



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: August 22, 2017

CBCA 5701-R

YRT ENTERPRISES LLC dba TOMPKINS INVESTIGATION SERVICES,

Appellant,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Yolanda R. Tompkins, President of YRT Enterprises LLC dba Tompkins Investigation Services, Washington, DC, appearing for Appellant.

J. Todd Casey, Office of Chief Counsel, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **ZISCHKAU**, and **SULLIVAN**.

SULLIVAN, Board Judge.

Appellant, YRT Enterprises LLC (YRT), seeks reconsideration of the Board's dismissal of its appeal for lack of jurisdiction.¹ *YRT Enterprises LLC v. Department of Justice*, CBCA 3701 (July 26, 2017). Because neither the new evidence nor the new

¹ In its motion, YRT states that it is appealing the Board's decision, but cites one of the Board's rules regarding reconsideration and seeks to introduce new evidence for the Board's consideration. On this basis, the Board construes YRT's motion to be one for reconsideration, pursuant to Rules 26 and 27 (48 CFR 6101.26, .27 (2016)). Appeals of decisions of the Board are made directly to the United States Court of Appeals for the Federal Circuit and are governed by the rules of that court.

arguments presented by YRT overcome the jurisdictional defects of its appeal, the Board denies the motion for reconsideration. Respondent, Department of Justice, Bureau of Alcohol, Firearms, Tobacco and Explosives (ATF), filed a motion seeking permission to respond to the reconsideration motion. The Board denies this motion as moot.

Discussion

Rules 26 and 27 of the Board's rules set forth the standards by which a motion for reconsideration will be evaluated and provide that reconsideration may be granted for several reasons, including newly discovered evidence which could not have been earlier discovered, even through due diligence; justifiable or excusable mistake, inadvertence, surprise, or neglect; or fraud, misrepresentation, or other misconduct of an adverse party. *Americom Government Services, Inc. v. General Services Administration*, CBCA 2294-R, 17-1 BCA ¶ 36,590, at 178,712. "Reconsideration is not a vehicle for retrying a case or introducing arguments that could have been made previously." *Id.*

In our prior decision, we held that the Board lacked jurisdiction to consider YRT's allegations that the agency's actions constituted a violation of title VII of the Civil Rights Act of 1964, because that act vests sole jurisdiction to consider such complaints with the United States district courts. *YRT Enterprises LLC*, slip op. at 5. We further held that, to the extent YRT was alleging general acts of discrimination, the Board could only consider these allegations if YRT alleged specifically how unlawful acts of government personnel affected its ability to perform the contract. *Id.* at 5-6. We determined that the letter sent to YRT on November 23, 2017, requesting return of security credentials at the end of contract performance did not terminate YRT's ability to work on the contract. *Id.* at 6.

YRT seeks reconsideration of the Board's determination that YRT had not alleged how the November 23 letter prevented it from performing the contract. With its motion, YRT submitted a second email message from the contracting officer, sent on November 28, 2016, stating that ATF would respond to YRT's inquiry "shortly." Exhibit 20.² YRT asserts that, because the contracting officer did not provide a response until November 30, 2016, the day that the contract was scheduled to end, ATF prevented YRT from working on the contract. This additional email message from the contracting officer does not change the Board's analysis of the November 23 letter itself, which we found was not a termination letter and did not prevent YRT from continuing to work on the contract through the end of contract completion, November 30.

² YRT submitted three new exhibits with its motion, numbered as appeal file exhibits. We cite to these exhibits with those numbers.

YRT alleges for the first time that ATF's actions violate provisions of the National Defense Authorization Act for Fiscal Year 2013, codified at 41 U.S.C. § 4712 (2012), which prohibit reprisal against contractor employees for reporting suspected gross mismanagement of a federal contract, waste of federal funds, or abuse of authority relating to a federal contract.³ YRT contends that its report of incidents of racism and potentially fraudulent activity on the contract affected YRT's performance of the contract with ATF. As support for these allegations, YRT asks the Board to consider a letter YRT sent to the Inspector General, Department of Justice, dated April 3, 2017. Exhibit 21. In this letter, YRT states many of the same facts alleged in its notice of appeal and complaint and asks the inspector general to investigate whether the actions taken by ATF constitute reprisal for whistleblowing activities that YRT had detailed. YRT also provided modifications 0001, 0003, and 0005 to YRT's contract, which YRT alleges evidence fraud and mismanagement by ATF. Exhibit 22.

The Board lacks jurisdiction to consider these new allegations because they were not presented to the contracting officer in YRT's claim. "An action brought . . . under the [Contract Disputes Act] must be 'based on the same claim previously presented to and denied by the contracting officer.'" *Scott Timber Co. v. United States*, 333 F.3d 1358, 1365 (Fed. Cir. 2003) (quoting *Cerberonics, Inc. v. United States*, 13 Cl. Ct. 415, 417 (1987)). In its review of YRT's claim, the Board does not see that YRT claimed that its contract was terminated as a reprisal for reporting contract mismanagement of fraud, waste and abuse. Exhibits 12, 15. Without such an allegation in the claim, the Board lacks the jurisdiction to consider these allegations further.

Finally, YRT alleges that the administrative withdrawal of Ms. Tompkins' security clearance violates Presidential Policy Directive No. 19 (Oct. 10, 2012), which prohibits reprisals against federal employees in the intelligence community in response to reports of

³ Contractor employees who believe that reprisal actions have been taken against them may request that the inspector general of the relevant agency investigate the matter and report the results to the head of the agency. 41 U.S.C. § 4712(b). Upon receiving the inspector general's report, the head of the agency is required to determine if the contractor employee has been subjected to reprisal and issue an order either denying relief or taking action to address any wrongdoing. *Id.* § 4712(c). If the head of the agency fails to act or the contractor fails to take an action ordered by the head of the agency, the contractor employee may seek relief in the appropriate U.S. district court. *Id.* § 4712(c)(2), (4). It appears that YRT has taken advantage of the relief afforded by this provision with its submission of its letter to the Department of Justice Inspector General. Exhibit 21.

waste, fraud, and abuse. Prohibited reprisals include denying access to classified information necessary to perform a contractor employee's job. *Id.* However, nothing in this policy directive grants the Board jurisdiction to review the decisions of executive branch agencies to grant or withdraw security clearances. *Department of the Navy v. Egan*, 484 U.S. 518, 528-30 (1988).

Decision

YRT's motion for reconsideration is **DENIED**.

MARIAN E. SULLIVAN
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

JONATHAN D. ZISCHKAU
Board Judge