UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: September 26, 2008

CBCA 1038

CHARLES M. PATE,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Charles M. Pate, pro se, Ramona, CA.

Maria Giatrakis, Office of the General Counsel, Department of Agriculture, San Francisco, CA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **SOMERS**, and **VERGILIO**.

VERGILIO, Board Judge.

On January 18, 2008, the Board received from Charles M. Pate (contractor) a notice of appeal disputing a contracting officer's decision dated November 4, 2007. Mr. Pate and the Forest Service, of the Department of Agriculture (the Government), had entered into an emergency equipment rental agreement (EERA). The agreement provided for payment at a given hourly rate for particular equipment and services. Contracts arose under the agreement when the Government placed orders and Mr. Pate accepted the orders by performance, for eight fire incidents here in dispute. For each contract, the contractor invoiced the Government at the hourly rate. In consideration of receipt of payment of each amount due, the contractor signed a written release, releasing the Government from any and all claims arising under the agreement. The contractor reserved no claim. The Government paid the contractor in accordance with the invoices. The contractor now seeks payment of $15,181, calculated at a greater hourly rate than in the contracts, asserting entitlement to the greater amount because the equipment and services should have been classified differently. The contracting officer denied the claim, citing the releases.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, as amended (CDA). After the submission of the appeal file (with supplements), complaint, and answer, the Government asks that the Board grant summary relief because the releases preclude the contractor from prevailing on any item of the claim. The contractor has not filed a timely response.

The Board grants the Government's motion. The contractor signed releases, reserving no claim against the Government for each contract. The contractor received the invoiced payments. Consideration was exchanged to make the releases binding on each party. The contractor has not identified material facts that would preclude enforcing the releases at this stage of the proceedings in response to the Government's motion for summary relief. Given the effective releases, the contractor fails to state a claim upon which relief can be granted. The Board denies the appeal.

Findings of Fact

1. The parties entered into an EERA with effective dates beginning on May 1, 2005, and ending on April 30, 2008. Although the parties disagree on which document in the appeal file represents the agreement reached (the substantive differences are found in the description of services to be performed, and seeming lack of signatures on the contractor-proffered agreement), the parties agree that, for the period in question, the agreement provides for payment at the hourly rate of $66 (or tied to a guaranteed daily amount, details of which are not relevant here). Exhibits A, J (exhibits are in the appeal file, as supplemented). For purposes of resolving the Government's motion for summary relief, the Board assumes the contractor-proffered agreement was the agreement reached. This agreement put forward by the non-movant describes the services as "general mechanic, fully equipped service truck with welder, cutting torch, air compressor, and tools for repair on diesel fire trucks and pick-up trucks." Exhibit K.

2. The agreement specifies that the Government is not obligated to place an order thereunder, and that the "contractor" is not obligated to accept an order. However, for orders accepted on hired equipment, the agreement specifies that the Government will pay the contractor at the agreed-upon rate. Exhibit 6 at 1 (¶ 6.a).

3. During 2006, the Government placed eight orders under the agreement. The contractor accepted each order by performance. The first date of hire was January 24; the final date of hire was August 30. Shortly after concluding performance at each incident, the contractor signed an invoice for work at that incident, seeking reimbursement at $66 per hour. Each invoice contains a release, stating that for and in consideration of receipt of a specified payment, the contractor releases the Government from any and all claims arising

under the agreement except as reserved. The contractor reserved no claim. The remarks section is either blank or states: no claims, no damage. Exhibit E. The contractor received the specified payment for each invoice. Exhibit F.

4. Before or during contract performance, the contractor learned that his equipment and services could be classified and described differently than in the agreement (i.e., at variance from the versions of the contractor and the Government), with compensation at $83 per hour. Throughout the year, the contractor continued to accept orders and contract under the agreement at the $66 hourly rate, never objecting to the classification, description, or payment, and never contending that performance was other than as described in each contract. The contractor has not disputed his summary of his knowledge as described in a letter dated October 5, 2007, to the contracting officer:

> It was brought to my attention in the early 2006 fire season that the pay of $66.00 per hour was incorrect for my job description as having a service truck which [w]as fully equipped with welder, cutting torch, air compressor, and tools for repair on diesel fire trucks and pick-up trucks. I was told that the manual description of duties I performed fell under "heavy equipment diesel mechanic with full service truck" at a pay rate of $83.00 per hour.
>
> Not being able to confirm this at the time, I continued to work on fires in 2006 under the EERA of 4-27-05. I attempted to gather more information on the manual description.

Exhibit K.

5. In April 2007, the contractor and Government amended the agreement, thereby altering the item description to that of a heavy equipment diesel mechanic with full service truck, at $83 per hour with a guarantee. The amendment retains the effective dates of the original agreement, May 1, 2005, to April 30, 2008. Exhibit L.

6. By letter dated October 5, 2007, the contractor submitted a claim to the contracting officer. The contractor maintains that he is entitled to additional payment for his performance on the eight orders of 2006. He asserts that his equipment and services should have been classified as heavy equipment, and that his work was incorrectly rated under the agreement. He claims entitlement to $15,181, calculated for 893 hours worked at an additional $17 per hour, the hourly difference between the rates of the amended and original agreement ($83 - $66). Exhibit K. The contracting officer denied the claim with a decision dated November 4, 2007. In the decision, the contracting officer noted that payments were made as agreed upon at the time of performance, releases were signed, and a claim was

precluded given the releases. Further, the contracting officer stated that despite the written beginning effective date of the amended agreement, the amendment did not affect orders for which payments had been made and releases signed. Exhibit I.

