UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: April 9, 2026

CBCA 7891-R

KING & GEORGE, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Edward T. DeLisle and Andrés M. Vera of Thompson Hine LLP, Washington, DC, and Jamar T. King of Thompson Hine LLP, Miamisburg, OH, counsel for Appellant.

Alexander C. Vincent, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **O'ROURKE**, and **KANG**.

O'ROURKE, Board Judge.

Respondent seeks reconsideration of our decision in *King & George, LLC v. General Services Administration*, CBCA 7891, 25-1 BCA ¶ 38,833, asserting that the Board's failure to address two of respondent's arguments constitutes clear error and was unjust. Because respondent has not stated grounds for reconsideration, we deny the motion.

Background

On June 5, 2025, the Board issued a decision denying the agency's motion for summary judgment, granting appellant's motion for partial summary judgment, and granting

the appeal. We presume familiarity with the facts of that decision but summarize them here as background for deciding the instant motion.

The underlying appeal involved a facilities maintenance contract which required appellant to provide janitorial services and heating, ventilation, and air conditioning (HVAC) maintenance for nine federal buildings in Florida. The contract contained three provisions relevant to the dispute: a deductions clause, a minimum staffing requirement, and a commercial items clause, Contract Terms and Conditions – Commercial Items (OCT 2018), 48 CFR 52.212-4 (2020) (Federal Acquisition Regulation (FAR) 52.212-4). The parties filed cross motions for summary judgment asking the Board to interpret whether the deductions clause permitted the agency to reduce monthly payments based solely on staffing vacancies, regardless of the performance-based, firm-fixed-price structure of the contract and appellant's satisfactory performance record.

In our decision, the Board found that the deductions clause pertained to deficient and omitted tasks but *not* to vacant positions. We further noted that substandard work resulting from those vacancies could have warranted deductions being taken, but the agency did not link the vacancies to poor performance. Instead, the agency erroneously determined that staffing was the type of performance requirement for which deductions could be taken—a construction that belied the plain language of the contract's terms. The Board further found that the termination for cause provision of the commercial items clause provides the proper remedy when a contractor fails to meet minimum staffing requirements. *See* FAR 52.212-4(l).

Shortly after the Board issued its decision, respondent moved for reconsideration of the decision under Board Rule 26 (48 CFR 6101.26 (2024)). In its motion, respondent contends that the Board, in its decision, "did not take into account GSA's argument that subsections (a), (g)(1), and (i) of [the commercial items clause] fully support GSA's decision not to pay K&G for those minimum staff positions that were required to be, but were not, filled." Motion for Reconsideration at 2. Respondent also argues that the decision failed to address respondent's theory that "under the common law of contracts, there is no duty to pay for any part of a bargained-for performance that was not rendered." *Id*. Appellant urges the Board to deny respondent's motion since it "merely restates arguments previously considered and rejected by the Board," which is not a proper basis for granting reconsideration. Appellant's Response to Motion for Reconsideration at 1. For the reasons that follow, we deny the motion.

Discussion

I. Standard of Review

"[T]here are three primary grounds that justify reconsideration: (1) an intervening change in the law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent injustice." *BES Design/Build, LLC v. Department of Veterans Affairs*, CBCA 6453-R, et al., 24-1 BCA ¶ 38,471, at 186,998 (2023) (citing *Delaware Valley Floral Group, Inc. v. Shaw Rose Nets*, *LLC*, 597 F.3d 1374, 1383 (Fed. Cir. 2010)). It is well established that "[a] motion for reconsideration is not an opportunity for a litigant to reargue its case." *Y2Fox, Inc. v. Department of State*, CBCA 7805-R, 24-1 BCA ¶ 38,647, at 187,873. Reconsideration is warranted only in extraordinary circumstances. *Caldwell v. United States*, 391 F.3d 1226, 1235 (Fed. Cir. 2004).

