

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Guy W. Parker d/b/a Parker International) ASBCA No. 56928
)
Under Contract No. FA8621-04-D-6250)

APPEARANCE FOR THE APPELLANT: Mr. Guy W. Parker

APPEARANCES FOR THE GOVERNMENT: Richard L. Hanson, Esq.
Air Force Chief Trial Attorney
Maj Jonathan P. Widmann, USAF
Jeffrey P. Hildebrant, Esq.
Trial Attorneys

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

Guy W. Parker d/b/a Parker International (hereinafter “Parker”) moves for reconsideration of our decision of 5 April 2010. In that decision we dismissed the appeal as to two claims for lack of jurisdiction and denied the appeal on the merits as to three claims. *See Guy W. Parker d/b/a Parker International*, ASBCA No. 56928, 10-1 BCA ¶ 34,416. On reconsideration we find no error and affirm our decision.

Parker’s motion for reconsideration states in its entirety, omitting only the footnotes:

This Rule 29 Motion to Reconsider ASBCA 56928 Decision 07APR2010 includes in Brief and Affidavit law and facts that exist in the Rule 13 Record. The Rule 5(b) Request for Equitable Adjustments Decision was litigated outside ASBCA jurisdiction and was not adjudicated solely upon the Rule 13 record. ASBCA accepted non-monetary dispute jurisdiction of the single 56928 Claim.

ASBCA 56928 Non-Monetary Dispute Claim: “This contractor is bound by 48 C.F.R. § 4.101 to only recognize Michael L. Grove as the Public Law 95-563 SF26 48 C.F.R. § 4.101 Contracting Officer of Record. Should Michael L. Grove be unable to respond, Mrs. Patsy Reeves Director of Contracting Aeronautical Systems Center, WPAFB is the default contracting office[r]. In order to

comply with substantial law Public Law 96-563 (amended) a substantial material or constructive change in this contract occurs if the 48 C.F.R. § 4.101 Contracting Officer of Record becomes unable to respond or disabled. Please provide a 48 C.F.R. § 33.211 Final Decision within 60 days from the date of receipt of this document for Breach of Contract based on Admission of Facts 1 through 36.”

(Mot. at 1)

The motion is signed by Mr. Parker and by Mr. Alan C. Gaudette. Mr. Gaudette is identified in his signature block as “ADR Moderator Contract FA8621-04-D-6250” (*id.*). The motion is followed by a three-page brief signed by both Mr Parker and Mr. Gaudette, and by a nine-page “affidavit” signed only by Mr. Gaudette (mot. at 4-15). Mr. Gaudette’s “affidavit” sets forth alleged facts, for which Mr. Gaudette claims personal knowledge, inextricably mixed with legal argument and citations.

Parker contends in his motion and brief that the Board’s decision was in error because (i) the decision litigated monetary claims that were “outside ASBCA jurisdiction” and (ii) the decision “was not adjudicated solely upon the Rule 13 record” (mot. at 1). With respect to the first alleged error, the first sentence in Parker’s 29 August 2009 Notice of Appeal (“NOA”) states:

This Notice of Appeal is sourced from Michael L. Grove’s...and Patsy J. Reeves’...deemed denial of certified Claims for Equitable Adjustments (Exhibit 2 P. 22) served **04APR2009** received **06APR2009** (Exhibit 3 P. 23-24) with claims, quantum and basis (Exhibit 4 P. 25-27) [emphasis added].

(NOA at 1)

Parker’s NOA summarizes the subject matter and amount of four monetary “CERTIFIED REQUESTS FOR EQUITABLE ADJUSTMENTS” (NOA at 25-26). Parker’s 5 September 2009 complaint sets forth the same four monetary claims with amended amounts (compl. ¶¶ 3-7, 10). Contracting Officer Clingerman decided these same four monetary claims in her 7 July 2009 final decision (gov’t mot. to dismiss, attach. 8 at 2-3, 5-7, 9). On this record, these claims were clearly within our jurisdiction for purposes of the government’s Motion to Dismiss (Partial) and for Summary Judgment which we granted in our 5 April 2010 decision.

With respect to the second alleged error, Parker appears to be complaining about the Board adoption of the Rule 4 file in *Guy W. Parker d/b/a Parker International*,

ASBCA No. 56742, 09-2 BCA ¶ 34,260 as part of the record in the present appeal, rather than relying solely on the papers submitted by the parties on the motion. Board Rule 13(a) expressly provides for inclusion in the record of “documents which the Board has specifically designated be made part of the record.” Our adoption of the Rule 4 file in ASBCA No. 56742 included appellant’s 150-document supplement to that file. Both parties were expressly advised of our action and both were given 30 days to submit any additional documents for the file. (Bd. corr. ltrs. dtd. 21 January and 1 February 2010) We find no error or prejudice to Parker in our adoption of the Rule 4 file in ASBCA No. 56742 for the present appeal.

Parker’s brief also rehashes its argument that Contracting Officer Clingerman was not a properly authorized contracting officer (app. br. at 6). Parker offers no new facts or argument not previously considered. Parker’s argument has not improved with repetition and the Federal Circuit agrees with us. *See Parker v. Donley*, No. 2010-1153, 2010 U.S. App. LEXIS 11809, at *6 (Fed. Cir. June 9, 2010).

Parker concludes his brief for reconsideration with the following requested relief: “Remand of the Complaint to DCMA for a Terminating Contract Officer FAR Part 49 Termination for Convenience FFP-GFE contract closeout settlement negotiation and final decision outside of litigation” (app. br. at 6). We cannot grant this relief. Parker’s Notice of Appeal appealed only the “deemed denial of certified Claims for Equitable Adjustments” (NOA at 1, 26). It did not appeal the denial of a claim for termination for convenience. Accordingly, the denial of a claim for termination for convenience is not before us on this appeal.

On reconsideration we affirm in all respects our decision of 5 April 2010.

Dated: 14 July 2010

MONROE E. FREEMAN, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

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. 56928, Appeal of Guy W. Parker d/b/a Parker International, rendered in conformance with the Board's Charter.

Dated:

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