ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -	)	
	)	
Peritia LLC	)	ASBCA Nos. 64495, 64586
	)	
Under Contract No. W51H72-25-P-A002	)	

APPEARANCE FOR THE APPELLANT: Panséh Roland Tsewole
Managing Principal

APPEARANCES FOR THE GOVERNMENT: Dana J. Chase, Esq.
Army Chief Trial Attorney
MAJ Katharine M. Calderon, JA
Sean A. Marvin, Esq.
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE LAUFGRABEN
ON GOVERNMENT'S MOTION TO DISMISS

ASBCA Nos. 64495 and 64586 were previously consolidated. The government moved to dismiss ASBCA No. 64495 as moot. For the reasons set forth below, the government's motion is granted.[1]

STATEMENT OF FACTS FOR THE PURPOSE OF THE MOTION

1. These consolidated appeals arise from a contract held by appellant, Peritia LLC (Peritia), to provide Defense Travel System Administration services for the U.S. Army at Shaw Air Force Base in Sumter, South Carolina (64495 compl. ¶ 18).[2]

2. On March 24, 2026, the Army terminated Peritia's contract for cause under Federal Acquisition Regulation (FAR) 52.212-4(m) (R4, tab 63).

3. On March 26, 2026, Peritia filed a notice of appeal to challenge the for-cause termination, which was docketed as ASBCA No. 64495. Among other things, the complaint alleged that the for-cause termination must be converted to a convenience termination because it was motivated by bad faith (64495 compl. ¶ 46).

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[1] We will address appellant's four pending motions in a separate order.

[2] We refer to the complaint filed in ASBCA No. 64495 as the "64495 complaint" and the complaint filed in ASBCA No. 64586 as the "64586 complaint."

4. On April 14, 2026, the Army converted the for-cause termination to a convenience termination (R4, tab 8). The conversion notice stated that Peritia may submit a "termination settlement proposal in accordance with the procedures outlined in FAR 52.212-4(l)" (*id.*).

5. That same day, April 14, 2026, Peritia emailed a termination settlement proposal and designated it a "certified claim" (R4, tab 71). The claim sought $173,597 in convenience termination costs and $1,076,403 in lost profits and other alleged damages (*id.*). Peritia notified the Board about the conversion and requested that it retain jurisdiction over ASBCA No. 64495 even though the Army converted the for-cause termination to a convenience termination (app. email dtd. April 14, 2026 notice of conversion).

6. Two days later, on April 16, 2026, the Army moved to dismiss ASBCA No. 64495 on the ground that the conversion rendered moot Peritia's challenge to the for-cause termination (mot. to dismiss).

7. Also on April 16, 2026, Peritia filed its response to the Army's motion to dismiss ASBCA No. 64495 as moot (app. resp. to mot. to dismiss). Peritia argued (among other things) that dismissal would be unjust as the "Board's continued jurisdiction is the only available check on a settlement process directed entirely by the Contracting Officer whose egregious conduct created this dispute" (*id.* at 3). On April 21, 2026, Peritia filed a "Notice of Supplemental Evidence," attaching two more documents in support of its response to the Army's motion (app. notice of supp. evid.). There, Peritia argued that the conversion did not moot its demand for breach damages arising from "misrepresentations independent of the termination label" (*id.* at 2).

8. The Board held in abeyance the Army's deadlines to answer the complaint and submit the Rule 4 file in ASBCA No. 64495 pending resolution of the motion to dismiss.

9. In the meantime, on June 12, 2026, the Army issued a final decision on Peritia's claim for convenience termination costs and breach damages (R4, tab 80). The Army granted $8,459.98 in convenience termination costs and denied the remaining $1,237,991.70 (*id.*). That same day, Peritia filed a notice of appeal to challenge that decision, which was docketed as ASBCA No. 64586 and consolidated with ASBCA No. 64495. Peritia filed its complaint in ASBCA No. 64586 on June 18, 2026.

10. On July 1, 2026, the Army renewed its motion to dismiss ASBCA No. 64495 as moot.

11. The Army answered the complaint in ASBCA No. 64586 on August 3, 2026.

DECISION

The Army argues that ASBCA No. 64495, which challenges the initial for-cause termination, is moot because the Army converted the for-cause termination to a convenience termination.[3] Given that the conversion granted Peritia the relief requested in the ASBCA No. 64495 complaint, the Army argues that ASBCA No. 64495 should be dismissed because there is no further relief that the Board could provide.

Peritia opposes the motion on several grounds, including that the conversion did not resolve its request for breach damages arising from the Army's alleged bad faith (app. notice of supp. evidence).

For the reasons set forth below, we grant the Army's motion.

I. Standard Of Review

The Board Rules do not specify the standard for a motion to dismiss for lack of jurisdiction, so we look to Rule 12(b)(1) of the Federal Rules of Civil Procedure. *Satterfield & Pontikes Constr., Inc.*, ASBCA Nos. 59980, 62301, 21-1 BCA ¶ 37,873 at 183,907. Under that standard, "the Board must dismiss any appeal that does not fall within its subject matter jurisdiction. In making that determination, the Board must 'accept as true, and construe in a light most favorable to the non-movant, only undisputed factual allegations.'" *Id.* (quoting *Agility Def. & Gov't Servs., Inc.*, ASBCA Nos. 58870, 59261, 15-1 BCA ¶ 35,810 at 175,133). "[W]hen the jurisdictional facts are intertwined with the merits of the appeal, the Board should leave the jurisdictional determination until the hearing." *Id.* at 908 (quoting *L-3 Commc'ns*, ASBCA Nos. 60713, 60716, 17-1 BCA ¶ 36,865 at 179,625).

II. The Conversion Mooted Peritia's Challenge To The For-Cause Termination In ASBCA No. 64495

[3] In its motion to dismiss, filed on April 16, 2026, the Army also argued that the Board lacks jurisdiction over Peritia's convenience termination claim because the Contracting Officer had not yet issued a final decision on that claim. The Contracting Officer has since issued a decision, which Peritia challenges in ASBCA No. 64586. Thus, the Army's request to dismiss for lack of jurisdiction based on the absence of a final decision is denied as moot.

The mootness doctrine arises from Article III of the U.S. Constitution, which limits the power of courts to decide "cases" and "controversies." U.S. CONST., art. III, § 2. A case is moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969). Thus, "[w]hen, during the course of litigation, it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should generally be dismissed." *Chapman L. Firm Co. v. Greenleaf Constr. Co.*, 490 F.3d 934, 939 (Fed. Cir. 2007). "The Board applies the United States Constitution's Article III case or controversy justiciability standards because we act in a judicial capacity when considering appeals even though the Board is an Article II administrative body." *Flightsafety Int'l, Inc.*, ASBCA No. 62659, 23-1 BCA ¶ 34,988 at 185,714.

In the government contracts context, this Board has stated that "[w]here a contracting officer unequivocally rescinds a government claim and the final decision asserting that claim, with no evidence that the action was taken in bad faith, there is no longer any claim before the Board to adjudicate, and the appeal is dismissed." *Combat Support Assocs.*, ASBCA Nos. 58945, 58946, 16-1 BCA ¶ 36,288 at 176,974; *see also Vectrus Sys. Corp.*, ASBCA No. 61651, 23-1 BCA ¶ 38,291 at 185,910. Thus, because a for-cause termination is a government claim against the contractor and the available relief is ordinarily conversion to a convenience termination, if the government converts the for-cause termination to a convenience termination, "there is no longer any claim before us upon which we can base jurisdiction." *Moonschein Indus. LLC*, ASBCA No. 61755, 19-1 BCA ¶ 37,434 at 181,937; *see also Teddy's Cool Treats*, ASBCA No. 58384, 14-1 BCA ¶ 35,601 at 174,410 (challenge to default termination was moot after government converted default termination to notice termination).

But the Board recognizes an exception to this rule when the government withdraws its claim in bad faith. *Satterfield & Pontikes Constr., Inc.*, 21-1 BCA ¶ 37,873 at 183,908-09. We understand this bad faith exception as a variation of the voluntary cessation exception to the mootness doctrine. Under the voluntary cessation exception, "'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice' unless 'subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Heartland By-Prods., Inc. v. United States*, 568 F.3d 1360, 1368 (Fed. Cir. 2009) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000)). Without this exception to the mootness doctrine, a defendant could effectively insulate itself from judicial scrutiny by ceasing the wrongful behavior whenever a lawsuit is filed, only to then resume it once the case is dismissed. *See L-3 Techs., Inc.*, ASBCA No. 61811, 21-1 BCA ¶ 37,808 at 183,602-03. In other words, "bad faith" in this context means that the government's "withdrawal of the claim cannot be trusted" because it may be reinstated. *Adv. Powder Sols. Inc.*, ASBCA No. 61818, 19-1 BCA ¶ 37,425 at 181,897, *aff'd* 831 F. App'x 501 (Fed. Cir. 2020).

For instance, in *Satterfield & Pontikes Construction*, the parties entered into a settlement agreement whereby the government agreed to convert a default termination to a no-cost convenience termination upon project completion by the sureties; however, the settlement agreement gave the government the right to reinstate the default if the settlement is "determined to be void, inapplicable or otherwise nullified by a court or Board of competent jurisdiction." *Satterfield & Pontikes Constr., Inc.*, 21-1 BCA ¶ 37,873 at 183,903. Upon completion by the sureties, the government converted the default to a convenience termination in a final decision. *Id.* But the government "reiterated [its] right to reinstate the termination for default under certain circumstances, and to 'assess [liquidated damages] under the original contract' if that occurred." *Id*. The contractor argued that the settlement was unenforceable because it was induced by government misrepresentations and it refused to dismiss its default termination appeal. *Id.*

The government moved to dismiss the appeal as moot on the ground that the parties' settlement agreement and the subsequent conversion left nothing for the Board to decide. *Id.* at 183,905. In denying the government's motion, the Board recognized that the contractor was challenging the settlement. *Id*. at 183,908-09. If the contractor is successful, the default could be reinstated—meaning that the conversion was not unequivocal and therefore the default termination appeal was not moot. *Id.* at 183,908-09.[4]

Conversely, in *Advanced Powder Solutions*, the Board dismissed an appeal as moot even though the contractor alleged that the government might reassert the withdrawn claim. *Adv. Powder Sols., Inc.*, 19-1 BCA ¶ 37,425 at 181,897. In rejecting that argument, the Board found the withdrawal unequivocal and, thus, the contractor lacked a reasonable expectation that the government would reassert the claim. *Id.*

The Board has also determined that allegations of bad faith government conduct were insufficient to defeat a motion to dismiss an appeal as moot when the withdrawal was otherwise unequivocal. *See Quimba Software, Inc.*, ASBCA No. 59197,

[4] In denying the government's motion, the Board also recognized that the contractor asserted both government bad faith and lack of good faith and fair dealing in response to the government's attempt to enforce the settlement agreement—not to the underlying default termination or the conversion to a convenience termination. *See id.* at 183,911. The Board did not rely on those allegations of bad faith in denying the government's motion to dismiss the default termination appeal as moot.

19-1 BCA ¶ 37,350, at 181,613 (allegations that the government issued the claim in bad faith were insufficient to show that the subsequent, unequivocal withdrawal of the challenged claim did not moot the appeal). The Board recognized that unless the contractor had submitted a certified claim of its own raising allegations of bad faith, the Board would lack jurisdiction to consider those allegations. *See M. Maropakis Carpentry, Inc. v. United States*, 609 F.3d 1323, 1331 (Fed. Cir. 2010) (contractor must meet jurisdictional requirements of the Contract Disputes Act whether asserting an affirmative claim or a defense to government action); *Quimba Software, Inc.*, ASBCA No. 59197, 19-1 BCA ¶ 37,350 at 181,613 (citing *Maropakis*). Taken together, *Satterfield & Pontikes*, *Advanced Powder*, and *Quimba Software* demonstrate that the bad faith exception to dismissal for mootness turns on whether the government's withdrawal of the claim is trustworthy (*i.e.*, final)—not on the appellant's characterization of the government actions or motives.

