

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Corners and Edges, Inc. ) ASBCA No. 55619  
 )  
Under Contract No. 263-MO-608091 )

APPEARANCE FOR THE APPELLANT: Mr. John E. Larson  
Secretary

APPEARANCE FOR THE GOVERNMENT: Mogbeyi E. Omatete, Esq.  
Trial Attorney  
Department of Health and Human Services  
Washington, DC

OPINION BY ADMINISTRATIVE JUDGE DELMAN ON  
ORDER TO SHOW CAUSE

The Board issued an Order to Show Cause directing the parties to address why ASBCA No. 55619 should not be dismissed as a result of the Board's decision that applied *res judicata* and *collateral estoppel* principles to bar re-litigation of certain issues in the appeal. *Corners & Edges, Inc.*, ASBCA Nos. 55611, 55619, 09-2 BCA ¶ 34,174 (*CEI*), *recon. denied*, 10-1 BCA ¶ 34,326 (*CEI II*). Familiarity with the facts is presumed.

The parties have filed their positions in accordance with the Board's order.\* In brief, appellant contends that its claim under ASBCA No. 55619 remains unaffected by the Board's decision and the appeal should proceed. The government contends that all material issues in appellant's claim are barred by the Board's decision, and the appeal should be dismissed.

DECISION

I. THE CEI DECISION IS FINAL

In *CEI* the Board held, *inter alia*, that appellant was barred from re-litigating at this Board the responsibility for Mr. Larson's van accident; the propriety of the

---

\* Along with its response, appellant filed a motion to dismiss ASBCA No. 55619 without prejudice, contingent upon the CBCA vacating its decision in CBCA Nos. 693 and 762 (app. resp. at 7). The government objected to this motion. Appellant has failed to identify any legal action filed at the CBCA or in the courts to vacate the CBCA's decision. Appellant's motion is denied.

contracting officer's decision to restrict Mr. Larson's use of the van after the accident; and whether Mr. Larson's use of a cart/dolly in lieu of the van caused the release of hazardous material, on the grounds of *res judicata* and *collateral estoppel* pursuant to a prior CBCA decision on the merits. *Corners & Edges, Inc. v. Dept. of Health and Human Services*, CBCA Nos. 693, 762, 08-2 BCA ¶ 33,961.

Appellant filed a timely motion for reconsideration of our decision, contending that the CBCA decision upon which this Board relied was a product of improper conduct of the presiding judge and a tampered and doctored trial transcript. This Board denied appellant's motion for reconsideration on these grounds. See *CEI II*, 10-1 BCA ¶ 34,326. As far as we know, appellant did not appeal the Board's decision denying its motion for reconsideration. Accordingly, the Board's decision is final.

## II. APPELLANT RAISES CONTENTIONS THAT WERE PRESENTED OR SHOULD HAVE BEEN PRESENTED IN PRIOR PROCEEDINGS

In response to the Board's Order to Show Cause, appellant continues to argue its contentions regarding CBCA improprieties. However, appellant raised this subject matter in its motion for reconsideration, which was denied by the Board. Appellant is not entitled to a second reconsideration of these same arguments. *Environmental Safety Consultants, Inc.*, ASBCA No. 53485, 06-1 BCA ¶ 33,122. See *Butt Construction Co.*, ASBCA No. 52081, 00-1 BCA ¶ 30,862. We have granted reconsideration of reconsideration decisions to correct calculation errors in the decision, *SUFI Network Services, Inc.*, ASBCA No. 55306, 10-1 BCA ¶ 34,327, but that is not the case here.

Appellant also asserts various reasons why *res judicata* and/or *collateral estoppel* principles should not have been applied by the Board in the first instance in *CEI*. However appellant briefed this subject matter prior to the Board's decision in *CEI*, but the Board rejected its arguments in the decision and denied its motion for reconsideration. Appellant also filed no appeal. Appellant's arguments now are untimely.

## III. BASED UPON THE BOARD'S DECISION IN CEI, NO CONTRACTOR CLAIM REMAINS TO BE LITIGATED UNDER ASBCA No. 55619

In ASBCA No. 55619, appellant claims that the contracting officer's decision to limit Mr. Larson's use of the government van and to substitute the government-furnished cart/dolly for deliveries was a wrongful new requirement and caused a quantifiable risk of injury to Mr. Larson, for which appellant was entitled to a claimed "definitization" of the contract price. Appellant contends that this specific claim as it pertains to Mr. Larson was not presented and adjudicated by the CBCA in Nos. 693 and 762 and therefore must be litigated under ASBCA No. 55619.

We do not agree with appellant. Clearly, the matter of the van accident and its consequences were before the CBCA in Nos. 693 and 762, and are also before this Board in ASBCA No. 55619. These transactional facts are the same in both proceedings. The parties are the same in both proceedings. The CBCA ruled, *inter alia*, in a decision on the merits that the contracting officer's decision to restrict Mr. Larson's use of the van after this accident was reasonable and did not affect appellant's cost of performance. Accordingly, appellant is now precluded by *res judicata* from re-litigating this matter in ASBCA No. 55619, that is, that this same contracting officer's decision was wrongful and/or otherwise entitled appellant to an adjustment or definitization of the contract price for undue risks or damages. There remains no other outstanding claim to be litigated under ASBCA No. 55619.

IV. CONCLUSION

We have duly considered all of appellant's arguments. For reasons stated herein, we conclude that based upon the Board's decision in *CEI*, there remains no other outstanding claim to be litigated under ASBCA No. 55619. ASBCA No. 55619 is dismissed.

Dated: 14 July 2010

---

JACK DELMAN  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

---

MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

---

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

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. 55619, Appeal of Corners & Edges, Inc., rendered in conformance with the Board's Charter.

Dated:

---

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