UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

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MOTION FOR SUMMARY JUDGMENT DENIED:
January 30, 2020

CBCA 5272

UNITED FACILITY SERVICES CORPORATION
dba EASTCO BUILDING SERVICES,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Todd J. Canni of Pillsbury Winthrop Shaw Pittman, LLP, Washington, DC; Michael R. Rizzo of Pillsbury Winthrop Shaw Pittman, LLP, Los Angeles, CA; and Alexander B. Ginsberg of Pillsbury Winthrop Shaw Pittman, LLP, McLean, VA, counsel for Appellant.

Kristi Singleton and Brett A. Pisciotta, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **SHERIDAN**, **ZISCHKAU**, and **LESTER**.

LESTER, Board Judge.

Appellant, United Facility Services Corporation dba Eastco Building Services (Eastco), has filed a summary judgment motion asking us to find that its cost data is

sufficient to support its claimed damages. Respondent, the General Services Administration (GSA), opposes, asserting that Eastco's motion ignores Eastco's obligation to prove entitlement, that Eastco has not justified the use of estimates in place of direct actual cost support in establishing quantum, and that a hearing will be necessary to resolve both entitlement and damages issues. We deny Eastco's motion.

Background

We previously detailed the facts underlying the parties' dispute in a decision denying the parties' earlier cross-motions for summary judgment, issued July 9, 2018. *See United Facility Services Corp. v. General Services Administration*, CBCA 5272, 18-1 BCA ¶ 37,086, at 180,554. We repeat facts below to the extent necessary to explain the basis of Eastco's motion.

On or about November 1, 2012, GSA awarded to Eastco a blanket purchasing agreement (BPA) under the Federal Supply Schedule for operations and maintenance services at three federal buildings in Miami, Florida, at a firm-fixed price of $68,945 per month. Under task orders issued under the BPA, Eastco was to "provide management, supervision, labor, materials, equipment, and supplies and [would] be responsible for the efficient, effective, economical, and satisfactory operation, scheduled and unscheduled maintenance, and repair of equipment and systems located within the property line" of the three buildings. Section J.3 of the solicitation for the BPA included a written equipment inventory list for the three federal buildings, but indicated that "[e]quipment inventory and any other maintenance records provided for review of offerors are provided in good faith for informational purposes only, but may contain some errors."

Before submitting its bid for the BPA, Eastco participated in pre-bid site visits to the three federal buildings that included tours of open courtrooms and general offices (but not rooms where court was in session), the main machinery rooms (chillers and compressors), generator rooms, fire panel rooms, roofs, switchgear rooms, fire pump rooms, and three or four air handler rooms in each building, which were to serve as examples of what was in the building. During the tours, GSA did not open enclosed ceilings for viewings, but the record does not tell us whether Eastco or other offerors requested, but were denied, above-ceiling access during the visit. The initial term of the BPA ran from December 1, 2012, to November 30, 2013, and GSA subsequently exercised the first two of four one-year options, running Eastco's contract performance through November 30, 2015.

Immediately after contract performance began, Eastco, as required by its contract, conducted a full survey of the three buildings and discovered that the amount of inventory

present at the building differed from the inventory amounts listed in the solicitation. Through an email message on March 27, 2013, Eastco notified GSA of the inventory that it had discovered at each of the buildings and provided GSA with an Excel spreadsheet containing what it considered to be a list of the complete inventories for each of the three buildings. Eastco alleges that it found thousands of additional inventory pieces that were not captured on the solicitation's inventory list, although GSA suggests that many of the additional items identified are merely subcomponents of previously listed pieces of equipment without which the listed equipment could not function.

On December 28, 2015, after completing contract performance, Eastco submitted to GSA a certified claim seeking a contract adjustment of $758,536.72 for servicing what it alleged was extra equipment in the buildings beyond what it had reasonably anticipated when bidding. The GSA contracting officer denied Eastco's claim by decision dated February 16, 2016, and the Board docketed Eastco's appeal of that decision on April 8, 2016.

