

BOARD SANCTIONS APPELLANT FOR FILING FOUR FICTITIOUS AI-CREATED CASES, BUT RULES FOR APPELLANT ANYWAY

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This blog has pointed out numerous cases where protesters and appellants have cited to fictitious cases in their pleadings (presumably using Artificial Intelligence, or “AI” to generate these citations). The Armed Services Board of Contract Appeals (“Board”) and the Government Accountability Office (“GAO”) have carefully scrutinized the reasons for these mistakes, and issued warnings or actual sanctions for this action. In a recent case, the Board issued sanctions of the appellant, but nevertheless awarded partial summary judgment to a *pro se* litigant because the statement of work at issue was latently ambiguous. *PDO Ahuska Joint Venture*, ASBCA No. 64164, July 13, 2026.

Ahuska was awarded a fixed price contract for replacement of a building’s waterproof membranes. During performance, the government determined that Ahuska’s membranes met a 120 mph wind speed requirement in the contract, but its standard warranty language only covered wind speeds of 90 mph. Because of this, the government required Ahuska to use another membrane manufacturer, and this caused delay and extra expense for Ahuska to obtain a 120 mph wind speed warranty.

Ahuska was a *pro se* litigant, and moved for summary judgment. Its pleading contained 5 citations. The government identified five allegedly fictitious cases in Ahuska’s motion and moved for sanctions and striking of the fictitious cases in the motion. The Board found that one case was a mere typographical error, but held that four cases were fictitious. The Board agreed to strike those four cases as a sanction. However, the Board found there was no genuine issue of material fact that the contract was ambiguous as to whether the member manufacturer’s warranty was required to cover 120 mph wind speed. Further, there was no genuine issue of material fact that the ambiguity was latent, not patent because it was not so apparent that it imposed an obligation to inquire upon Ahuska.

Takeaway. The Board granted Ahuska’s motion for partial summary judgment and denied the government’s cross motion for partial summary judgment. The important takeaway is two-fold: (1) Even *pro se* litigants will be held to a strong standard when considering the imposition/type of sanctions and (2) The Board considers willfulness, degree of prejudice to the parties, delay and expense, as well as bad faith, in determining sanctions. The Board decided that the entire Ahuska pleading did not need to be stricken, but only the four fictitious citations and the contentions supported by those citations.

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