UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: May 21, 2015

CBCA 3815-C(1512)-R, 3816-C(1537)-R

SYSTEMS INTEGRATION & MANAGEMENT, INC.,

Applicant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Robert C. MacKichan, Jr., and Marques O. Peterson of Vedder Price, Washington, DC, counsel for Appellant.

Nathan C. Guerrero, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS**, **STERN** and **GOODMAN.**

SOMERS, Board Judge.

In *Systems Integration & Management, Inc. v. General Services Administration*, CBCA 3815-C(1512), 3816-C(1537), 15-1 BCA ¶ 35,886, we granted in part and denied in part an Equal Access to Justice Act (EAJA) application. We found Systems Integration & Management, Inc. (SIM) eligible to recover attorneys' fees. However, we limited SIM's recovery to $32,150. This amount reflected 257.2 hours worked by one of SIM's attorneys, Mr. P. H. Harrington, on SIM's claim from December 18, 2008, the date of the General Services Administration (GSA) contracting officer's final decision, to April 9, 2010. Based upon our review of all of the evidence presented, we held that on that date, GSA's position in the litigation became substantially justified, when SIM rejected nearly identical terms of a settlement that both parties had agreed upon weeks earlier. As a result, we denied attorney fees and costs sought from April 9, 2010, onward.

SIM now seeks reconsideration of the Board's decision. "Motions for reconsideration are committed to the considerable discretion of the Board." *URS Energy & Construction, Inc. v. Department of Energy*, CBCA 2260-R, 12-2 BCA ¶ 35,147, at 172,522 (citing *Beyley Construction Group Corp. v. Department of Veterans Affairs*, CBCA 5-R, et al., 08-1 BCA ¶ 33,784, at 167,203). The Board reconsiders decisions under limited circumstances set out in Board Rule 26 (48 CFR 6101.26 (2014)). As the Board has stated,

> [R]econsideration 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 excusable 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.

Ryll International, LLC v. Department of Transportation, CBCA 1143-R, 12-1 BCA ¶ 35,029, at 172,144 (citing *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); *W.G. Yates & Sons Construction Co. v. General Services Administration*, CBCA 1495-R, 12-1 BCA ¶ 35,038, at 172,154 (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." *Ryll International*, 12-1 BCA at 172,144 (citing *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." *Id*. (citing *Beyley Construction Group Corp.* 08-1 BCA at 167,203).

In its motion for reconsideration, SIM asserts that the Board's decision contains a factual error, and that GSA, rather than SIM, walked away from the settlement in April 2010. More specifically, SIM says that GSA presented a draft settlement on April 1, 2010,

which included changes that did not comport with the settlement that the parties had reached in principle on March 23, 2010. These changes are (1) that GSA included reference to a district court judgment against SIM and (2) that SIM would be required to pay interest on the amount due pursuant to the judgment.

We find that the changes that SIM highlights do not materially change the essence of the terms of the settlement. Thus, we reject SIM's assertions, and, as we held in our previous decision, conclude that GSA's position became substantially justified on April 9, 2010, the date on which SIM began the conduct that ultimately prolonged resolution of the case.

As background, we note that while SIM and GSA were negotiating the settlement of SIM's claims against GSA under the Contract Disputes Act (CDA), the United States Government was pursuing a civil false claims case against SIM in the United States District Court for the Eastern District of Pennsylvania. On February 13, 2010, SIM agreed to pay $525,000 to the United States Government to resolve the civil false claims action. When SIM failed to make this payment, the district court entered judgment against SIM on March 25, 2010, in the amount of $525,000, after the parties had agreed to a settlement in principle.

Meanwhile, before the entry of judgment against SIM, in a March 23, 2010, letter, GSA memorialized the terms of the agreement that the parties had reached in principle. As SIM correctly notes, at that time, no judgment had yet been entered against SIM by the district court. However, by the time that GSA prepared the draft settlement agreement for SIM's review on April 1, 2010, the district court had entered the judgment against SIM. Therefore, GSA attached and incorporated a copy of the judgment in the settlement agreement. The essential terms of the agreement, i.e., that GSA would settle SIM's CDA claims for $960,000, remained the same. GSA apparently incorporated the newly entered judgment against SIM in the draft settlement agreement in light of the fact that the parties intended to resolve both the CDA claim and the damages sought in the civil false claims action. The fact that entry of judgment resulted in a requirement that SIM pay interest on that outstanding judgment did not change the essential terms of the agreement.

In any event, the amount of interest owed by SIM would have been limited if the parties had signed the agreement on or near April 9, 2010. The court issued the judgment on March 25, 2010. SIM received the draft settlement agreement on April 1, 2010. If agreement had been finalized on or near April 9, 2010 (the date at which we found GSA's position to be substantially justified), interest would have accrued for fourteen days (from March 25, 2010, to April 9, 2010). Assuming, hypothetically, an interest rate of 3.25% on

the judgment, SIM would have been required to pay just less than $700 in interest at that time.

SIM asserts that it was GSA, and not SIM, which rejected the settlement in April 2010, when it did not adopt the changes proposed by SIM. However, the record does not support SIM's assertion that GSA rejected the settlement. In a letter dated September 16, 2010, Mr. Harrington, in conjunction with a suggestion that the parties could "close out the case" without a written settlement agreement, stated that "it has been almost six months since you and I settled this case." Clearly SIM's counsel believed that the parties had reached a settlement in principle, and that, in September 2010, counsel did not believe that GSA had walked away from the settlement.

As we noted in our earlier decision, "EAJA provides that the adjudicative officer 'may reduce the amount to be awarded, or deny an award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.'" *Systems Integration and Management, Inc. v. General Services Administration*, 15-1 BCA at 175,443, (quoting 5 U.S.C. § 504(a)(3)). We detailed the facts that led us to conclude that SIM had "engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy."

SIM has not presented grounds to justify reconsideration of our decision on SIM's application for fees and costs.

Decision

For the reasons set forth above, SIM's motion for reconsideration is **DENIED**.

JERI KAYLENE SOMERS
Board Judge

We concur:

JAMES L. STERN
Board Judge

ALLAN H. GOODMAN
Board Judge