Here, we dismiss ASBCA No. 64495 as moot because there is no remaining case or controversy in that appeal for the Board to decide and, as explained below, the bad faith exception does not apply. To begin, the complaint in ASBCA No. 64495 demands that the Board convert the for-cause termination to a convenience termination, and to grant "further relief, including appellant's right to pursue any amounts recoverable through the termination-for-convenience settlement process" (64495 compl. at Prayer for Relief). The conversion provided Peritia with the requested relief, including the right to seek convenience termination costs. Because ASBCA No. 64495 challenges the for-cause termination (a government claim), once the Army withdrew that claim by converting to a convenience termination, no claim remained for the Board to decide.

Even so, Peritia contends that the conversion did not moot ASBCA No. 64495 because the complaint contains an unresolved request for money damages arising from the government's alleged bad faith (app. opp. to mot. to dismiss at 7). But the 64495 complaint does not request money damages arising from the government's alleged bad faith. And even if it did, we would not have jurisdiction over that request because Peritia did not meet the jurisdictional requirement of submitting a certified claim seeking such relief in connection with ASBCA No. 64495. *See Quimba Software, Inc.*, ASBCA No. 59197, 19-1 BCA ¶ 37,350 at 181,613. Peritia's allegations of bad faith are before the Board in ASBCA No. 64586. We have jurisdiction over those allegations in that appeal, along with Peritia's request for convenience termination costs and breach damages, because Peritia presented them to the Army in a certified claim and received a final decision. The Board can address those allegations in ASBCA No. 64586, not ASBCA No. 64495.

We have also considered Peritia's allegations of bad faith and find that they are insufficient to invoke the bad faith exception to the mootness doctrine (app. notice of supp. evid. at 2). Peritia does not allege that the conversion cannot be trusted because the Army intends to reinstate the for-cause termination; rather, Peritia argues that the Army converted the for-cause termination to a convenience termination as a "litigation-risk avoidance" strategy (*id.* at 3). That is not enough to defeat the motion to dismiss ASBCA No. 64495 as moot because the conversion was unequivocal (R4, tab 8 at 2). And because the conversion is unequivocal, there is no claim remaining in ASBCA No. 64495 for us to decide.

We have also considered Peritia's argument that dismissing ASBCA No. 64495 as moot would "reward egregious conduct" and "eliminate the only available judicial check on a settlement process conducted entirely by the Contracting Officer" responsible for that alleged egregious conduct (app. opp. to mot. to dismiss). But whether ASBCA No. 64495 is moot turns on the Army's unequivocal conversion of the for-cause termination to a convenience termination, not Peritia's characterization of the Army's actions or the status of convenience termination settlement discussions. Thus, we grant the Army's motion to dismiss ASBCA No. 64495 as moot.

Finally, our dismissal of ASBCA No. 64495 is without prejudice. *See Combat Research Assocs.*, 16-1 BCA ¶ 36,288 at 176,974 ("dismissal of an appeal as moot is without prejudice to its merits") (citing *Textile Productions, Inc. v. Mead Corp*., 134 F.3d 1481, 1486 (Fed. Cir. 1998)). And our dismissal of ASBCA No. 64495 does not limit the scope of ASBCA No. 64586. ASBCA No. 64586 is not limited solely to quantum.

CONCLUSION

For these reasons, ASBCA No. 64495 is DISMISSED WITHOUT PREJUDICE.

Dated: August 20, 2026

ERIC E. LAUFGRABEN
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur

J. REID PROUTY
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur

MICHAEL N. O'CONNELL
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 Nos. 64586, 64495, Appeals of Peritia LLC, rendered in conformance with the Board's Charter.

Dated: August 21, 2026

PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals