

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of)
GEORGE I. CLINGERMAN)
)
) Docket No. MSBCA 2002
Under Dept. of Natural Resources)
Contract No. 94-04-003)
)

May 28, 1998

Motion for Reconsideration – The burden is on the party seeking reconsideration to establish that an error in the Board’s decision has been caused by fraud, surprise, mistake or inadvertence. Mere disagreement with the Board’s decision does not provide grounds for reconsideration.

APPEARANCE FOR APPELLANT: Mr. & Mrs. George I. Clingerman
Clearville, PA

APPEARANCES FOR RESPONDENT: Joseph P. Gill
Assistant Attorney General
Annapolis, MD

OPINION BY CHAIRMAN HARRISON ON
APPELLANT’S MOTION FOR RECONSIDERATION

The Board of Contract Appeals (Board) issued an opinion dated March 24, 1998 on the subject appeal which granted an equitable adjustment of \$17,632 on Appellant’s termination claim. Appellant’s counsel received a copy of this decision on March 26, 1998. On April 24, 1998, the Board received a letter dated April 14, 1998 from Mr. and Mrs. Clingerman which questioned the Board’s determination not to disturb the Procurement Officer’s decision that had allowed Appellant \$3,519.20 for mowing operations in 1996. Appellant’s letter asserted that Appellant should have been paid for both mowing and hauling, not just for mowing. The Board determined to treat the Appellant’s letter as a Motion for Reconsideration pursuant to COMAR 21.10.06.28.1

The Board’s determination regarding the 1996 mowing operations was set forth in paragraph A.2. on page 5 of the Board’s March 24, 1998 Opinion which is incorporated herein by reference as if fully set forth. Paragraph A.2. provided:

¹ The letter from the Clingermans is considered a filing by a sole proprietorship and is thus accepted although not filed by counsel.

2. Services rendered, not invoiced or paid

Appellant sought payment of \$30,458.06 for 608 acres mowed in 1996 based upon a per acre estimated yield of 2.73 bales and a total of 1,659 bales, at \$18.35/bale. DNR agreed with the 1,659 estimated number of bales, but not with the price calculation. The \$18.35 contract unit price covered the cost of four operations: mowing, raking, baling, and hauling/storing. Appellant only mowed these acres, according to DNR. The DNR Procurement Officer determined that a reasonable cost for mowing was \$2.12 a bale and agreed to pay Appellant \$3,519.20 for this work. The Board will not disturb this determination.

The Appellant also argued in his April 14, 1998 letter that the Board in fairness should at least award the Appellant one-fourth of the total cost of all four operations rather than cost based on the \$2.12 a bale found by the Procurement Officer to be reasonable for mowing. To the extent that these complaints (and any evidence to support them) were advanced at the hearing of the appeal or may be found in the record as compiled prior to the Board's issuance of the March 24, 1998 Opinion, they were rejected by the Board in its Opinion.

DNR, in response to Appellant's April 14th letter, observes that:

Even if Mr. Clingerman had presented evidence on this issue at hearing, and even if he were correct, his argument is irrelevant. At the hearing, the State presented and the Board accepted a calculation of the sum owed to Mr. Clingerman using the "total cost approach." Decision, p.3. Under this approach and the Board's Decision, Mr. Clingerman is paid all of the costs he incurred in 1996, plus a reasonable profit. The costs incurred include all costs for mowing and/or hauling hay.

While we agree with DNR's counsel that Appellant has been paid for all costs he incurred in 1996 plus a reasonable profit, there is a more fundamental reason that we must deny the Motion for Reconsideration.

This Board has held that a Motion for Reconsideration of its decision to be considered favorable, should demonstrate that the Board's decision was in error through fraud, surprise, mistake or inadvertence. 11 Firstfield Road Limited Partnership, MSBCA 1232, 2 MSBCA ¶117 (1985); Reliable Janitor Service, MSBCA 1247, 2 MSBCA ¶126 (1986); Engineering Technologies Associates, Inc., MSBCA 1362, 2 MSBCA ¶175 (1988). Appellant's motion fails to demonstrate that the Board's March 24, 1998 decision was in error through fraud, surprise, mistake or inadvertence. Appellant simply continues to disagree with the DNR Procurement Officer's final decision and this Board's determination not to disturb it regarding 1996 mowing operations. Such disagreement does not provide grounds for this Board to reconsider its March 24, 1998 Opinion. Accordingly, the Motion for Reconsideration is denied.

Wherefore, it is Ordered, this 28th day of May, 1998, that the Motion for Reconsideration is denied and the matter is remanded to DNR for appropriate action.

Dated: May 28, 1998

Robert B. Harrison III
Chairman

I concur:

Candida S. Steel
Board Member

Randolph B. Rosencrantz
Board Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2002, appeal of George I. Clingerman under Dept. of Natural Resources Contract No. 94-04-003.

Dated: May 28, 1998

Mary F. Priscilla
Recorder