

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Military Aircraft Parts) ASBCA No. 60490
)
Under Contract No. SPM4A7-10-M-H216)

APPEARANCE FOR THE APPELLANT: Mr. Robert E. Marin
President

APPEARANCES FOR THE GOVERNMENT: Daniel K. Poling, Esq.
DLA Chief Trial Attorney
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Richmond, VA

OPINION BY ADMINISTRATIVE JUDGE PAUL
ON THE PARTIES' MOTIONS TO DISMISS

This is a timely appeal of a contracting officer's (CO's) decision denying appellant Military Aircraft Part's (MAP's) claim in a total amount of \$11,365. The Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, is applicable. MAP opted to use the Board's expedited procedures under Board Rule 12.2, and the parties subsequently submitted the appeal on the record pursuant to Board Rule 12.2.* As substantive briefing was being completed, MAP filed a motion for partial dismissal of the appeal; Defense Logistics Agency (DLA) responded with a motion to dismiss the appeal in its entirety. We grant DLA's motion. The Board also grants MAP's motion in part and denies the motion in part.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTIONS

1. Through its 20 October 2015 claim, MAP contended that DLA had breached the parties' contract by improperly rejecting its first article of a titanium sheet metal component used as an overwing moveable fairing seal on the B-1B Lancer Aircraft. It sought monetary relief in a total amount of \$11,365. (Compl. at 1, 6) In a decision

* A decision under Rule 12.2 shall have no value as precedent, and in the absence of fraud, shall be final and conclusive and may not be appealed or set aside.

promulgated on 10 December 2015, the CO denied MAP's claim in its entirety (*id.* at 1). This appeal followed.

2. The parties engaged in substantive briefing pursuant to Board Rule 12.2; and, while briefing was still ongoing, the CO issued Modification No. P00008 to the contract which sustained MAP's claim in its entirety. The CO stated, in pertinent part:

1. This Modification pertains to contract/order SPM4A710MH216. The award has been closed out by Sustainment and archived. SPM4A710MH216 cannot be changed.

2. To avoid further litigation, the contracting officer is granting Military Aircraft Parts, Inc., all of the relief it requested in its October 20, 2015 claim and its March 8, 2016 complaint, docketed as ASBCA No. 60490. The Government will pay Military Aircraft Parts \$11,562.69, which includes interest calculated from the date MAP filed its claim.

(App. mot., ex. A)

3. On 6 June 2016, MAP filed a motion to dismiss in part. It asked the Board to "dismiss the quantum determination in this appeal with prejudice"; however, it also argued that the CO's decision circumvented its right to obtain an award under the Equal Access to Justice Act (EAJA). In addition, MAP seeks a declaratory judgement from the Board holding that DLA breached the parties' contract. (App. mot. at 1-3)

4. On 20 June 2016, DLA responded by moving to dismiss the appeal with prejudice in its entirety. It contended that MAP's complaint did not seek declaratory judgment and that its EAJA contentions were premature. DLA concluded that the underlying dispute was moot. (Mot. at 2-4)

DECISION

It is well settled that "[w]here an appeal has been rendered moot by the contracting officer granting all of the relief requested in the claim on appeal, the Board should dismiss it with prejudice since there is no longer a dispute between the parties on the appealed claim." *Lasmer Industries, Inc.*, ASBCA Nos. 56946, 56966, 11-1 BCA ¶ 34,671 at 170,801; *see also Combat Support Associates*, ASBCA Nos. 58945, 58946, 16-1 BCA ¶ 36,288 at 176,973; *L-3 Communications Integrated Systems, L.P.*, ASBCA Nos. 60431, 60432, 16-1 BCA ¶ 36,362 at 177,252. In other words, the appeal is moot. *See Humane Society of the United States v. Clinton*, 236 F.3d 1320,

1331 (Fed. Cir. 2001); *Chapman Law Firm Co. v. Greenleaf Construction Co.*, 490 F.3d 934, 939 (Fed. Cir. 2007). Because the appeal seeks only monetary relief and does not involve a claim for interpretation or adjustment of contract terms, we lack authority to issue a declaratory judgment. *Aeronca, Inc.*, ASBCA No. 51927, 01-1 BCA ¶ 31,230 at 154,145. Finally, MAP's allegations relating to circumvention of a possible EAJA application are both premature and not an appropriate consideration for the Board when determining how to dispose of a case. *Chapman Law Firm*, 490 F.3d at 939. Moreover, I express no opinion on whether this decision on motions to dismiss is or is not appropriate to support an EAJA application.

CONCLUSION

We grant DLA's motion; we grant MAP's motion in part and deny it in part. The appeal is dismissed as moot.

Dated: 27 June 2016



MICHAEL T. PAUL
Administrative Judge
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 60490, Appeal of Military Aircraft Parts, rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals