

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Bruce E. Zoeller) ASBCA No. 56578
)
Under Contract No. DACA41-1-99-532)

APPEARANCE FOR THE APPELLANT: Mr. Bruce E. Zoeller
Hiawatha, KS

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
Engineer Chief Trial Attorney
Alice J. Edwards, Esq.
Engineer Trial Attorney
U.S. Army Engineer District, Kansas City

OPINION BY ADMINISTRATIVE JUDGE DELMAN ON APPELLANT'S
MOTION FOR RECONSIDERATION

In *Bruce E. Zoeller*, ASBCA No. 56578, 14-1 BCA ¶ 35,627, the Board sustained this appeal insofar as it awarded appellant \$26,496.60 plus CDA interest, less amounts previously paid pursuant to the contracting officer's decision dated 26 June 2008. On 15 July 2014, appellant timely filed a motion for reconsideration of this decision.¹ Familiarity with this decision is assumed.

In opposing the appellant's motion for reconsideration, the government stated as follows:

Multiple Motions for Reconsideration

The only remaining issue which the Board ruled on in its 11 June 2014 Decision was the amount of compensation owed by the government to Appellant for the value of the Illinois bundleflower (IBF) seed crop in the FW parcel for calendar year 2003. [Citations omitted] Appellant's most recent Motion for Reconsideration simply reiterates discovery issues raised in his 17 November 2012 "Judicial Notice," and his 05 August 2013 Motion for Reconsideration. Board Rule 29 (new Board Rule 20) does

¹ Appellant's motion also seeks review by the ASBCA Senior Deciding Group. The Chairman has denied this request.

not contemplate multiple motions for reconsideration. [Citation omitted] Appellant's 17 November 2012 "Judicial Notice" appeared to request reconsideration of the Board's 21 September 2012 Discovery Order in which the Board declined to issue an order to create or construct documents not in existence. The Board later affirmed its Decision regarding discovery. *Bruce E. Zoeller*, ASBCA No. 56578, 13-1 BCA ¶ 35353 n.3 (Jun 27, 2013), *recon. denied*, 14-1 BCA ¶ 35480 (Dec 17, 2013). Appellant's 5 August 2013 Motion for Reconsideration again requested that the Board order construction of documents. This Motion was untimely and denied by the Board. *Bruce E. Zoeller*, ASBCA No. 56578, 14-1 BCA ¶ 35480 (Dec 17, 2013). A third attempt at a Motion for Reconsideration on the same issue is also, obviously, out of time.... The 30-day time limit in Board Rule 29 (new Board Rule 20) is strictly construed. [Citation omitted]

(Gov't opp'n at 1-2)

We agree with the government that appellant's current motion primarily seeks further review of a Board discovery order that was issued over two years ago. We agree that appellant's request is untimely under the Board's rules.

As for the merits of the Board's quantum decision of 11 June 2014, the law on reconsideration is as follows:

[The moving party] must demonstrate a compelling reason for the Board to modify its decision. *J.F. Taylor, Inc.*, ASBCA Nos. 56105, 56322, 12-2 BCA ¶ 35,125. In determining whether a party has done so, we look to whether there is newly discovered evidence or whether there were mistakes in the decision's findings of fact, or errors of law. *Id.*

ADT Construction Group, Inc., ASBCA No. 55358, 14-1 BCA ¶ 35,508 at 174,041. Appellant has not shown any newly discovered evidence, mistakes in fact-finding or legal errors with respect to the Board's quantum decision.

CONCLUSION

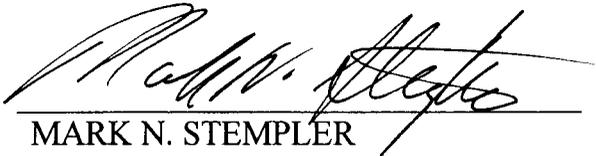
For reasons stated, appellant's motion for reconsideration is denied.

Dated: 21 November 2014



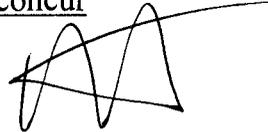
JACK DELMAN
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



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

I concur



RICHARD SHACKLEFORD
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. 56578, Appeal of Bruce E. Zoeller, rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals