2 hours x \$120)	240.00
Appealing CO decision to Board (5 hours x \$120)	600.00
Interest (on \$62,593.44) @ 10%	<u>6,259.34</u>
TOTAL CLAIM	\$68,852.78

(*Id.*)

25. According to White, the \$120 per hour rate represents his “private practice rates when I do private practice therapy.” The \$840 claimed for appealing Holt’s decision to the CO, and for appealing the CO’s decision to the Board represented his time and was not paid to either a consultant or an attorney. (Tr. 79-80)

26. On 15 May 2008, White notified the Board by e-mail that he would rely on Exhibit A-3, his PowerPoint presentation at the 30 April 2008 hearing, as his post-hearing brief ordered by the Board by letter dated 5 May 2008. The e-mail referred to Enclosure 8 of his complaint as setting forth his “verified” claimed amount. The e-mail said that the enclosure did not include \$1,395 in additional expenses: (1) \$600 (5 hours x \$120/hour) for hearing preparation; (2) \$600 (5 hours x \$120/hour) for the time spent at the hearing; and (3) \$195 for purchase of the transcript.

DECISION

In limiting White’s leave compensation to 37 days while he was deployed for contingency operations in Iraq from March 2007 to March 2008, the Navy followed 5 U.S.C. § 6323(a) and 5 U.S.C. § 6323(b). In her final decision, the CO contended “[i]t is the Navy’s intent to provide personal services contract health care workers the same military leave compensation to which civil servants are entitled under federal law” (R4, tab 18, ¶ B.2). To be entitled to the leave benefits of 5 U.S.C. § 6323(a) (15 days per fiscal year) and 5 U.S.C. § 6323(b) (not exceeding 22 workdays in a calendar year), an individual must be an employee as defined by 5 U.S.C. § 2105, or appointed to a civil service position. *Horner v. Acosta*, 803 F.2d 687, 693 (Fed. Cir. 1986); *Costner v. United States*, 665 F.2d 1016, 1020 (Ct. Cl. 1981). Since White was never appointed into the civil service, we conclude that 5 U.S.C. § 6323(a) and (b), which were neither cited

nor referred to in the contract at time of award, could not be used as a basis for establishing the extent of White's paid leave.⁶

Under federal statutes, a member of the Ready Reserve is required to "(1) participate in at least 48 scheduled drills or training periods during each year and serve on *active duty* for training of not less than 14 days (exclusive of travel time) during each year; or (2) serve on *active duty* for training not more than 30 days during each year" (emphasis added). 10 U.S.C. § 10147(a)(1) and (2); *see also* 32 C.F.R. § 101.5(a)(1)(i)(A) and (B) (2007).

The record shows that on 15 February 2006, the year before he was mobilized for his one-year tour in Iraq, White requested and received approval from the OIC to perform "Army Reserve Annual Training" for the period 26 March to 6 April 2006, with travel on 25 March and 7 April 2006. Since 25-26 March and 5-6 April 2006 were weekend days, White requested 10 days to perform reserve training. White's request was made pursuant to ¶ 3.9 (the "military leave" provision) of the contract. The record shows that on 22 March 2006, White requested and received approval from the OIC to perform "Temporary Active Duty" (TAD) for the periods 1-5 May and 16-19 May 2006. None of the nine days fell on a weekend. White's request was made pursuant to ¶ 3.6 (the "performance of active duty" provision) of the contract. (Finding 9)

When White was mobilized on March 2007, he was "relieved from [his] present reserve component status." He was mobilized pursuant to Executive Order No. 13223 under a different statute, 10 U.S.C. § 12302 (finding 16, n.3 and n.4).

The parties are in agreement that, when White fulfills his reserve duty responsibilities, he is performing active duty under ¶ 3.6 of the contract. When asked what was meant by "performance of active duty responsibilities" under ¶ 3.6 of the contract, COR Downer testified that the term meant "a reservist member being recalled for either a two-week training evolution, a weekend evolution or a recall for active duty purposes for deployment." White stated that was how he interpreted ¶ 3.6 as well. (Finding 7) We conclude that both White's "contingency operation" deployment to Iraq, and his normal reserve duties fell under "performance of active duty responsibilities" of ¶ 3.6. That being the case, no distinction could be made between performance of active duty and reserve duty responsibilities because in both instances White was actually performing active duty responsibilities.

⁶ In addition to the 15 days under ¶ 3.9 of the contract, the Navy granted White 22 days of paid leave pursuant to 5 U.S.C. § 6323(b). The Navy has not claimed the 22 days back. Payment for the 22 days, therefore, is beyond the scope of this appeal. 41 U.S.C. § 605(a), *infra*.

Since ¶ 3.6 addresses only authorization for planned absences for “performance of active duty responsibilities” (and for attending continuing education courses), ¶ 3.9 fills in the gap by limiting “[d]ocumented military leave” – a term that although not defined, is broad enough to include both active duty training when serving as a reservist and deployment under contingency operations – to 15 calendar days per calendar year. This is consistent with the principle that in interpreting a contract, we must give reasonable meaning to all parts of the contract, and not render any portion meaningless. *Fortec Constructors v. United States*, 760 F.2d 1288, 1292 (Fed. Cir. 1985); *Thanet Corp. v. United States*, 591 F.2d 629, 633 (Ct. Cl. 1979). Moreover, an interpretation which gives a reasonable meaning to all parts of a contract will be preferred to one which “achieves a weird and whimsical result.” *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991); *Arizona v. United States*, 575 F.2d 855, 863 (Ct. Cl. 1978).

We believe the government’s interpretation is the only reasonable one because White’s interpretation would lead, in our view, to a “weird and whimsical” result. White’s interpretation is not reasonable because it would require the government to pay for services not performed (finding 20), it would leave such payment open-ended for an extended duration, it would result in double payment (*id.*), and since the interpretation depends upon a purported distinction between active and reserve duty, it would leave ¶ 3.9 of the contract useless, inexplicable and inoperative when a reservist performs active duty responsibilities during normal reserve training under 10 U.S.C. § 10147.

This disposes of the principal elements of White’s claim. White also claimed \$240 (2 hours) for appealing Holt’s decision to the CO, and \$600 (5 hours) for appealing the CO’s decision to the Board. The \$840 total amount was based on \$120 per hour. According to White, \$120 per hour rate was his “private practice rates when I do private practice therapy.” White acknowledged that the \$840 claimed represented his time and was not paid to a consultant or an attorney. (Finding 25)

Since White admits that the \$840 claimed was not incurred, we disallow the amount. White’s claim with respect to his appeal to the Board is in any event unallowable pursuant to FAR 31.205-47(f)(1) which provides that costs incurred in connection with “the prosecution of claims or appeals against the Federal Government” are unallowable. *Advanced Engineering & Planning Corp.*, ASBCA Nos. 53366, 54044, 03-1 BCA ¶ 32,157 at 158,992-995, *aff’d*, 292 F. Supp. 846 (E.D. Va. 2003); *Bill Strong Enterprises, Inc. v. Shannon*, 49 F.3d 1541 (Fed. Cir. 1995). *See also Naekel v. Department of Transp., F.A.A.*, 845 F.2d 976, 980 (Fed. Cir. 1988) (upholding denial of payment to *pro se* litigant for his/her own time expended on his/her own behalf). As for White’s additional claim of \$1,395 (finding 26), we lack jurisdiction to consider it

because it has not been submitted to the CO for decision in accordance with 41 U.S.C. § 605(a)⁷ and would, in any event, be unallowable under FAR 31.205-47(f)(1).

CONCLUSION

Because fulfilling statutory (10 U.S.C. § 10147) reserve duties is considered “active duty,” it is unreasonable for White to interpret ¶ 3.6 of the contract to apply only to active duty arising out of a contingency operation such as his one-year deployment to Iraq. Because ¶ 3.6, when read together with ¶ 3.9, can be harmonized to permit paid leave for all types of active duty up to 15 calendar days per calendar year, and because White’s interpretation of ¶ 3.6 would leave ¶ 3.9 useless, inexplicable, and inoperative when a reservist performs active duty for normal reserve training, and would lead to an inexplicable result -- such as paying for services not performed for a year -- we hold that White’s interpretation is unreasonable.

For the foregoing reasons, the appeal is denied.

Dated: 12 June 2008

PETER D. TING
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

⁷ 41 U.S.C. § 605(a) requires that “[a]ll claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for decision.”

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 56259, Appeal of Mr. Christopher H. White, rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals