UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: May 1, 2012

CBCA 1143-R

RYLL INTERNATIONAL, LLC,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

Marlene Ryll, President of Ryll International, LLC, Greenville, SC, appearing for Appellant.

Rayann L. Speakman, Office of Division Counsel, Federal Highway Administration, Department of Transportation, Vancouver, WA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **STEEL**, and **KULLBERG**.

STEEL, Board Judge.

In *Ryll International, LLC v. Department of Transportation*, CBCA 1143, 11-2 BCA ¶ 34,809, we denied Ryll International, LLC's (Ryll) appeal of the contracting officer's (CO) decision to terminate for cause a contract to crush and stockpile borrow and surface course aggregate in Katmai National Park, Alaska. The CO terminated the contract because Ryll was not able to complete the work within the period specified. In upholding the decision to terminate, the Board found that the failure to perform was not excusable and that the Government had a reasonable, contract-related basis to support its termination for cause.

Appellant now seeks reconsideration of the Board's decision. Familiarity with that decision is presumed.

Appellant argues that because of errors of law and fact in the Board's decision, the decision should be reconsidered and the appeal granted. Following a careful review of the numerous allegations made in support of appellant's motion, the Board finds that the allegations are either incorrect or immaterial to the decision. We deny appellant's request for reconsideration because the grounds submitted by appellant do not warrant reconsideration under the Board's Rules.

Review of a motion to reconsider is governed by the standards set out in the Board's Rule 26 (48 CFR 6101.26 (2011)). As the Board has stated,

> The Board's Rule 26 explains that reconsideration may be granted for any of the following reasons set out in Rule 27(a): newly discovered evidence which could not have been earlier discovered, even through due diligence; justifiable or excuable mistake, inadvertence, surprise, or neglect; fraud, misrepresentation, or other misconduct of an adverse party; the decision has been satisfied, released or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application; the decision is void, whether for lack of jurisdiction or otherwise; or any other ground justifying reconsideration, including a reason established by the rules of common law or equity applicable as between private parties in the courts of the United States.

Oregon Woods, Inc. v. Department of the Interior, CBCA 1072-R, 09-1 BCA ¶ 34,063, at 168,431-32, *aff'd sub nom. Oregon Woods, Inc. v. Salazar*, 355 F. App'x 403 (Fed. Cir. 2009); *see also W.G. Yates & Sons Construction Co. v. General Services Administration,* CBCA 1495-R (Nov. 9, 2011); *Springcar Co. v. General Services Administration*, CBCA 1310-R, et al., 10-2 BCA ¶ 34,534, at 170,332.

Reconsideration is not a vehicle for retrying a case or introducing arguments that have been made previously. *Confederated Tribes of Coos, Lower Umpqua, & Siuslaw Indians v. Department of Health and Human Services*, CBCA 237-ISDA-R, 10-2 BCA ¶ 34,476, at 170,043. Significantly, Rule 26(a) also cautions that "[a]rguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration, for altering or amending a decision, or for granting a new hearing." *See Beyley Construction Group Corp. v. Department of Veterans Affairs*, CBCA 5-R, et al., 08-1 BCA ¶ 33,784, at 167,203. As the Board observed in *Beyley*:

> Reconsideration is a matter within the discretion of the Board. *Flathead Contractors, LLC v. Department of Agriculture*, CBCA 118-R, 07-2 BCA ¶ 33,688 at 166,778. In exercising our discretion, and in evaluating a request for reconsideration, a tribunal must "strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the incessant command of the [tribunal's] conscience that justice be done in light of all the facts." *Advanced Injection Molding, Inc. v. General Services Administration*, GSBCA 16504-R, 05-2 BCA ¶ 33,097 at 164,063, *cited in Flathead Contractors*, 07-2 BCA at 166,778; *see also Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 50-R, 07-2 BCA ¶ 33,618.

In its motion for reconsideration, as counted by the Government, appellant sets forth fifteen arguments as to why the Board's decision should be reconsidered, based on evidence already in the record. All but two arguments were raised in appellant's or the Government's post-hearing brief. The issues raised by appellant were mostly ones of interpretation of evidence and application of the law, about which it had thoroughly presented its arguments before the decision was issued.

In a couple of instances, appellant noted that the Board had made factual errors: that appellant's first visit to the site was July 18, 2007, not August 18, and that the parties had first discussed modifying the contract so as to extend the completion date into the following spring on October 19, not October 30, as the Board stated. These statements are correct, but have no impact on the analysis or result.

Two arguments were semantic. For example, citing testimony that the CO declined to characterize her discussions with appellant and its subcontractor as "mediating" between the parties, appellant argued that the Board's finding that the CO "mediated" negotiations was erroneous. In context, the Board meant not that the CO served as a alternative dispute resolution mediator, but that she urged Ryll and its subcontractor to resolve their differences so that the contract could be completed. Likewise, appellant argues that the Board erred when it stated, "sent a notice to its suppliers" (although the referenced letter itself contained the caption "Letter to Suppliers") when the letter in question was arguably sent to only one supplier.

These factual and semantic differences, however, even if viewed in the light most favorable to appellant, are not material to the question of whether the Government was justified in terminating the contract for cause and would not alter the Board's decision on the merits. None of these errors were offered by the Board as material to its decision.

The *Oregon Woods* case is instructive here. In that case, the appellant raised nine issues, also suggesting errors in dates cited in the decision and asserting that the Board overlooked or ignored disputed material facts in reaching its decision. Specifically, as the *Oregon Woods* Board stated regarding the incorrect dates at issue, "Oregon Woods correctly points out that modification 2 was issued on October 12, 2007, not on September 12, 2007. The date of the modification is immaterial to our decision, however, so changing it does not merit reconsideration." 09-1 BCA ¶ 34,063 at 168,432 n.2. With regard to other facts and arguments, the Board found that none of the reasons given by Oregon Woods met Rule 26's standards of good grounds for reconsideration:

> The best that might be said for any of them is that they establish disagreements about immaterial facts. As we held in granting the agency's motion for summary relief, only genuine issues of *material* fact will defeat such a motion.

Id. at 168,432.

In the instant case, the Board finds that none of the arguments made by appellant go to issues sufficiently material that they would cause the Board to alter its decision.

Decision

Accordingly, the motion to reconsider the Board's decision is **DENIED**.

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CANDIDA S. STEEL
Board Judge

We concur:

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STEPHEN M. DANIELS
Board Judge

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H. CHUCK KULLBERG
Board Judge