

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
William M. Edwards, Esq.
Engineer Trial Attorney
U.S. Army Engineer District,
Kansas City

OPINION BY ADMINISTRATIVE JUDGE DELMAN
ON APPELLANT'S MOTIONS

By decision dated 14 September 2010, the Board denied appellant's motions for sanctions, *Bruce E. Zoeller*, ASBCA No. 56578, 10-2 BCA ¶ 34,549. On 18 October 2010, the Board received the following documents from appellant dated 14 October 2010, which, *inter alia*, sought reconsideration of the Board's decision:

1. Appellant Objects And Motions For Board Ruling And Order Corrective Actions To Be Taken By The Board's Senior Deciding Group Pursuant To This Motion
2. DISCRETIONARY OR OTHERWISE MANDATORY JUDICIAL NOTICE
3. APPELLANT'S DISCRETIONARY OR OTHERWISE MANDATORY JUDICIAL NOTICE ALONG WITH APPELLANT MOTION FOR RULE 13(A) SETTLING THE RECORD – SPECIAL DESIGNATIONS – TO ACCOMODATE [sic] BOARD SENIOR DECIDING GROUP RECONSIDERATION OF THE BOARD'S RULE 31 AND RULE 35 DECISION DATED 14 SEP 09 [2010]
4. Appellant Motions For A Rule 33 Extension So That It May Submit Corrective Demarcation Of Headings On Its Prior Submittals So That Such Can Be Made Prior To Board Action On Appellant's 14 OCT 2010 ...Motion To Reconsider

And Quash...Requested Board Rule 13(a) Settling The Record—Specific Designations

(Varying fonts and emphasis in originals)

The government responded on 22 November 2010. The government found appellant's motions "very confusing" (resp. at 1), but to the extent it understood appellant's contentions, it disputed appellant's right to any relief.

Before the Board could address appellant's motions for reconsideration, the Board received notice from the U.S. Court of Appeals for the Federal Circuit that appellant had filed an appeal to the Court from the above decision along with an appeal of another Board decision not directly pertinent to the subject motions, which appeals were docketed by the Court on 19 January 2011 and consolidated on 28 January 2011, *Zoeller v. Army*, Nos. 2011-1167, -1168. By Order dated 24 January 2011, the Board exercised its discretion to stay all Board proceedings pending resolution of the appeals. Appellant objected to this stay by letter dated 1 February 2011, citing Board authority that would allow us to exercise our discretion to address appellant's motions for reconsideration notwithstanding the appeals. *Nucleus Corporation*, ASBCA No. 39612, 94-2 BCA ¶ 26,862. The government responded, but did not take issue with this authority.

We agree with appellant that *Nucleus* supports our authority to address appellant's motions for reconsideration under these circumstances. Accordingly, we vacate the Board's order of a stay for the sole purpose of addressing appellant's motions for reconsideration.

We understand appellant to request that the Board's Senior Deciding Group (SDG) address its motions for reconsideration of the Board's decision denying appellant's motions for sanctions. Under the Board's rules, the Chairman of the ASBCA may refer an appeal to the SDG where the appeal is of unusual difficulty, of significant precedential importance or of serious dispute within the normal decision process. ASBCA Rules, Preface, Part II(c), 48 C.F.R. Chapter 2, Appx. A, Part 2. The Chairman has reviewed appellant's motion papers and has declined to refer appellant's motions for reconsideration to the SDG. *See AEC Corp.*, ASBCA No. 42920, 03-1 BCA ¶ 32,071 at 158,488 n.1. Accordingly, appellant's motions for SDG review are denied. Appellant's related motions to settle the record to accommodate SDG review and reconsideration are also denied as moot.

With respect to the merits of appellant's motions for reconsideration, the general rule is that such a motion must be based on newly discovered evidence or a showing of error in fact-finding or in law. A motion that merely restates arguments previously raised and considered by the Board will be denied. *Job Options, Inc.*, ASBCA No. 56698, 10-2 BCA ¶ 34,526. This is the case here. Appellant basically reargues the points the

Board has previously considered and rejected. Accordingly, its motions for reconsideration are denied.

CONCLUSION

For reasons stated, appellant's motions herein are denied.

Dated: 23 March 2011



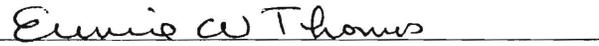
JACK DELMAN
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



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

I concur



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

Dated:

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