7. On January 18, 2008, the contractor filed an appeal with this Board.

Discussion

The contractor contends in the complaint that, according to an EERA Rate Guide, his truck and services should have been described and classified for compensation at $83 per hour. He contends that he did not know the correct rate for his equipped vehicle and services performed, although the contracting officer did. Further, he contends that at the time he signed each release he lacked a copy of the rate guide and did not know the specifics pertaining to his vehicle until after he had performed the services for which he seeks compensation.

The Government moves for summary relief, stating that the contractor cannot prevail on the claim given the releases, in which the contractor reserved no claim. The contractor opposes the motion. Despite indications that he would provide a response, he has not done so. However, as explained below, the releases and awareness acknowledged by the contractor preclude relief.

Summary relief

With a motion for summary relief, the moving party bears the burden of establishing the absence of any genuine issue of material fact to resolve its request; all significant doubt over factual issues must be resolved in favor of the party opposing summary relief. At the summary relief stage, the Board may not make determinations about the credibility of witnesses or the weight of the evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). However, it is also true that "the party opposing summary judgment must show an evidentiary conflict on the record; mere denials or conclusory statements are not sufficient." *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-91 (Fed. Cir. 1987) (citations omitted). To preclude the entry of summary relief, the non-movant must make a showing sufficient to establish the existence of every element essential to the case, and on which the non-movant has the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). When a motion is made and supported as required in Federal Rule of Civil Procedure 56(a), the adverse party may not rest upon the mere allegations or denial in its pleadings, but must set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324; *InterFreight Transport Systems, Inc. v. Department of Agriculture*, CBCA 129, 07-1 BCA ¶ 33,523.

Releases

The contractor contends that his equipment and services were misclassified in 2006. He maintains that he is entitled to additional payment, calculated pursuant to the amended EERA. The contractor acknowledges signing the releases, but states that at the time of his signatures, he was not aware that his vehicle qualified for the different classification at the greater rates. Complaint. The Government maintains that the claim should be denied because the contractor has been compensated for the contracted-for services at the agreed-upon rate and the contractor is precluded from pursuing the claim because he signed a release regarding each incident in dispute. Answer.

For each of the eight contracts here at issue, for and in consideration of receipt of specific payment, the contractor signed a statement that released the Government from all claims arising under the agreement, and the contractor received the specific payment. Through each release, the contractor accepted final payment and agreed not to submit a claim under the contract. The contractor has not put forward a factual basis to treat each release as other than binding. The releases serve to bar the prosecution of the claims at issue. Accordingly, the Board denies the contractor's claim.

The contractor's signatures on the releases without a reservation of a claim, and payments by the Government, discharge the Government of all claims and demands arising out of each contract, absent special and limited circumstances (mutual mistake; conduct of parties in considering a claim after execution of a release; unilateral mistake or oversight in including a claim in a release; or fraud or duress). *J.G. Watts Construction Co. v. United States*, 161 Ct. Cl. 801, 806-07 (1963). The contractor has put forward no information that would permit the Board to conclude that circumstances exist to invalidate or limit the releases.

In asserting the propriety of his claim of entitlement to additional payment under the terms and conditions of the contract because the Government misclassified his equipment and services, the contractor underestimates the import of the releases.

> It does not follow that because a claim is by hindsight seen to be even entirely meritorious, an agreement to compromise it was in any wise improper. A party who settles his claim may not avoid it by proof that his claim was just. It has long been held that a release for a lawful consideration is binding though the contractor received only what was otherwise due him.

Johnson, Drake & Piper, Inc. v. United States, 531 F.2d 1037, 1044 (Ct. Cl. 1976). Moreover, in light of the contractor's admitted general awareness, at the time of signing

releases, that he might be able to obtain a reclassification of his equipment and services, a factual or legal basis to avoid the releases is not well-founded. Appellate authority does not countenance the silence when entering into a release:

> Plaintiff's contentions now urged that he lacked sufficient information at the time of the release to frame proper exceptions to reserve his present claims, and that he obtained the necessary data only in the course of discovery proceedings in this action, do not excuse his failure to state his exceptions covering his present claims in general terms which would have sufficed the purpose of preserving his right to pursue them.

Adler Construction Co. v. United States, 423 F.2d 1362, 1364 (Ct. Cl. 1970).

The contractor's signed release associated with each receipt of payment precludes the contractor from recovery. By releasing the Government from any and all claims arising under the agreement, the contractor is foreclosed from pursuing the relief he now seeks.

Post-release amendment of agreement

The contractor puts forward no basis to conclude that there existed a mutual intent at the time of amending the agreement in 2007 to alter the terms of payment for the work in 2006. As evidenced by the decision of the contracting officer, the resolution of the claim was not an indication that the releases were other than final from the Government's perspective. The record provides no basis to conclude that the amendment was intended to undo the releases.

Decision

The Board grants the Government's motion and **DENIES** the appeal.

_____
JOSEPH A. VERGILIO
Board Judge

We concur:

_____
STEPHEN M. DANIELS
Board Judge

_____
JERI KAYLENE SOMERS
Board Judge