II. The Agency's Grounds for Reconsideration

Respondent contends that reconsideration is justified in this case to correct a clear error and prevent manifest injustice. According to respondent, the error is the Board's failure to consider two arguments raised in its motion for summary judgment: (1) that certain sections of the commercial items clause permitted the agency to refuse payment for staffing vacancies; and (2) that the agency did not have a duty to pay for performance that was not provided. Respondent further asserts that these arguments are fully dispositive of the dispute and independently justify the agency's actions without regard to the interpretation of the deductions clause. Below, we examine each of these arguments.

A. The Commercial Items Clause Argument

In our decision, we addressed only those arguments advanced by respondent that were based in fact and legally viable. The argument relating to the commercial items clause was hypothetical and bore no relation to the agency's documented justification for reducing payments. The record established that the agency reduced contractor payments pursuant to the deductions clause of the contract, *not* under the commercial items clause. In responding to a similar allegation in a motion for reconsideration, one of our predecessor boards concluded that there is no requirement to respond to each and every argument a party raises, particularly when that argument lacks any factual basis. *See Jay P. Altmayer v. General Services Administration*, GSBCA 12639-REM-R, 96-2 BCA ¶ 28,453, at 142,120 (choosing not to address an argument that it found "so lacking in support as not to be worth discussing").

In addition, respondent does not define "clear error," nor cite to any legal authority supporting the premise that a decision lacking a response to each argument constitutes clear error. At most, respondent appears to suggest that a tribunal's silence with respect to a particular argument automatically amounts to clear error warranting reconsideration. We disagree. In resolving contract disputes, our role is not to chase every argument raised by a party but to address those that are relevant, factually supported, and material to the issues presented. Our decision demonstrates exactly that approach. We identified all of the arguments presented by respondent and discussed only those that satisfied the criteria set forth above. Indeed, the absence of analysis addressing a particular argument is not error but reflects a deliberate determination that the argument, although considered, did not warrant discussion.

Finally, the argument at issue pertained to the invoicing and payment provisions of the commercial items clause and was based on the agency's insistence that the "services" rendered by appellant included staffing. Under that interpretation, the agency justified reducing the contractor's payments (for vacant positions) under the deductions clause. However, our decision expressly rejected the proposition that the deductions clause could be applied to staffing shortfalls in the same way that it could be applied for failing to conduct water testing or to service an air handler. "Reconsideration is not granted when a party reargues facts and theories upon which the Board has previously ruled." *John Douglas Burke v. Department of Health and Human Services*, CBCA 7492-R, 23-1 BCA ¶ 38,360, at 186,276 (quoting *Power Wire Constructors v. Department of Energy*, CBCA 2057-R, 12-2 BCA ¶ 35,165, at 172,559). For these reasons, we find that respondent has not articulated a proper ground for reconsideration.

B. The Common Law Argument

Respondent's second argument is that, under the common law of contracts, the agency did not have a duty to pay for performance that was not provided. Respondent contends that the Board's failure to address this argument in its decision warrants reconsideration to correct clear error and prevent manifest injustice. This argument merely rehashes previous arguments made by respondent and rejected by the Board. "Arguments and evidence previously presented are not grounds for reconsideration." Rule 26.

A careful reading of our decision demonstrates that, in denying the agency's summary judgment motion, we determined, under the plain language of the contract's terms, that staffing shortfalls were not performance failures in the same way as failed or omitted tasks and, as such, were not eligible for deductions. We also found that the agency was obligated to pay for the operations and maintenance services it received and, further, that the remedy for breaching the minimum staffing requirement of the contract was the termination for cause

provision. In making those determinations, the Board considered respondent's common law argument and rejected it. Respondent cannot raise it again here. "A motion to reconsider is not a second chance at trying the case." *Walker Development & Trading Group Inc v. Department of Veterans Affairs*, CBCA 5907-R, 19-1 BCA ¶ 37,465, at 182,010.

For the foregoing reasons, we find that the Board's decision considered all arguments advanced by appellant in its summary judgment motion. Accordingly, we find no reason to reconsider our decision.

Decision

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

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge

We concur:

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

Jonathan L. Kang
JONATHAN L. KANG
Board Judge