



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 29, 2012

CBCA 2535

HOUSE OF JOY TRANSITIONAL PROGRAMS,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

Kent Gordon, Board President of House of Joy Transitional Programs, Douglasville, GA, appearing for Appellant.

Ryan M. Warrenfeltz, Sr., and Aparna V. Scrivivasan, Office of the General Counsel, Social Security Administration, Baltimore, MD, counsel for Respondent.

Before Board Judges **STERN** and **ZISCHKAU**.

ZISCHKAU, Board Judge.

House of Joy Transitional Programs (HOJ) appeals the final decision of the Social Security Administration's (SSA) contracting officer denying HOJ's claim for \$99,990 in contract payments. HOJ alleges that the contracting officer neglected to properly monitor contract performance, resulting in a wrongful termination of HOJ's contract, harassment, discrimination, and nonpayment of invoices. HOJ elected the Board's Rule 53 accelerated procedure and the parties have submitted the case on the record. We deny HOJ's appeal, concluding that the contractor has failed to meet its burden of proof.

Background

The SSA is responsible for the administration and payment of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits to provide a basic level of support to disabled individuals whose earning ability is restricted due to their impairments. Exhibit 1 at 4 (all exhibits are in the appeal file, except as noted). The SSA administers the Ticket-to-Work and Self-Sufficiency Program (Ticket-to-Work program), which is intended to provide SSDI beneficiaries and SSI recipients with disabilities more choices for receiving employment services and to increase provider incentives to serve these individuals in obtaining and maintaining employment. *Id.* Under the Ticket-to-Work program, the SSA provides SSDI beneficiaries and SSI recipients with a “ticket” that they may use to obtain employment services, vocational rehabilitation services, or other support services from an Employment Network (EN) of their choice. *Id.* “An EN is any qualified entity that has entered into an agreement with SSA to function as an EN under the [Ticket-to-Work program] and assume responsibility for the coordination and delivery of employment services, [vocational rehabilitation] services or other support services to beneficiaries who have assigned their Tickets to the EN.” *Id.* at 6.

The SSA awards contracts to entities that it selects to be ENs, and it pays ENs on a firm-fixed-price basis in consideration for satisfactory performance of work that results in certain outcomes or milestones achieved by disabled beneficiaries or recipients. Exhibit 1 at 19-23, 43-50. The SSA pays ENs for a ticket holder’s employment outcomes, and not for the cost of services that ENs provide. *Id.* at 43. The SSA does not guarantee any minimum or maximum work or dollar amount under its EN contracts. *Id.* at 23. Upon entering into a contract with the SSA, the EN elects one of the two payment methods, either an “outcome payment system” or an “outcome-milestone payment system,” and may change its election under certain conditions. Exhibits 1 at 19, 2 at 16. Payment to an EN under the Ticket-to-Work program is governed by 42 U.S.C. § 1320b-19(h), Ticket-to-Work program regulations at 20 CFR part 411, and the terms of the EN’s contract with the SSA.

The SSA had a contracted program manager, MAXIMUS, Inc., to assist the SSA in administering the Ticket-to-Work program, including monitoring EN performance and processing EN payment requests. Exhibit 1 at 5. Under its contract, the EN is responsible for submitting requests for payment, along with supporting evidence of the ticket holder's work or earnings, to MAXIMUS. *Id.* at 21. MAXIMUS was to review each request for payment and supporting evidence and either forward the request and documentation to the SSA or inform the EN of any deficiency in the request or documentation and give the EN an opportunity to take corrective action. Upon receipt of a payment request from MAXIMUS, the SSA was to evaluate the evidence and determine if payment to the EN was appropriate.

The SSA would not make any payments until it received satisfactory evidence establishing the EN's entitlement to payment. *Id.*

On December 9, 2005, the SSA awarded contract no. SSOO-06-E1575 to HOJ to be an EN under the Ticket-to-Work program, with a five-year period of performance expiring on December 8, 2010. Exhibit 1 at 1. The contract gave the SSA an option to extend the term of the contract for an additional five years. As part of a contract modification in 2009, the SSA required ENs to demonstrate security and suitability requirements for handling personally identifiable information while providing services to beneficiaries under the Ticket-to-Work program. On October 12, 2010, MAXIMUS, on behalf of the SSA's contracting officer, sent HOJ a notice of intent to exercise an option to extend the contract which otherwise would expire on December 8, 2010. HOJ did not respond, nor did it provide the SSA with the required suitability forms and proof of liability insurance until February 2011, about two months after the contract expired. The SSA decided to extend the contract retroactively as of December 9, 2010, for an additional five-year term, and the parties executed a bilateral modification on March 24, 2011. Exhibit 19 at 1. During the period from December 8, 2010, through March 24, 2011, the SSA had instructed MAXIMUS not to unassign any of HOJ's tickets and to continue processing HOJ payment requests. Indeed, the SSA identifies two payments that were approved during this period.

On May 19, 2011, the SSA informed HOJ that its executive director had been found "unsuitable" to perform on HOJ's EN contract and serve as its signatory authority. The SSA suspended HOJ's contract on May 24, 2011, pending HOJ's appeal of the unsuitability determination or designation of an acceptable new signatory authority. Exhibits 43, 44 at 2. After rejecting one proffered replacement signatory authority, the SSA accepted on June 8, 2011, a new signatory authority and the contracting officer issued a modification lifting HOJ's contract suspension. Exhibits 51, 53. The SSA never terminated HOJ's contract.

On May 27, 2011, HOJ filed a claim with the contracting officer, asserting that the SSA had not treated HOJ fairly and had subjected HOJ to harassment, wrongful contract termination, an improper unsuitability determination, and discrimination. HOJ also claimed that the SSA and its contracted program manager had not made required payments to HOJ totaling \$99,990 "based on the payments held, dropped, lost, and overlooked during the 2005-2011 term contracts." On August 6, 2011, the contracting officer issued a final decision denying HOJ's claim.

On August 22, 2011, HOJ filed a notice of appeal here, challenging the final decision. HOJ asserted entitlement to \$99,990 for unpaid invoices and unspecified "damages." HOJ stated that the SSA's contracted program manager "should have the exact amount due," as "[i]t is their job to maintain invoicing and payment records." Notice of Appeal, App. 1. On

September 12, 2011, the SSA filed the appeal file. The Board issued a scheduling order on September 15, with initial record submissions from the parties due on December 12 and replies due on December 19. On September 16, HOJ designated its notice of appeal as its complaint, as supplemented with a letter dated September 14. The SSA filed its answer and a motion to dismiss on October 5, and HOJ filed an opposition on October 6. The SSA timely filed its initial record submission and reply. At the Board's request, the record was further supplemented in January 2012.

Discussion

We construe a pro se litigant's pleadings liberally, holding them to less stringent standards than formal pleadings prepared by an attorney. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Greenlee Construction, Inc. v. General Services Administration*, CBCA 416, 07-1 BCA ¶ 33,514, at 166,062. But this more lenient standard for interpreting pleadings does not change a pro se litigant's burden of proof or our weighing of the factual record.

Payment Requests

HOJ asserts in its complaint that the SSA improperly failed to pay \$99,990 in contract payments. The SSA responds that HOJ's claim is entirely unsupported. We agree with the SSA that HOJ has not met its burden of proving its entitlement to any additional payments.

Exhibit 75 of the appeal file submitted by the SSA identifies in spreadsheet format a total of 277 payment requests submitted by HOJ, regarding twenty-seven different ticket holders, during the period 2006 through 2011, and the status of those requests – paid, denied, or open/pending, and the reasons for the payment dispositions indicated. HOJ has not identified a single payment that was improperly denied or left in an open status. In responding to an interrogatory regarding the basis for its claim amount, HOJ states *inter alia* that the \$99,990 amount was “due to [Title 41 of] the US Code [section] 605c [i]n hopes that the Contracting Officer will take notice of the serious nature and urgency of our claim.” In the interrogatory response, HOJ “itemized” the following damages: \$20,000 for closure of its California office and relocation expenses, \$125,000 for “[l]oss of revenue and staff, damages beginning February 2011 thru August 2011,” and \$85,000 for “unpaid invoices submitted June 2006-January 2011.” Respondent's Initial Record Submission (Dec. 12, 2011), Exhibit 2. HOJ has not shown how it computed those amounts and the amounts are not supported by any evidence in the record. Because HOJ has failed to demonstrate entitlement to additional payments, we deny this portion of its claim.

Contract Termination Allegation

HOJ contends that the SSA terminated its contract in February 2011 without cause and that HOJ was suspended from submitting new client intakes to MAXIMUS and requesting payments because of the suspension. Respondent's Initial Record Submission, Exhibit 2 at 5. As damages, HOJ cites "loss of board members and volunteer staff of HOJ." We agree with the SSA that HOJ's contract expired on December 8, 2010, per the terms of the contract. The contract expired because HOJ never submitted the insurance and suitability documentation required for exercising the option. In any event, the SSA and HOJ entered into a bilateral modification in March 2011 that retroactively extended the contract term for another five years effective December 9, 2010. Regarding the contract suspension imposed by the contracting officer due to the unsuitability determination of HOJ's executive director, we find the contracting officer's actions to be reasonable and supported by the record. The SSA lifted the suspension once HOJ proposed a suitable replacement. Finally, HOJ has not established any damages even if it had shown entitlement.

Unfair Treatment and Harassment Allegations

HOJ bases its claims of unfair treatment, harassment, discrimination, contracting officer neglect, and retaliatory conduct on a number of entirely unsupported or erroneous allegations regarding the payment process, the unsuitability determination, the alleged termination, the contract suspension, and alleged disrespectful conduct shown to HOJ's executive director by SSA personnel. Affidavit of Joy Thompson (Jan. 30, 2012). We find no evidence in the record of unfair treatment, harassment, discrimination, retaliation, or contracting officer neglect during the periods in question and we are unpersuaded by the conclusory statements made by HOJ in its filings.

Decision

In sum, we conclude that HOJ has not demonstrated entitlement on any of its allegations. Therefore, we **DENY** the appeal.

JONATHAN D. ZISCHKAU
Board Judge

I concur:

JAMES L. STERN
Board Judge