UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION IN CBCA 185-R DENIED;
MOTION TO DISMISS CBCA 1031 GRANTED: August 15, 2008

CBCA 185-R, 1031

PETERSEN EQUIPMENT FIRE & EMERGENCY SERVICES,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Audrey Johnston, Chief Executive Officer of Petersen Equipment Fire & Emergency Services, Tehachapi, CA, appearing for Appellant.

Stephen R. Palmer, Office of the Regional Solicitor, Department of the Interior, Sacramento, CA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **HYATT**, and **McCANN**.

McCANN, Board Judge.

These cases present a claim for increased workers' compensation benefits for Eric Petersen, a sometime employee of Petersen Equipment Company, a Government contractor.[1] The objective of appellant, and of Mr. Petersen, is to have the Board determine that the Government agreed to pay Eric Petersen, when he was employed as a firefighter for the Government, at a daily rate of pay instead of an hourly rate of pay. Such a determination would, theoretically, increase the disability payments which have been awarded to him by the Department of Labor (DOL). As elaborated below, the Board does not have jurisdiction

[1] The relationship between Eric Petersen and Petersen Equipment Company has not been made clear.

over claims by employees of the Federal Government for disability payments, nor does it grant reconsideration of a decision absent newly discovered evidence or other factors as set forth in Rules 26 and 27. We thus deny the motion for reconsideration of our decision in CBCA 185 and dismiss CBCA 1031 for lack of jurisdiction.

Background

On August 24, 1990, Petersen Equipment Company entered into Emergency Equipment Rental Agreement (EERA) number CA-020-EQ0-107 with the Bureau of Land Management (BLM). Appeal File, Exhibit 2(a). Under this agreement Petersen Equipment agreed to supply firefighting equipment to the BLM at certain rates. Under some of the equipment categories the following phrase appears: "Individual to be paid AD-4 wages." In block 6 of this agreement it states that the contractor is to furnish the supplies. In block 7 it states that the Government is to furnish the operator.

Eric Petersen was hired to be the operator of the equipment. Mr. Petersen's Emergency Firefighter Time Reports for the days August 21 through August 31, 1992 show that he worked various numbers of hours during this period. Appeal File, Exhibit 2(b). These reports were signed by Eric Petersen and by the government time officer. These reports indicate that the firefighter classification was AD-4 and the rate of pay was $10.90 per hour. There is no reference in these reports to agreement CA-020-EQ0-107. Eric Petersen does not dispute that he was paid by the Government for the hours that he worked at the rate stated in the Emergency Firefighter Time Reports.

While operating the equipment on the job, Eric Petersen was injured. He sought and was awarded workers' compensation benefits by the DOL. Appeal File, Exhibit 2 at 52-57. In its decision, the DOL found that Mr. Petersen was a federal employee. Mr. Petersen seeks to increase his award of workers' compensation benefits by asking this Board to determine that, through agreement CA-020-EQ0-107, he was hired by Petersen Equipment Company or by the BLM and received a daily rate of pay instead of an hourly rate of pay.[2]

Procedural History

On May 31, 2007, the Board dismissed CBCA 185 for lack of jurisdiction under the Contract Disputes Act of 1978 (CDA), 41 U.S.C.A. §§ 601-613 (2008). This decision articulated three problems with the appeal: (a) it was not clear that Petersen Equipment

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[2] Mr. Petersen has not been clear on who he contends hired him or on how he contends that this Board has jurisdiction over his claim under the contract.

Company had filed the appeal; (b) no claim had been filed with the contracting officer; and (c) the claim was apparently made under the Federal Employees' Compensation Act (FECA), 5 U.S.C. ch. 81 (2000), over which the Board has no jurisdiction. *Petersen Equipment Fire & Emergency Services v. Department of the Interior*, CBCA 185, 07-2 BCA ¶ 33,591. On June 15, 2007, Petersen Equipment filed for reconsideration of this decision. This request was docketed as CBCA 185-R. Subsequently, Petersen Equipment filed the same claim with the contracting officer, who issued a decision denying the claim on or about December 10, 2007. Petersen Equipment appealed the denial of its claim to the Board. This appeal was docketed as CBCA 1031. The Board consolidated CBCA 185-R with CBCA 1031 and respondent filed a motion to dismiss the appeals.

Discussion

CBCA 185-R

We address first the request for reconsideration of our decision in CBCA 185. The Board's jurisdiction derives from the CDA, which requires that a claim be submitted to the contracting officer for decision as a prerequisite to the Board's jurisdiction. 41 U.S.C. §§ 605(a), 606. Since no claim had been presented to the contracting officer, the Board dismissed the claim for lack of jurisdiction. We further stated that even if a claim had been presented, the Board would lack subject matter jurisdiction over it since matters involving workers' compensation payments are exclusively within the province of the DOL.

Our Rule 26 provides that reconsideration may be granted for any of the grounds set forth in Rule 27, which include, among other things, newly discovered evidence which could not have been earlier discovered through due diligence, fraud, misrepresentation or other misconduct of an adverse party, or excusable mistake. Appellant has presented no new evidence or arguments in its motion for reconsideration. Arguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration. Rule 26(a). Accordingly, appellant's motion for reconsideration must be denied.[3]

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[3] The Board's decision in CBCA 185-R, for which reconsideration is sought, was issued by a panel which included Judge Robert W. Parker, as well as Judges Hyatt and McCann. Since the issuance of that decision, Judge Parker has retired. He has been replaced, in CBCA 1031, by Judge Daniels, who was selected randomly. Under applicable precedent, a board of contract appeals may not change the panel that decides a motion for reconsideration. *Stan Dieker v. General Services Administration*, GSBCA 16050-R, 03-2 BCA ¶ 32,375 (citing *Universal Restoration, Inc. v. United States*, 798 F.2d 1400, 1406 n.9 (Fed. Cir. 1986)). Accordingly, the motion for reconsideration docketed as CBCA 185-R

CBCA 1031

CBCA 1031 is an appeal of the contracting officer's denial of a claim identical to CBCA 185 which, subsequent to the issuance of our decision in CBCA 185, Petersen Equipment submitted to the contracting officer. For the reasons we articulated in dismissing CBCA 185, we simply have no jurisdiction over this matter. Although appellant has cured the first basis for dismissing CBCA 185 (failure to present a claim to the contracting officer for final decision), it has not and can not cure the primary defect in its appeal -- that the Board has no subject matter jurisdiction over the issue raised in the claim.

This Board's jurisdiction under the CDA is over express or implied contracts for the procurement of property, other than real property; the procurement of services; the procurement of construction, alteration, repair, or maintenance of real property; or the disposal of personal property. 41 U.S.C. § 602. The workers' compensation benefits that form the basis for appellant's claim do not arise under the CDA and are in no way related to the contract between Petersen Equipment and BLM. We have no jurisdiction over issues relating to an individual's employment with the Federal Government or with respect to workers' compensation entitlement. Appellant has not shown any basis by which the contract could be interpreted to govern disability payments in these circumstances. Moreover, the DOL has already issued a decision addressing Mr. Petersen's claim for workers' compensation. Whatever rights Mr. Petersen may have with respect to his workers' compensation claim are governed by the provisions of FECA.

Decision

The motion for reconsideration of the decision issued in CBCA 185 is **DENIED**. CBCA 1031 is **DISMISSED FOR LACK OF JURISDICTION**.

R. ANTHONY McCANN
Board Judge

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is being decided solely by Judges McCann and Hyatt, the remaining members of the original panel. The entire panel has participated in the decision issued with respect to CBCA 1031.

We concur:

STEPHEN M. DANIELS Board Judge	CATHERINE B. HYATT Board Judge