After the Board denied GSA's motion to dismiss this appeal for lack of jurisdiction, *see Eastco Building Services v. General Services Administration*, CBCA 5272, 17-1 BCA ¶ 36,670, at 178,559, the parties filed summary judgment motions on two issues the resolution of which, they reported, could assist them in resolving this matter amicably: (1) whether the language in section J.3 indicating that the "Equipment Inventory List" might contain "some errors," along with the solicitation requirement that Eastco undertake a pre-bid site visit, effectively barred a claim based upon errors in the inventory list; and (2) if not, whether Eastco can calculate damages by utilizing published guidebooks to estimate labor hours associated with the additional maintenance work. Although the Board subsequently denied the parties' cross-motions, *United Facility*, 18-1 BCA at 180,554, GSA reported during that briefing process that, despite discovery requests seeking payroll records or other proof of alleged damages, Eastco had not produced any documentation showing that it actually spent more money to service the alleged additional inventory than it anticipated when it submitted its bid. Eastco disputed GSA's allegations, asserting that it had "used an acceptable and highly credible method of estimating the increased costs that resulted from GSA's inaccurate inventory listing," calculating its claimed damages "by identifying the number of additional pieces of equipment it found at the buildings and us[ing] the GSA guidebook to calculate the additional maintenance required for each piece of equipment." After rejecting both GSA's argument that GSA had disclaimed any errors in the inventory list and Eastco's argument that the disclaimer meant nothing, we found ourselves unable to rule on the viability of Eastco's cost support because neither party had presented the Board with any of the cost information or estimates upon which Eastco was relying in support of its damages claim.

The parties then requested a renewed stay of proceedings to allow them again to engage in settlement discussions. After a year of continued stay requests, the Board notified the parties that the stay would have to be lifted and that the case would need to proceed. At that point, GSA asked the Board to schedule a hearing on this matter, indicating that factual disputes precluded summary judgment, while Eastco asked for an opportunity to file a new summary judgment motion through which it intended to show how its cost estimates provide an adequate basis for a damages award. The Board permitted Eastco to present its motion, which has now been fully briefed.

Discussion

Eastco's Quantum Support

Eastco has appended 875 pages of documents to its summary judgment motion, documents that it asserts support and justify the monetary damages that it is seeking. It has organized the documents into the following three categories:

First, Eastco has created a chart comparing (1) each piece of equipment that GSA said in the solicitation was in the three buildings with (2) each piece of equipment that Eastco actually found in the buildings and had to maintain. In that chart, Eastco identifies a labor hour time estimate for the work necessary to maintain each piece of equipment, which it developed using an apparently undated document titled "GSA Office of Real Property Management and Safety's Maintenance Time Standards" ("GSA Time Standards" or "Standards"). Eastco describes the GSA Time Standards as setting forth "maintenance intervals for each item of equipment and the labor hours associated with each maintenance task." Applying the Standards, Eastco developed a comparative total time and cost estimate that, according to Eastco, "reflects thousands of hours associated with the maintenance requirements for the additional equipment." Specifically, using the Standards, Eastco estimates that, if it had only been required to maintain the equipment listed in the solicitation, Eastco would have expended 34,373 total labor hours over the three-year life of the contract. To maintain all of the equipment actually discovered in the building for three years, Eastco, again applying the Standards, estimates that the work took 68,196 total labor hours.

Second, Eastco has submitted payroll reconciliation statements showing that Eastco had eight employees on site during the performance of this contract—a project manager, a scheduler, four heating/air conditioning maintenance employees, and two others—and stating how much it paid each employee during the period of contract performance.

Third, Eastco prepared summaries of the amounts that Eastco actually paid to its subcontractors and vendors for work on the contract, supported by purchase order requests, service order requests, and invoices.

On summary judgment, Eastco asks us to find that this evidence, taken together, is sufficient to support the damages that Eastco claims in this appeal, entitling it to a damages award based upon the difference between the estimated number of labor hours that it would have expended maintaining the originally listed equipment (34,373 hours) and an estimated number of labor hours that it should have taken to maintain all of the equipment actually found (68,196 hours), a difference of 33,823 labor hours.

