UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: August 10, 2010

CBCA 181-ISDA, 279-ISDA

METLAKATLA INDIAN COMMUNITY,

Appellant,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Respondent.

Geoffrey D. Strommer of Hobbs, Straus, Dean & Walker, LLP, Portland, OR, counsel for Appellant.

Melissa A. Jamison, Office of General Counsel, Public Health Division, Department of Health and Human Services, Rockville, MD, counsel for Respondent.

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

STEEL, Board Judge.

Appellant Metlakatla Indian Community (Community) has requested reconsideration of the Board's decision in *Metlakatla Indian Community v. Department of Health and Human Services*, CBCA 181-ISDA, et al., 09-2 BCA ¶ 34,307, denying both parties' motions for summary relief. Familiarity with that decision is presumed. We deny appellant's request for reconsideration because it has not presented sufficient grounds to warrant reconsideration under the Board's rules.

In fiscal years (FYs) 1995 and 1996 the Community provided health care services to its members under self-determination contracts with the Department of Health and Human Services (HHS), Indian Health Service (IHS), pursuant to the Indian Self-Determination and

Education Assistance Act (ISDA or Act), Pub. L. No. 93-638, codified as amended at 25 U.S.C. §§ 450, *et seq.* (2006). In the above-captioned cases, the Community sought additional indirect contract support cost (CSC) funding from IHS for these ISDA contracts. The parties filed cross-motions for summary relief, and the motions were denied since the Board found that genuine issues of material fact remain in dispute.

In resolving the parties' motions, the Board noted apparent material disputes as to the utility and probity of the Congressional shortfall reports, what the Government intended when it prepared and submitted the reports to Congress, and whether the reports serve as proof of actual shortfall amounts and deficiency of funds needed to provide contract support costs to all contractors in the fiscal year pursuant to section 106(a) of the Act. Because those differences could require the Board to make evidentiary judgments on these disputed facts, the Board concluded that summary relief was not appropriate in this case. *Metlakatla*, 09-2 BCA at 169,466 (citing *Beta Systems, Inc. v. United States*, 838 F.2d 1179, 1183 (Fed. Cir. 1988); *George P. Gobble v. General Services Administration*, CBCA 528, 07-2 BCA ¶ 33,675). *See also Anderson v. Liberty Lobby*, 477 U.S. 242, 251-52 (1986) (when considering a motion for summary judgment, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to . . . [the fact-finder] or whether it is so one-sided that one party must prevail as a matter of law.")

Appellant argues in its reconsideration motion that summary relief should be granted since there is no dispute of material fact that would require testimony from witnesses, and the only question before the Board is one of contract interpretation, generally a question of law upon which it must prevail. The Community cites earlier decisions by our predecessor Department of the Interior Board of Contract Appeals, in which motions for summary judgment in similar fact situations were granted, *Seldovia Village Tribe*, IBCA 3862, et al., 03-2 BCA ¶ 32,400, and *Cherokee Nation of Oklahoma*, IBCA 3877, et al., 99-2 BCA ¶ 30,462, *aff'd sub nom. Thompson v. Cherokee Nation of Oklahoma*, 334 F.3d 1075 (Fed. Cir. 2003), *aff'd, Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005). Thus, appellant argues, the shortfall reports submitted to Congress on an annual basis show the contractual and statutory CSC payment requirement, and there is no factual dispute which precludes the granting of summary relief. Finally, appellant argues that the Board must give effect to all parts of the contract, not just the annual funding agreements (AFA), but also the full amount listed under the Act's section 106(a) requirement for full indirect CSC and ISDA funding. To do so, appellant asserts, the Board need only reconcile the provisions of the contract, a question of law appropriate for decision on summary relief. IHS responds that reconsideration is not appropriate where appellant is merely attempting to highlight portions of its prior arguments. Appellant counters that its arguments are new, since they only became necessary after the Board ruled as it did.

Reconsideration is granted in very limited circumstances, set out in Board Rules 26 and 27 (48 CFR 6101.26, .27 (2009)), such as in the case of fraud, misrepresentation, other misconduct of party, justifiable or excusable mistake, inadvertence, surprise, or neglect, or newly discovered evidence. Rule 27 (a). Likewise, arguments already made and reinterpretation of evidence are not sufficient grounds for granting reconsideration. Rule 26(a).

Here, the denial of summary relief was based upon a determination that there are material facts in dispute. While the facts in this case are similar to those in the *Seldovia* and *Cherokee* cases, they are not identical. Appellant's suggestion that the facts are immaterial because the issue is solely a question of law is insufficient under Board Rules 26(a) and 27(a) to dictate that the Board grant its motion for reconsideration. There remain genuine disputes as to material facts in this matter, and the Board declines to reconsider its decision to deny the motions for summary relief.

Therefore, the motion for reconsideration is **DENIED**.

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CANDIDA S. STEEL
Board Judge

We concur:

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JERI K. SOMERS
Board Judge

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CATHERINE B. HYATT
Board Judge