

THOMAS B. PRESCOTT,)	AGBCA No. 2000-108-R
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Appellant)	
)	
Representing the Appellant:)	
)	
Thomas B. Prescott)	
443 No. Johnson Place)	
Porterville, California 93257)	
)	
Representing the Government:)	
)	
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RULING ON APPELLANT’S MOTION FOR RECONSIDERATION

December 23, 1999

Before HOURY, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK.

Appellant has filed a timely Motion for Reconsideration of the Board’s decision, Thomas B. Prescott, AGBCA No. 98-151-1, 1999 WL 799344 (Oct. 7, 1999), denying his appeal of a Contracting Officer’s (CO’s) denial of a claim for an equitable adjustment under Emergency Equipment Rental Agreement (EERA or “the agreement”) No. 56-9A40-6-1P045 between the U. S. Department of Agriculture, Forest Service (FS or Government) and Thomas B. Prescott (Prescott or Appellant) of Porterville, California.

Appellant asserts seven reasons for filing the motion. His first reason is that the Government’s Answer was filed after what he terms the 30 day “statute of limitations” under Board Rule 6(b) had elapsed. He attacks the credibility of two Government employees whose declarations are cited in the Board’s findings. Appellant contends that the claim was filed at the behest of a CO who should have denied or investigated his allegations. He disputes the Board’s holding that other than

apparent invoices, the monetary claims had not been supported with evidence, making reference to a June 28, 1999 letter from the Clevenger Ford body shop manager. He points to an apparent typographical error in the Board's Finding of Fact No. 15 where the amount of a painting invoice was erroneously inserted in a sentence which also contained the correct amount of the upholstery invoice under discussion. Appellant disputes the Board's characterization of one of his arguments as a conclusion both that the Government ordered unneeded services and that Appellant was entitled to be paid the rental rate for a bus. Finally, Appellant disputes the Board's recitation of a Government contention. The Board stated that the Government pointed to the fact that Appellant cited no contract language *supporting* the requested rate increase. In his motion, Appellant refers to the decision as indicating that the Government alleged that Appellant cited no contract language *suggesting* the requested rate increase.

Reconsideration is discretionary with the Board and will not be granted in the absence of compelling reasons, *i.e.*, clear error of fact or law, or newly discovered evidence that could not have been discovered at the time of the original proceeding. Reconsideration is not intended to permit a party to reargue its position or to present additional arguments that could have been presented originally. Timber Rock Reforestation, AGBCA No. 97-194-R, 98-1 BCA ¶ 29,360; Rain and Hail Insurance Service, Inc., AGBCA No. 97-180-R, 97-2 BCA ¶ 29,121; White Buffalo Construction, Inc., AGBCA No. 95-221-R, 96-1 BCA ¶ 28,050. None of the issues raised by Appellant is an error of fact or law with the exception of one error which is not substantive. In several cases, Appellant repeats arguments made or which could have been made originally.

Regarding the date of filing the Government's Answer, Appellant ignores the fact that the Board exercised its discretion to grant the Government an enlargement of time in which to file the answer. That time period is established by regulation and is neither a statute of limitations nor jurisdictional. In addition, if Appellant felt it a matter worthy of argument, Appellant could have, and failed to, raised it in the original proceeding. The Board previously considered and found unpersuasive Appellant's credibility arguments regarding the Government declarations as well as Appellant's argument that he was misled by an employee who advised him to file a claim if dissatisfied with the contractual rate of compensation. Similarly, the Board considered the 1998 letter from a body shop manager and found it of little probative value in determining whether or how damage was sustained in 1996. The typographical error in inserting the amount of another invoice in a sentence describing an invoice for upholstery is acknowledged. Were the phrase "of \$1,883.20" stricken, the sentence would read as intended. Its correction, however, would not change the outcome of the appeal. The Board disagrees that it inaccurately characterized one of Appellant's contentions and one of the Government's contentions. Nonetheless, even if the characterizations had been erroneous, Appellant's underlying contentions that it should have been compensated at the rental rate for buses and that nothing precluded the various COs from granting extra compensation except the will to do so were considered and rejected in the Board's decision. Based on the foregoing, we find no basis for reconsideration.

RULING

Appellant's Motion for Reconsideration is denied.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
December 23, 1999