The Viability of Eastco's Quantum Support

In prior summary judgment motions, each party requested that we find in its favor on the entitlement issue in this appeal. In its motion, GSA also asked that, were we to deny its request on entitlement, we reject Eastco's theory of calculating quantum, which GSA described as depending on estimates of extra labor hours expended on extra work. We denied the parties' cross-motions on entitlement. We also denied GSA's request regarding Eastco's quantum calculation, recognizing "that, in certain circumstances '[w]here a contractor does not accumulate cost data and cannot identify its actual costs attributable to changes, estimates may be used to quantify the increased costs a contractor incurred.'" *United Facility Services*, 18-1 BCA at 180,553 (quoting *Reliable Contracting Group, LLC v. Department of Veterans Affairs*, CBCA 1539, 11-2 BCA ¶ 34,882, at 171,563). Nevertheless, we also recognized that, in light of precedent from the Court of Appeals for the Federal Circuit, "an award of damages based upon cost estimates—or, as the appellate court described it, the 'guesstimate' of how much the contractor actually spent in response to a change – is permissible only 'where the claimant can demonstrate a *justifiable inability to substantiate* the amount of his resultant injury by direct and specific proof.'" *Id.* (quoting *Dawco Construction, Inc. v. United States*, 930 F.2d 872, 881 (Fed. Cir. 1991), *overruled on other grounds by Reflectone, Inc. v. Dalton*, 60 F.3d 1572 (Fed. Cir. 1995)). Because neither party presented the Board with any of Eastco's actual cost support, we found GSA's summary judgment motion too theoretical to allow for resolution of quantum issues at that stage of the proceedings.

Now, Eastco has presented us with what appears to be the entirety of its cost support, which includes its heavy reliance on labor hours estimates developed through application of the GSA Time Standards. It asks that we grant summary judgment in its favor based upon that cost support, although the scope of the issues on which it is seeking summary judgment is somewhat unclear. Although Eastco's motion for summary judgment could be interpreted

as limited to whether the cost support that it is providing is adequate to calculate a quantum award, the arguments that Eastco raises in its reply briefing make it appear that Eastco is seeking summary judgment on the case as a whole. It appears that, in its summary judgment request (as supplemented by its reply briefing), Eastco is assuming that it is entitled to recover all costs associated with maintaining equipment that was not listed in GSA's solicitation.

To the extent that Eastco believes that it has already established entitlement, it has done no such thing. In our prior summary judgment decision, we held that, even though GSA could not rely on a disclaimer in the solicitation to render the solicitation's equipment list essentially meaningless, Eastco was not entitled to rely on the solicitation equipment list as a definitive representation of everything that was in the building. *United Facility Services*, 18-1 BCA at 180,551-52. To the contrary, the solicitation at issue contained a site investigation clause, which, in conjunction with GSA's solicitation disclaimer language and a question-and-answer added to the solicitation by amendment in which a bidder expressly represented that the list was far from complete, placed upon Eastco an obligation to identify, at minimum, readily observable defects in the list during its site investigation. *Id.* Eastco has placed nothing in the record here to establish what it discovered or should have discovered through its site investigation, whether GSA's contention that the "missing" equipment was a part of or logically connected to the equipment that was listed and should have been anticipated is wrong, or the extent to which the site investigation should have affected its expectations about what equipment was in the buildings. Through a hearing, Eastco will have to establish the extent to which it would not have been made aware of equipment list defects had it conducted a reasonable site investigation in the circumstances of this case and the reasonableness of its assumptions about how much the anticipated maintenance work would cost. It cannot obtain a quantum award by simply assuming entitlement.

For purposes of resolving the pending motion, we will view it as a request for *partial* summary judgment limited to the issue of whether Eastco's proposed quantum support, in and of itself, is legally sufficient to support a damages award, assuming that Eastco first is able to prove entitlement. GSA appears to challenge the following two aspects of Eastco's use of estimates: (1) Eastco's right to rely on labor hour estimates at all, given that Eastco allegedly could have, but failed, to maintain contemporaneous records showing how much time and cost it was devoting to the alleged extra work on this project; and (2) Eastco's reliance, in creating its estimates, upon a set of labor hour time standards that, according to GSA, is outdated. We address these concerns below.

We recognize that, in certain instances, a contractor seeking damages may have to rely upon cost estimates, "in the absence of actual costs, to establish the cost of added work."

