UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION AND
MOTION TO REOPEN THE RECORD DENIED: August 19, 2010

CBCA 1310-R, 1530-R

SPRINGCAR COMPANY, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Robert C. MacKichan of Holland & Knight LLP, Washington, DC; and William M. Pannier of Holland & Knight LLP, Los Angeles, CA, counsel for Appellant.

Lesley M. Busch, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS**, **STERN**, and **HYATT**.

SOMERS, Board Judge.

On March 26, 2010, after considering all evidence presented to the Board on a fully developed record, including the appeal files, testimony, and post-trial briefs, we granted appellant Springcar Company, LLC's (Springcar) claims in part and denied the remainder. *Springcar Co., LLC v. General Services Administration*, CBCA 1310, et al., 10-1 BCA ¶ 34,407. Familiarity with that decision is presumed. Springcar has moved for reconsideration of that decision, and asks us to reopen the record in CBCA 1530 in order to allow appellant to present additional evidence. The General Services Administration (GSA) opposes the motion.

Board Rule 26 (48 CFR 6101.26 (2009)) provides that reconsideration may be granted for any of the reasons stated in Rule 27(a), which include, among other things, newly discovered evidence which could not have been earlier discovered through due diligence, fraud, misinterpretation, or other misconduct of an adverse party, or excusable mistake. Pursuant to our Rules, "[a]rguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration." *Beyley Construction Group Corp. v. Department of Veterans Affairs*, CBCA 5-R, et al., 08-1 BCA ¶ 33,784; *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 50-R, 07-2 BCA ¶ 33,618. Reconsideration is a matter within the discretion of the Board. *Beyley*, 08-1 BCA at 167,203 (citing *Flathead Contractors, LLC v. Department of Agriculture*, CBCA 118-R, 07-2 BCA ¶ 33,688). Appellant has presented no new evidence or arguments in support of its motion for reconsideration and to reopen the record. For the reasons set forth below, we deny appellant's motions.[1]

I. CBCA 1310-R

In the first claim, CBCA 1310, Springcar sought compensation for increased electrical costs resulting from the transfer of leased space from one heating, ventilation, and air conditioning (HVAC) system, referred to as the general HVAC system, to the dedicated twenty-four-hour HVAC system. The Government acknowledged that Springcar would be entitled to some relief for any extra operating expenses arising from the transfer of leased space from one HVAC system to another, but disputed the amount of reimbursement sought.

We found that Springcar was entitled to recovery for additional electrical costs resulting from the transfer of leased space from the general HVAC system to the dedicated twenty-four-hour system. We concluded based upon evidence presented in the appeal file that the cost for the twenty-four-hour operation for the additional 8434 square feet is approximately $2.17 per square foot per year. We ordered GSA to pay Springcar a one-time payment of $101,459.90 plus interest, as calculated in accordance with the Contract Disputes Act of 1978, 41 U.S.C. § 611 (2006), from the date on which GSA received Springcar's first certified claim (April 30, 2008) until the date of payment. We ordered that the annual rent be increased by the amount of $18,301.78 per year, effective May 1, 2010.

[1] Although this opinion may not address each and every point presented by appellant in its motions for reconsideration and to reopen the record, we have considered all of Springcar's arguments before reaching this decision.

Springcar disagrees with this decision because the Board relied upon an exhibit in the appeal file to determine quantum, rather than adopting the analysis presented by appellant's expert. Springcar asserts that we provided no foundation for using the analysis that we located in the appeal file.

The Board may rely upon any evidence contained within the appeal file. *See* Board Rule 4(g); *Keller & Sons Enterprises, Inc. v. General Services Administration*, GSBCA 11970, 94-1 BCA ¶ 26,564 (1993) (board relied upon appeal file to calculate damages); *Monitor Northwest Co.*, GSBCA 7028, 85-2 BCA ¶ 18,065 (liquidated damages granted on the basis of evidence contained in appeal file). Indeed, at the hearing, a GSA witness testified that GSA considered the methodology detailed in that exhibit when evaluating how to compensate Springcar for the transfer of space to the dedicated twenty-four-hour HVAC system. The fact that appellant failed to object to appeal file exhibit 16, or failed to question the witness about the methodology, is of no consequence.

