

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Bridget Allen ) ASBCA No. 54696  
 )  
Under Contract No. DABJ35-03-P-0096 )

APPEARANCE FOR THE APPELLANT: Ms. Bridget Allen

APPEARANCES FOR THE GOVERNMENT: Craig S. Clarke, Esq.  
Acting Chief Trial Attorney  
CPT Eugene Y. Kim, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE SHACKLEFORD  
ON APPELLANT’S MOTION FOR RECONSIDERATION

On 2 March 2005, appellant filed a timely motion for reconsideration (app. mot.) of our Rule 12.3 decision of 1 February 2005 (*Bridget Allen*, ASBCA No. 54696, 05-1 BCA ¶ 32,871). The government filed an opposition to the motion on 4 April 2005. Appellant, on 11 May 2005, replied to the government’s opposition.

Our decision denied a claim for payment of additional amounts for work alleged to have been performed outside the scope of the contract. Appellant has been paid for every hour worked at the contract price of \$15 per hour. While the motion makes many arguments, they all emanate from two basic contentions – that we erred in excluding evidence of discrimination and that we misinterpreted the contract.<sup>1</sup>

Ms. Allen argued at trial and in her post trial brief that she is entitled to recover her claimed costs because she was discriminated against in the administration of her contract as compared to the administration of a contract awarded to another person at Army Community Service (ACS) of a different race from Ms. Allen (Ms. Walters). We declined to allow testimony of said alleged discrimination at trial. Ms. Allen continues that argument in her motion and further adds that she was also discriminated against when the Board “purposely” misapplied the law in *Orlando Williams, d/b/a Orlando Williams Janitorial Service*, ASBCA Nos. 26099, 26872, 84-1 BCA ¶ 16,983, such that she was prevented from availing herself of her rights under 42 U.S.C. § 1981(a) and (b)

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<sup>1</sup> We decline to respond to Ms. Allen’s inflammatory statements about her treatment at the Board.

as well as under the Fourteenth and Fifteenth Amendments to the United States Constitution.

We stated in *Orlando Williams* as follows:

We address first appellant's assertion of his claim under the "Fifth Amendment to the Constitution of the United States and under 42 U.S.C. § 1981" for alleged "unlawful racial discrimination of defendant against the Petitioner" (complaint ¶ 2).

It is well established that this Board has no jurisdiction over claims based upon due process and equal protection guarantees of the Fifth Amendment or on racial discrimination in violation of a statute. *J & L Janitorial Services, Inc. v. United States*, Ct. Cl. No. 567-81C, order of 16 July 1982, 30 CCF ¶ 70,185; *Pride Unlimited, Inc.*, ASBCA No. 17778, 75-2 BCA ¶ 11,436; *motion for reconsid. denied* ¶ 11,631.

Accordingly, we dismiss appellant's claims to the extent they are based on allegations of racial discrimination or bias as beyond our jurisdiction. These matters may be considered, however, in evaluating the actions of Government employees in the administration of the contract.

84-1 BCA at 84,594-95

The assertion in *Orlando Williams* regarding consideration of allegations of racial discrimination to evaluate the actions of government employees was not quoted or discussed in our decision and it is the focus of Ms. Allen's argument. The consideration of these matters is a discretionary evidentiary determination. Board Rule 20(a) provides in part that the parties "may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge." In that regard we look for guidance to Rules 401 and 402 of the Federal Rules of Evidence. Rule 401 defines relevant evidence as that "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 402 concludes that "[e]vidence which is not relevant is not admissible."

Ms. Allen did not prove that the government required her to perform any work that was not required by her contract as ratified. It was proven that she was paid fully and

completely for her contract work. Ms. Allen's complaint is that allegedly another contractor was being paid for work not in accordance with the other contractor's contract. This favorable treatment was allegedly due to this contractor's race. If true, that matter is for another forum and is not a proper claim before us. Thus we deny reconsideration of our decision excluding evidence of the alleged discrimination against Ms. Allen.

Appellant's contention that we did not interpret her contract properly is also without merit. In our decision we cited Section IV of AR 608-1 and ¶ 3 of the Statement of Work in support of our conclusion that providing courses and resume assistance were cognizable under appellant's contract. In addition, the Employment Readiness Program (ERP) manager testified that one function of the ERP was to assist clients in writing resumes and offer classes on resume writing. The ERP would not create a resume from scratch for a client. (Tr. 225-26) Ms. Allen's own letter which was included with her monetary offer listed specialized services available to clients and included was help in writing both civilian and government resumes and conducting "classes to help soldiers become familiar with using the internet to search for jobs and prepare their resumes." (R4, tab 3) She confirmed in her testimony that her bid included resume assistance (tr. 140).

We made clear in our initial decision that appellant failed to prove someone with authority directed her to write resumes from scratch. We also found that she failed to prove that she actually wrote 28 resumes from scratch. We perceive no basis for changing those findings.

We are not persuaded that our initial decision was wrong and accordingly, we deny the motion for reconsideration.

Dated: 8 July 2005

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RICHARD SHACKLEFORD  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

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EUNICE W. THOMAS  
Administrative Judge  
Vice Chairman

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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. 54696, Appeal of Bridget Allen, rendered in conformance with the Board's Charter.

Dated:

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