John Cibinic, Jr., James F. Nagle, & Ralph C. Nash, Jr., *Administration of Government Contracts* 626 (5th ed. 2016). Although no "magic rule" applies to every situation regarding the manner in which a contractor relying on estimates must calculate a damages claim or the type of support that must underlie those estimates, "[s]tatistical estimating techniques are often used and are persuasive when based on available actual data and supported by expert testimony," and "[t]rade association manuals are often used in establishing the reasonableness of an estimate or to calculate an adjustment." *Id.* at 628-29. The viability of estimates is typically going to be fact-specific and will differ depending on the type and reliability of original cost data available and the type of work being performed.

Nevertheless, before we can permit a contractor who has established entitlement to obtain a damages award based upon estimates, we have to find that the contractor justifiably has "no more reliable method for computing damages" available to it and that the evidence presented "is sufficient for a [tribunal] to make a fair and reasonable approximation of the damages." *Dawco Construction*, 930 F.2d at 880. It is the burden of the party seeking such an award to justify its failure or inability to substantiate its damages by direct proof. *Joseph Pickard's Sons Co. v. United States*, 532 F.2d 739, 742 (Ct. Cl. 1976). Ultimately, the goal in making a monetary award in a contract case like this one is to compensate the contractor for increased costs that it incurred as a result of a change in what the contract said would be required. *Sauer Inc. v. Danzig*, 224 F.3d 1340, 1348 (Fed. Cir. 2000). As we previously recognized, "actual cost data is the preferred means of proving increased costs because it 'provides the [tribunal], or contracting officer, with documented underlying expenses, ensuring that the final amount of the equitable adjustment will be just that—equitable—and not a windfall for either the government or the contractor.'" *United Facility Services*, 18-1 BCA at 180,552-53 (quoting *Dawco Construction*, 930 F.2d at 882).

For us to grant summary judgment in Eastco's favor on quantum, we would have to find (1) that "there is no genuine issue as to any material fact (a fact that may affect the outcome of the litigation)" regarding Eastco's ability to support its quantum with estimates and the manner in which it has created them and (2) that "the moving party is entitled to judgment as a matter of law." *Marine Metal, Inc. v. Department of Transportation*, CBCA 537, 07-1 BCA ¶ 33,554, at 166,175 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986)). Here, there are several issues surrounding Eastco's presentation of its estimates that preclude us from granting summary judgment for Eastco:

First, Eastco does not explain why it was justifiably unable to keep better records of the extra maintenance work that its employees were actually performing. "[O]nce a contractor is aware that it has a potential claim against the Government or that it is having to perform extra or changed work, it has an obligation to create and maintain

contemporaneous records tracking and showing its increased costs and/or segregating increased costs from costs for unchanged work." *United Facility Services*, 18-1 BCA at 180,553 (citing *Dawco Construction*, 930 F.2d at 881); *see Delco Electronics Corp. v. United States*, 17 Cl. Ct. 302, 321 (1989) ("In maintaining cost data, a contractor should segregate costs associated with the change where it is feasible to do so, and especially where the contractor can anticipate submitting a large claim."). Although the payroll records that Eastco presents here tell us how much each of Eastco's on-site employees was paid, they say nothing about what work each employee was performing or the time spent by any employee on any specific piece of equipment (whether equipment that Eastco originally anticipated having to maintain or equipment considered "extra" work). Eastco presents no daily logs that might more specifically detail that work.

Eastco asserts in its briefing, without citing any evidentiary support, that it "was not capable of tracking its labor hours, material costs, and subcontractor costs for each additional maintenance task required by GSA," Motion at 10, but its only justification in support is a statement in its briefing, again without evidentiary support, that, "as a small business in the rather unsophisticated building maintenance industry," it "does not have a sophisticated accounting system of controls and processes capable of contemporaneously accounting for the pervasive changes it encountered while maintaining the three federal buildings in question." *Id.* at 9-10. Yet, an effort to track extra work does not necessarily require the contractor to go out and create an entirely new or highly sophisticated accounting system. The contractor need only find *some* kind of contemporaneous way to attempt accurately to track extra work, even if the tracking is rather basic or lacks technical sophistication. *See Wilner Construction Co.*, ASBCA 32449, 88-2 BCA ¶ 20,614 at 104,171 (to track extra work being performed, "[n]o exotic or detailed records were required"). Here, Eastco has provided nothing but the representations of counsel in its briefing as to why Eastco did not attempt to keep contemporaneous records identifying the costs of extra work, representations that are not admissible as evidence. *See J.G. Watts Construction Co. v. United States*, 161 Cl. Ct. 801, 808 (1963) ("Statements made by counsel in briefs are not normally accepted by the [tribunal] as being part of the factual record.").

If, at hearing, Eastco is unable to provide any explanation justifying its failure at least to attempt to track labor hours or costs associated with extra work, that failure could justify a significant reduction in, and possibly even denial of, Eastco's damages recovery. *See Bath Iron Works Corp. v. United States*, 34 Fed. Cl. 218, 243-44 (1995) (discussing situation in which the contractor "totally failed to establish a 'justifiable inability to substantiate' its damages with direct and specific proof"), *aff'd*, 98 F.3d 1357 (Fed. Cir. 1996); *Wilner Construction*, 88-2 BCA at 104,173 (discounting appellant's estimates where "appellant could have kept very accurate records of what wall finishes were removed, when and in what

quantities," but voluntarily elected not to do so). It should have been obvious to Eastco as soon as it started contract performance that it would have to maintain an extensive amount of equipment that had not been listed in the solicitation. Yet, it appears that, over the course of three years of contract performance, Eastco may not have taken any steps to track or segregate any of the more than $700,000 in costs that it now alleges it incurred to maintain that extra equipment.

Certainly, there may be instances in which, despite the contractor's early awareness of changes or extra work, the volume or complexity of the work may make cost segregation or tracking impracticable. *See, e.g.*, *Parsons of California*, ASBCA 20867, 82-1 BCA ¶ 15,659, at 77,416. But it is the contractor's burden to establish that impracticability and its justifiable inability to prove the actual costs of its extra work through direct evidence. *See L.L. Hall Construction Co. v. United States*, 379 F.2d 559, 567 (Ct. Cl. 1966) ("Some showing must be made that secondary evidence [such as estimates] is appropriate because the primary evidence (actual costs) is nonexistent or unavailable *for good reason*." (emphasis added)); *P.J. Dick Inc. v. General Services Administration*, GSBCA 11783, 94-3 BCA ¶ 27,172, at 135,403 (contractor must "explain the justifiable inability to substantiate the amount of injury with specific and direct proof"); *Production Corp.*, DOT BCA 2424, 92-2 BCA ¶ 24,796, at 123,695 (contractor's failure to concern itself with costs of a change while performing was not a "justifiable inability" to prove actual costs of change). Were we blindly to excuse the failure of a contractor in situations like the one here to attempt to track its extra work over an extended period of time, it could create a disincentive to other contractors who would normally make efforts to maintain actual and accurate cost records. *See L.L. Hall Construction*, 379 F.2d at 567 ("[I]f every contractor could ignore actual equipment operating costs, assuming it had or could reasonably maintain records of such costs, and rely instead on [estimates], it would be absurd."). Although the negative consequences resulting from unjustified failures to segregate or track costs might be viewed as a penalty to the contractor, any penalty is attributable to the contractor's own failure to take appropriate action to document the effects of a known contract change. *Transtechnology Corp., Space Ordnance Systems Division v. United States*, 22 Cl. Ct. 349, 363 (1990).

On the current record, we have no basis upon which to grant Eastco's summary judgment request because Eastco has presented no evidence allowing us to evaluate the extent to which we should accept, discount, or reject Eastco's extra work labor hours estimates. Further, in light of the discretion that the Board must exercise in deciding the extent to which to discount or preclude a quantum award in the absence of the contractor's justifiable inability to prove the cost effect of extra work by actual direct cost support, *see*

United Facility Services, 18-1 BCA at 180,553, we do not see how we could make that type of discretionary determination, as a matter of law, on summary judgment.

Second, as GSA argues, Eastco's damages estimate appears to be untethered from, and in conflict with, Eastco's actual cost records. As we discussed in our prior summary judgment decision, even when a contractor justifiably relies on "well-accepted industry cost estimating manuals to establish how much it should have cost to maintain each piece of unlisted equipment," the contractor "still need[s] to tie those estimates to records of its actual incurred costs." *United Facility Services*, 18-1 BCA at 180,553. Here, GSA asserts in response to Eastco's summary judgment motion, without challenge by Eastco, that Eastco employees spent a total of 43,029 labor hours working on this contract.[1] Yet, Eastco's quantum calculation is based upon a labor hours estimate that all of the work on this project should have taken 68,196 labor hours, an estimate that, according to GSA, exceeds Eastco's actual labor hour experience by more than 25,000 labor hours. Obviously, if Eastco was able to perform all work (including the alleged extra work) under this contract in 43,029 actual labor hours, Eastco could not rely upon a 68,196 labor hours estimate in establishing quantum. No matter how Eastco created its estimates, they cannot be divorced from Eastco's *actual* experience on the job, *see Bregman Construction Corp.*, ASBCA 15020, 72-1 BCA ¶ 9411, at 43,716 (finding estimates unreliable where "they [could not] be reconciled with the actual cost and quantity figures in evidence"), and Eastco cannot legitimately base a damages claim on a labor hours estimate that assumes 25,000 more labor hours than its records show it incurred.

Third, Eastco has not placed any bid estimating documentation in the record to show what work Eastco originally anticipated it would have to perform or what it expected that work to cost. Evidence of Eastco's original assumptions and the reasonableness of those assumptions in the circumstances may directly inform the reasonableness of Eastco's current quantum estimates. Recognizing, as indicated above, that Eastco cannot recover from the Board more than it actually spent in performing the contract, one way to evaluate the reasonableness of Eastco's current damages estimates is to compare the total cost that Eastco incurred in performing this job against what Eastco realistically and reasonably anticipated that it would cost plus any added expenses or work for which Eastco is responsible. *Astro*

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[1] In its summary judgment response, GSA supported its assertion that Eastco employees expended a total of 43,029 labor hours on this contract with a spreadsheet showing its calculations, developed from Eastco's payroll records, and an affidavit from the individual who studied Eastco's payroll records and prepared the calculations. In its reply brief, Eastco did not address GSA's calculation.

Dynamics, Inc., NASA BCA 476-1, 78-1 BCA ¶ 13,097, at 64,007. That Eastco is attempting to establish quantum based upon newly created estimates without reference to its total incurred labor hours and costs or its original bid assumptions does not render this type of information irrelevant. Although "[b]id estimates are," generally, "unsatisfactory evidence" in and of themselves, they are pertinent in evaluating the reasonableness of after-the-fact quantum estimates that a contractor generates to support an extra work claim. *American Tile & Linoleum Co.*, ASBCA 6605, 61-2 BCA ¶ 3135, at 16,294-95. The absence of such records could make Eastco's effort to prove quantum more difficult.

Fourth, we cannot find on summary judgment the extent to which the GSA Time Standards on which Eastco relies are reliable and appropriate for calculating estimated labor hours for maintaining the alleged additional equipment in the circumstances here. Certainly, the use of trade association and industry manuals and guidebooks to assist in the development of labor and cost estimates for cost adjustment purposes is a well-accepted practice. *See* John Cibinic, Jr., James F. Nagle, & Ralph C. Nash, Jr., *supra*, at 629 (citing numerous cases). Nevertheless, we have little information about the Standards upon which Eastco is relying, other than that GSA published them twenty-five or more years ago and at some point abandoned them. Eastco has submitted various pages from an undated version of the Standards to the Board that appear to identify labor hours estimates for work on different types of equipment, *see* Appeal File Supplemental Exhibits 2 & 3, but no descriptive information from the Standards themselves identifies their purpose, how they are to be applied, or the extent to which they apply to the types of equipment being maintained in these buildings. Further, there is no testimony or affidavit detailing how the estimates were created and explaining why they are reliable. Although GSA's complaints about the Standards, beyond the fact that GSA has not relied on them for more than two decades, lack much detail, we cannot find based upon the limited information presented to us that, as a matter of law (as we must find in order to grant summary judgment), the standards are sufficiently reliable, current, and well accepted to form the basis of Eastco's labor hour estimates.

Decision

For the foregoing reasons, appellant has not presented us with sufficient information to allow us to grant summary judgment in its favor on the viability of its quantum support. Accordingly, appellant's motion for summary judgment is **DENIED**. The Board will schedule this appeal for a hearing by separate order.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

We concur:

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Board Judge