



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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MOTION FOR RECONSIDERATION DENIED: January 26, 2023

CBCA 7109-R

GERALD E. PAULUS, JR.,

Appellant,

v.

AGENCY FOR INTERNATIONAL DEVELOPMENT,

Respondent.

Gerald E. Paulus, Jr., pro se, Mesa, AZ.

John B. Alumbaugh and Eugene J. Benick III, Office of the General Counsel, Agency for International Development, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **KULLBERG**, and **ZISCHKAU**.

**ZISCHKAU**, Board Judge.

Appellant, Gerald E. Paulus, Jr., timely seeks reconsideration of the Board's decision of December 19, 2022,<sup>1</sup> denying his appeal of a termination for cause. We determined that the United States Agency for International Development (USAID) had met its burden for sustaining the termination for cause and further concluded that appellant is not entitled to other compensation. Appellant seeks reconsideration primarily on four grounds: (1) that the Board erred in its decision because sworn testimony was never taken from the "accuser" (his co-worker); (2) that the Board erred because the determination of the suitability board

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<sup>1</sup> *Gerald E. Paulus, Jr. v. Agency for International Development*, CBCA 7109 (Dec. 19, 2022).

referenced in the termination notice was never introduced into evidence; (3) that the determination of the suitability board violated appellant's due process rights because he was never called to testify before the suitability board; and (4) that the Board erred in its finding that appellant was informed of the reason for his termination as required under his personal services procurement contract. We deny appellant's request for reconsideration.

"A motion for reconsideration must be based on the acquisition of newly discovered evidence or the showing of legal error." *Yates-Desbuild Joint Venture v. Department of State*, CBCA 3350-R, et al., 18-1 BCA ¶ 36,959, at 180,084 (2017) (quoting *Sims Paving Corp.*, DOT BCA 1822, 91-2 BCA ¶ 23,733, at 118,868). The party requesting reconsideration "bears the burden of establishing that the Board's decision contains substantive errors that are substantial enough to warrant relief." *SRM Group, Inc. v. Department of Homeland Security*, CBCA 5194-R, et al., 21-1 BCA ¶ 37,869, at 183,885, *aff'd*, No. 2021-2104, 2022 WL 1089228 (Fed. Cir. April 12, 2022). Appellant has failed to meet this burden.

This Board has noted that "[r]econsideration is not a vehicle for retrying a case, advancing arguments that were already made, or introducing arguments that could have been made previously." *CH2M-WG IDAHO, LLC v. Department of Energy*, CBCA 6147-R, 19-1 BCA ¶ 37,408, at 181,852. When deciding a motion for reconsideration, the Board 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." *Id.* at 181,852-53 (quoting *Flathead Contractors, LLC v. Department of Agriculture*, CBCA 118-R, 07-2 BCA ¶ 33,688, at 166,770).

Appellant's first argument is an argument that he raised in CBCA 7109. As the decision in CBCA 7109 illustrates, appellant's termination for cause was not due to the co-worker's initial allegations against him but, rather, was due to appellant's repeated failure to follow the directions of the Regional Security Officer (RSO) to cease all contact with his co-worker. That failure ultimately led the suitability board and the RSO to conclude that appellant should be sent home. Appellant has offered no new evidence that these findings were erroneous, and as such we cannot grant reconsideration on this ground.

Regarding appellant's second and fourth arguments, the Board recognizes that appellant disagrees with the determination of the suitability board and the contracting officer's reference to it in the termination notice. However, appellant has offered no new evidence to convince the Board to doubt the veracity of the affidavits of the contracting officer and deputy mission director, which not only mention the determination of the suitability board but reinforce the conclusions of the suitability board and the RSO. We see no error in our conclusion that appellant was given adequate notice of the grounds for his

termination for cause in the termination notice and at the March 11, 2021, meeting. We therefore cannot grant reconsideration based on these grounds.

Turning lastly to appellant's third argument on due process, this Board could deny reconsideration based solely on the fact that it is an argument which has been previously made and for which appellant has offered no new evidence. See *CH2M-WG IDAHO, LLC*, 19-1 BCA at 181,852. However, even if appellant was correct that the suitability board should have interviewed him, any due process rights that he might have were protected by his contract and the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018). The CDA gave him the right to appeal a final decision of the contracting officer to a competent tribunal. Additionally, under our rules, appellant had every right during our review of CBCA 7109 to challenge the suitability board and RSO determinations and to present his own evidence regarding what occurred. Appellant availed himself of this right. We considered all of the evidence that appellant presented and concluded that the determination of the suitability board and the RSO adequately supported the contracting officer's termination for cause.

We have considered all of appellant's arguments for reconsideration but conclude that none have merit.

Decision

Appellant's motion for reconsideration is **DENIED**.

*Jonathan D. Zischkau*  
JONATHAN D. ZISCHKAU  
Board Judge

We concur:

*Erica S. Beardsley*  
ERICA S. BEARDSLEY  
Board Judge

*H. Chuck Kullberg*  
H. CHUCK KULLBERG  
Board Judge