

HEALTHCARE PRACTICE
ENHANCEMENT NETWORK, INC.

CONTRACT NO. None

VABCA-5864R

VA MEDICAL CENTER
LOMA LINDA, CALIFORNIA

Jack Paul, Esq., Los Angeles, California, for the Appellant.

Cameron V. Gore, Esq., Trial Attorney; *Philip S. Kauffman, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

**OPINION BY ADMINISTRATIVE JUDGE PULLARA
ON GOVERNMENT'S MOTION FOR RECONSIDERATION**

On May 23, 2001, the Board received the Government's MOTION FOR RECONSIDERATION of the Board's decision in *Healthcare Practice Enhancement Network, Inc.*, VABCA No. 5864, 2001 WL 389432 (April 10, 2001). In its MOTION, the Government suggests that there is "an apparent inconsistency in how the Board defines 'institutional ratification'." The Government requests that the Board "reconsider the basis for its decision or alternatively clarify the intended standard for 'institutional ratification'." Thus, the Government is not seeking a different result, but is merely seeking clarification of the Board's words.

We disagree that there is any inconsistency in our decision and decline to further clarify, modify or otherwise explain our decision for the Government. The words therein speak for themselves. Moreover, the Board's decision was believed to have been received by the Government on or about April 18, 2001, i.e., more than 30 days prior to the Board's receipt of the Government's MOTION.

In that regard, Board Rule 29 requires the filing of a motion for reconsideration within 30 days of receipt of the decision for which reconsideration is sought. A motion not filed within that 30 day time limit must

be dismissed as untimely. *Executive Engineering & Services Corporation*, VABCA No. 2102, 86-3 BCA ¶19,175.

Accordingly, the Board sent to the Government an ORDER TO SHOW CAUSE, if any cause existed, why its motion should not be dismissed as untimely. In the meantime, the Board received Appellant's reply in opposition to the Government's motion, arguing, *inter alia*, that the motion was untimely and should be rejected.

On June 12, 2001, the Government submitted its reply to the Board's ORDER TO SHOW CAUSE. Without actually stating so, the Government appears to concede that its MOTION FOR RECONSIDERATION was untimely.

Nevertheless, the Government urged, "Even *assuming arguendo* that the Respondent's Motion is untimely, the Board has discretion to revisit and/or reconsider its April 10, 2001, Decision," citing several cases, as well as Fed. R. Civ. P. 60(b). Thus, we will consider the VA's response to the ORDER TO SHOW CAUSE as a MOTION FOR RELIEF FROM JUDGMENT. In *Nitro Electrical Corp.*, VABCA No. 3777R, we said:

FRCP 60(b) provides for a (b)(6) MOTION FOR RELIEF FROM JUDGMENT to be made within a "reasonable" time after a judgment is entered. We conclude that this MOTION, filed well over three years after the Board's decision was final, was not made in reasonable time and that it is untimely.

We also note that, even if we considered it, the MOTION fails to present the extraordinary circumstances warranting the exercise of our inherent power to amend a previous, final judgment of the Board.

In the instant case, while the MOTION may have been submitted in a reasonable time under *FRCP 60(b)*, we conclude that the MOTION fails to present circumstances warranting the exercise of our power to amend our judgment in the principal decision. Essentially, the Government asks us modify or explain what we consider to be the clear language of our decision. This we decline to do.

DECISION

Based on the foregoing, the Government's MOTION FOR RECONSIDERATION of the Board's decision in *Healthcare Practice Enhancement Network, Inc.*, VABCA No. 5864, is *DISMISSED* as untimely and the Government's MOTION FOR RELIEF FROM JUDGMENT is *DENIED*.

Date: **June 13, 2001**

MORRIS PULLARA, JR.
Administrative Judge
Panel Chairman

We Concur:

JAMES K. ROBINSON
Administrative Judge

RICHARD W. KREMPASKY
Administrative Judge