

[REDACTED],
 Petitioner,
 v.
 GEORGIA VOCATIONAL
 REHABILITATION AGENCY,
 Respondent.

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 : Docket No.:
 : OSAH-[REDACTED]-Woodard
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INTRODUCTION

FINDINGS OF FACT

1.

2.

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Petitioner would operate the facility as a relief operator. As a relief operator, Petitioner temporarily operated the snack bar, but was not considered a licensed blind vendor.³ (Testimony of Teresa Eggleston; Testimony of Rajaunnda Gandy; Exhibit R-7).

3.

Petitioner signed the Temporary Agreement with the Rehabilitation Services' Business Enterprise Program, the state licensing agency for the Randolph-Sheppard Act Georgia Vending Facility Program (hereinafter, the "state licensing agency," or "SLA"). The agreement stated, in part, that "[REDACTED], relief operator, [is] placed into [Vending Facility] on a *temporary basis*." (emphasis added). The agreement explicitly provided, "This agreement may be terminated at any time by the SLA. The SLA shall make every effort to provide the Relief Operator with a minimum of one week's notice prior to termination. This agreement will be terminated upon the revocation or termination of the state licensing agency's permit to operate a vending facility on or other property." (Testimony of Teresa Eggleston; Exhibit R-7).

4.

On July 27, 2012, BEP management merged the operations of Vending Facility with Vending Facility a vending facility located a few miles away in Dekalb County in the Manuel Maloof Building. The licensed blind vendor who operated Vending Facility took over the operation of the merged facilities. Respondent did not invoke a competitive bid process for the position. Respondent terminated Petitioner's Temporary Agreement for Vending Facility #190 at that time. (Testimony of Teresa Eggleston; Testimony of Rajaunnda Gandy).

CONCLUSIONS OF LAW

1.

In order to effectuate the intent of the federal Business Enterprise Program ("BEP"), an agency in each state is selected as the State Licensing Agency ("SLA") by the Rehabilitation Services Administration. 34 C.F.R. §§ 395.2 and 395.3. The Georgia Department of Labor is the SLA for Georgia. Federal regulations require that each state's BEP develop certain policies regarding governance of the program. See 34 C.F.R. §§ 395.3(a)(3), (a)(5) and (a)(6). Additionally,

³ Relief operators do not participate in the competitive bid process, as licensed blind vendors are typically required to do.

federal regulations require that the state BEP promulgate rules and regulations, which must be submitted to and approved by the Secretary of the United States Department of Education. See 34 C.F.R. §§395.4, 395.3(a)(11)(ii).

2.

As part of its role as Georgia SLA, Respondent is responsible for establishing and maintaining objective criteria for licensing qualified applicants, including giving preference to blind persons who are in need of employment. 20 U.S.C. 107a(a)(1), 107b; O.C.G.A. § 49-9-42. Licenses may only be issued to persons who are determined by the State licensing agency to be: blind; citizens of the United States; and certified by the State vocational rehabilitation agency as qualified to operate a vending facility. 34 C.F.R. § 395.7(a).

3.

Petitioner argued that when a vacancy opened in a Georgia BEP vending facility, Respondent should have commenced a competitive bid process so that Petitioner could bid to retain operation of Vending Facility BEP Rules and Regulations § VII(B)(1). However, BEP may elect to transfer licensed vendors as necessary to meet the best interests of the licensed vendor and/or the State Licensing Agency, without opening a vending facility to competitive bidding. Rules and Regulations § VII(A). In this case, BEP exercised its regulatory authority when it chose to transfer operation of Vending Facility to the licensed vendor, rather than commencing a competitive bid.

4.

The Temporary Agreement between Petitioner and BEP created a contractual relationship governing the operation of Vending Facility As a matter of law under Official Code of Georgia Annotated, Section 13-2-1, an unambiguous contract is the only evidence of parties' intent and understanding. See e.g., Rauschenberg v. Peeples, 30 Ga. App. 384 (1923). When language in a contract is capable of only one reasonable interpretation, no construction is required by the Court. Franchise Enters., Inc. v. Ridgeway, 157 Ga. App. 458 (1981).

5.

Petitioner's Temporary Agreement stated that the agreement was merely temporary, and Respondent could terminate the agreement at any time. Moreover, the contract adds that the agreement *will be* terminated upon the revocation or termination of the state licensing agency's

permit to operate the facility. Thus, the contract unambiguously provides that the contract was terminable at any time, Further, the contract is unambiguous that Petitioner, as a temporary operator, did not have the contractual right to retain operation of the facility or to engage in competitive bidding for this or another facility if BEP decided to revoke or terminate her contract.

6.

Parol evidence as to the parties' beliefs and intentions is only admissible when the contract is ambiguous. McGuire Holdings, LLLP v. TSQ Partners, LLC, 290 Ga. App. 595 (2008). As the contract here is unambiguous, Petitioner's argument that Respondent should have offered her a new position or allowed her to retain her current position is moot, as her beliefs are inadmissible parol evidence.

7.

Respondent has proven that it was authorized to terminate Petitioner's Temporary Agreement of Operation.

DECISION

Based on the foregoing, Respondent's adverse action in terminating Petitioner's Temporary Agreement of Operation for Vending Facility s **AFFIRMED**.

SO ORDERED, this _____ day of March, 2013.

PATRICK WOODARD
Administrative Law Judge