Appellant's belated conclusion that additional arguments might have been made or other evidence might have been highlighted is not a basis for the Board to allow reconsideration. *Mitchell Enterprises, Ltd. v. General Services Administration*, CBCA 402-R, 07-2 BCA ¶ 33,644. "While the Board will look at clear errors, be they of fact or law, the Board will not use reconsideration to allow a party to retry a case or introduce facts and arguments that it failed to present at the original hearing or put forward in its briefing." *Beyley*, 08-1 BCA at 167,205 (quoting *Flathead Contractors,* 07-2 BCA at 166,769). Springcar presents no new, additional, compelling insight, or evidence that the Board has not already carefully considered. The Board will not grant reconsideration based on reinterpretations of old evidence and interpretations of matters already considered by the Board. *Tidewater*; *see also Hook Construction, Inc. v. General Services Administration*, CBCA 423-R, 07-1 BCA ¶ 33,488, at 165,994.

II. CBCA 1530-R

In the second appeal, Springcar contended that the Government imposed numerous changes to the leased premises, which resulted in increased electrical costs. We denied that claim, finding that appellant had failed to prove by a preponderance of the evidence that the Government ordered any of the changes.

Springcar argues that the contracting officer's testimony at the hearing that GSA's building manager, Ms. Glenda Petefish, attended a meeting on October 21, 2005, during which some of the changes (adjusting the building automation system (BAS) settings) allegedly occurred, surprised appellant. Springcar contends that the Government failed to

disclose the fact that Ms. Petefish attended the meeting. Springcar seeks to reopen the record "to explore Ms. Petefish's participation in the October 21, 2005 meeting."

GSA responds, stating that (1) the evidence did not conclusively establish that Ms. Petefish attended the meeting; (2) although Ms. Petefish had been listed on discovery responses as an individual with knowledge of the issues and was a potential witness for GSA, Springcar did not attempt to depose her or attempt to discover her personal knowledge concerning the events at the meeting; (3) relying upon the testimony at trial, appellant argued in post-trial briefing that Ms. Petefish's presence established that the Government had ordered changes at the meeting; and (4) the Board's conclusion that government representatives at the meeting did not have authority to effectuate the alleged changes is supported by the law, citing *Hercules, Inc. v. United States*, 516 U.S. 417, 423-24 (1996)*; Winter v. Cath-Dr/Balti Joint Venture*, 497 F.3d 1339 (Fed. Cir. 2007); *City of El Centro v. United States*, 922 F.2d 816 (Fed. Cir. 1990); *H. Landau & Co. v. United States*, 886 F.2d 322 (Fed. Cir. 1989); *General Electric Co.*, ASBCA 11990, 67-1 BCA ¶ 6377.

Springcar's arguments have not changed from those previously asserted. Springcar had argued that Ms. Petefish had ordered the changes on the Government's behalf, and we rejected that argument. We evaluated the evidence presented at the hearing, examined Springcar's arguments, and ultimately held that Springcar had failed to establish by a preponderance of the evidence that the contracting officer or the contracting officer's representative ordered the changes at the October meeting, or indeed at any time. Arguments already made and reinterpretation of old evidence are not sufficient bases for requesting reconsideration. Rule 26(a). Even if the reasoning in support of a motion for reconsideration is more sophisticated than the arguments previously made, reconsideration is inappropriate. *ROI Investments v. General Services Administration*, GSBCA 15488-C(15037-C)-REIN-R, 01-2 BCA ¶ 31,523, at 155,622.

Decision

Springcar has given us no reason to reconsider our decision or to reopen the record. Consequently, the motions for reconsideration and to reopen the record are **DENIED**.

JERI KAYLENE SOMERS
Board Judge

We concur:

JAMES L. STERN
Board Judge

CATHERINE B. HYATT
Board Judge