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**IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
EASTERN GRAND DIVISION**

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FILED  
TN CLAIMS COMMISSION  
CLERK'S OFFICE

JUDY WILKERSON, )  
                  Claimant, )  
                                  ) )  
v.                                  ) )  
                                  ) )  
STATE OF TENNESSEE, )  
                  Defendant. )

**Claims No. T20141297  
Regular Docket**

2016 JAN 21 A 10: 15

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**ORDER DENYING CLAIM**

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**Procedural History**

This claim was initially filed with the Division of Claims Administration (DCA) on March 27, 2014. The claim was transferred from the DCA to the Commission on June 25, 2014, pursuant to Tenn. Code Ann. § 9-8-402(c).

On August 7, 2014, Dr. Wilkerson filed her Complaint with the Commission after which the State filed an Answer on September 8, 2014.

A request by Dr. Wilkerson for binding arbitration was later denied in an Order signed by the Commission.

Subsequently, the case came on for hearing before the undersigned in Mt. Juliet, Tennessee, on October 20, 2015. Following that hearing the parties submitted post-trial briefs which the Commission has thoroughly reviewed.<sup>1</sup>

The Claimant, Judy Wilkerson, Ph.D. is representing herself *pro se*. The State is

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<sup>1</sup> At trial, there were 16 exhibits entered into evidence. Post-hearing, Dr. Wilkerson's *curriculum vitae* was forwarded to the Commission and will be marked as Exhibit 17 and included in the record. Additionally, at Dr. Wilkerson's request, the State has provided a document entitled "Request for Proposal, Quantitative Impact Evaluation of Grant" which will be entered into evidence as Exhibit 18 and filed in the record. Additionally, marked as Exhibit 19, are two pages of figures captioned "CHSCC IMJAT Line Item Budget". This document will also be forwarded to the Clerk of the Commission to be included into the record. References to these exhibits will be to (Exh. \_\_, p \_\_).

represented in this matter by Attorney Eugenie B. Whitesell of the Office of the Attorney General and Reporter of the State of Tennessee.

### **Relevant Provisions from Exhibits Introduced at Trial**

Exhibit 1 is the contract between Chattanooga State Community College (ChSCC) and Dr. Judy R. Wilkerson. The contract was signed by Dr. Wilkerson on April 5, 2013, and by the president of ChSCC on April 11, 2013. Dr. Wilkerson's services were to cover the period April 11, 2013, through September 30, 2016, with \$51,750 to be paid in the first year.<sup>2</sup> Dr. Wilkerson was to act as "the Institutions (sic) Independent External Grant Evaluator". Services to be provided by Claimant were at a minimum to include those described at pages 18-21 of the "RFP attachment 6.2, Pro Forma Contract". Payments to Dr. Wilkerson were to be made on a quarterly basis contingent upon "the satisfactory completion of deliverables and services listed in Contractors (sic) proposal C3: Breakdown of Proposed Activities by Year, pages 71-72 ..." (Exh. 1, p 1).

Paragraph C.3 provided that "[t]he Dean of Engineering Technology Division and the Budget Administrator for the Trade Adjustment Community College and Career Training Grant (TACCCTG) must approve the invoices prior to any payments" (Exh. 1, p 2).

Paragraph D.4, captioned Termination for Convenience, stated the following:

The Institution may terminate this Contract without cause for any reason. Termination under this section D.4 shall not be deemed a Breach of Contract by the Institution. The Institution shall give the contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to

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<sup>2</sup> The grant to ChSCC commenced in 2012.

any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. (Exh. 1, Tr. 2)

Paragraph D.12 reads as follows:

Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance upon the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto. (Exh. 1, p 3)

Exhibit 2 is Dr. Wilkerson's "Proposal Transmittal and Statement of Certifications and Assurances" in connection with her application to serve as the External Grant Evaluator for ChSCC in connection with the United States Department of Labor (DOL) grant.

Page 20 of this Proposal provides that the first year of the proposer's services would be designated as a Planning Year which would encompass the "Fall of 2012, Spring 2013, Summer 2013 (o/a October 2012-July2013)". Outcome Year 1 covers the period between August 2013-July 2014.

Page 20 of this Exhibit states that "[t]he preponderance of evaluation work in the first year will be on program planning and not outcomes. Reports for outcomes data are projected for September/October (for subsequent years) to allow for maximizing the counts by incorporating summer school. Reports for program implementation are projected for August to allow for modifications targeting continuous improvement" (Exh. 2, p 20). Page 21 of Exhibit 2 also states that "data on program implementation are needed in Summer 2013 to ensure that start-up of new courses are as well designed as possible and consistent with the needs assessment provided for in the RFP".

Page 26 of Exhibit 2 contains the following statement:

The reports proposed herein are based on the receipt of data in a format that can be filtered for counting. Upon receipt of Excel spreadsheets from P (Program Manager), E (Evaluator) will generate the required report using two formats – one that separates data for internal planning and evaluation purposes and one that is merged for the final report submitted to the DOL. Separate reporting should allow for better analysis of program strengths and weaknesses than merged reporting, but merged reporting is a DOL requirement.

The bulk of Exhibit 2 consists of Dr. Wilkerson's explanation of her proposal which addresses 21 separate Deliverables designed for ChSCC in compliance with DOL requirements (Exh. 3, pp 27-70). Page 71 of this document again states that Year One of the Proposal constitutes a "planning year".

Exhibit 3 is a letter from the president of ChSCC to Dr. Wilkerson dated October 10, 2013, terminating her services to the College pursuant to Section D.4., supra, in connection with Contract #332 80 13. The effective date of that termination is indicated as November 8, 2013.

Exhibit 4 is a letter from Dr. Wilkerson to the president of the College dated November 6, 2013. In that letter, Dr. Wilkerson outlines "some serious concerns about the [DOL] project's viability" and in particular, the low enrollment numbers of students who were being trained under the federal government grant. Dr. Wilkerson goes on to state that her work had been impeded because she had "not been given access to student data related to outcomes, most course materials, or most other specified process-related information". She also accented the fact that the USDOL as well as the National Evaluation Team for TAACCCT Grants had the right to request copies of her evaluation.

That letter was apparently initially sent to the president by email and attached to it were Dr. Wilkerson's Evaluation Report for the years 2012-2013 (Exh. 5). In entries found in this report, Dr. Wilkerson complained, at page 2, that she was not provided with outcomes data and that overall, the reports provided to her by the College program, IMJAT, were "generally

difficult to follow” (Exh. 5, p 3).

Dr. Wilkerson also complained that College course syllabi, although they met the accreditation standards for an engineering organization group, the American Board of Engineering Technology (ABET), did not provide “sufficient detail” to meet certain grant goals (Exh. 5, p 4). Dr. Wilkerson goes on to observe that there were gaps in the information required for quarterly reports to DOL regarding recruitment into the program and that no information on the number of students enrolling was provided (Exh. 5, p 4). Dr. Wilkerson also stated that in connection with Deliverable 3, she had not been provided with satisfaction survey data. In connection with Deliverable 7, Dr. Wilkerson wrote that retention of staff appeared to be “problematic” (Exh. 5, p 6). As for Deliverables 9 and 10, Dr. Wilkerson commented that she had not been provided “specific documentation ... regarding online coursework development in MJ or NDT and that there had been delays in course development” (Exh. 5, p 7).

Dr. Wilkerson went on to recount problems she perceived with ChSCC’s Deliverables identified in her Proposal as they related to finalization of learning modules, transfer agreements between ChSCC and other Colleges, the membership of an Advisory Board, and plans for recruitment of students as discussed under Deliverable 15 (See Exh. 5, pp 8-9).

Dr. Wilkerson also criticized the College’s website as it related to programs covered by the grant and the school’s participation in events which might serve to attract more students. *Id.*

Exhibit 5 then discusses the College’s Proposal to the DOL and her Proposal to the College. This portion of the report is broken down with regard to four discrete sections which apparently were directed by the DOL to the College in connection with the grant. With regard to question 1, Dr. Wilkerson observes again at page 19, that much needed data was missing in connection with her efforts to complete her report to the College. As for DOL question 2, Dr.

Wilkerson concluded that evaluation of instructional delivery methods was impeded by the dearth of information available in two priority areas (Exh. 5, p 27).

Additionally, with regard to that question, Dr. Wilkerson wrote that there had been staffing turnover in the grant program and that she had never been provided with materials necessary for her to evaluate the “staff and their credentials” (Exh. 5, p 29).

Also, with regard to question 2, Dr. Wilkerson complained that she was unable to track results and improvement opportunities involved with the development of a comprehensive database since she had never received “screenshots and access” to ChSCC data (Exh. 5, Tr. 31). This sort of information, according to Claimant, was called for in her evaluation proposal. *Id.*

Dr. Wilkerson wrote that though Project Director McConnell had attended a conference hosted by the Gates Foundation, she never provided the promised “leveraging strategies” which supposedly were to be addressed at that conference (Exh. 5, p 36).

Finally, with regard to answers to question 4 required by the DOL, dealing with participation by private industry partners in the program, Dr. Wilkerson opined that “specific possibilities for collaboration are not strongly aligned ... with USDOL expectations” (Exh. 5, p 41).

Exhibit 6 at trial is Dr. Wilkerson’s Invoice dated November 5, 2013, requesting payment of \$28,000 in connection with work she claims to have done in the preparation of her November report.

Exhibit 7 is a draft Evaluation Report prepared by Dr. Wilkerson on July 21, 2013, which on page one contains the following statement:

The Evaluator wishes to commend the IMJT staff, particularly the Project Director, Dr. Dorenda McConnell, and the Dean of Engineering, Dr. Tim McGhee, for their outstanding cooperation and collaboration. Their dedication to and pride in this project is clear and

compelling. Together they have ensured that IMJT has had an excellent start with the potential needed to achieve its goal.

Exhibit 8 shows that, for her work between April 13, 2013, and July 21, 2013, Dr. Wilkerson was paid \$21,500.

However, on October 4, 2013, Dr. Wilkerson prepared a Status Report and Request for Information sent to ChSCC in which she states that the DOL grant required two evaluation reports but that her proposal also included “a start-up evaluation report in October 2013”. In the Status Report, Wilkerson expresses her belief that College officials were under the impression that a third party evaluation was “of limited necessity”, and that she still needed “quite a bit of information” in order to prepare the extra report promised in her bid to the College to act as third party evaluator. The first page of this Report and Request states that Dr. Wilkerson thought it advisable to delay her first year report until such time as the College had submitted certain required data to DOL online. Consequently, Claimant asked for a delay until December, 2013, to submit her report (Exh. 9, p1).

In Exhibit 11, email exchanges between Dr. Wilkerson and ChSCC personnel, Dr. Wilkerson requested that part of the grant budget be “roll[ed] over [from] the first year projection to subsequent years since some of the data has not yet reached my desk and the federal fiscal year is reaching a close soon” (Exh. 11, p 2). On August 28, 2013, Dr. Wilkerson also wrote a Ms. Price (now Potter) the following:

Am I ok to spread the budget differently from year to year? I'd like to bank some for busier times.

Exhibit 12 is an email exchange between Dr. Wilkerson and Dr. McConnell dated October 4, 2013, requesting information in connection with the interim report she had promised as a part of her proposal (Exh. 12).

Exhibit 13 is a letter to the president of ChSCC from the acting regional administrator for the USDOL's Employment and Training Administration in Atlanta. It references a report prepared by Adrian Barrett, a Federal Project Officer (FPO), who conducted an onsite review of the implementation of the DOL grant at the College between September 3 and 6, 2013. Page 3 of that document contains the following statement:

The results of the review indicate that the grantee's programmatic, administrative, and financial operations are effective to achieve the objectives and goals stated in the grant agreement. In addition, the grantee has complied with the special clauses and conditions stipulated in the grant agreement, as well as applicable Federal laws and regulations.

Exhibit 14 is a document which outlines student data to be delivered by third party evaluators to DOL including program participant names, Social Security numbers, and dates of birth which would be used in control and companion group analysis. A secure data system was required (Exh. 14, p 1).

Exhibit 15 is an email exchange between ChSCC personnel and the FPO, Mr. Barrett, stating that when Barrett was in Chattanooga, the College had indicated its desire to terminate Dr. Wilkerson's services and secure a new third party evaluator. The exchange discusses what steps the College would need to take in order to effectuate Claimant's termination, which it hoped to effectuate ASAP, and requested information as to what other steps the Department would require in order to carry out this change. Mr. Barrett responded that the only further approvals which would be necessary from DOL would be in the event that dollar amounts in the budget were modified (Exh. 15).

Exhibit 16 is an email exchange between Dr. McGhee and the President of the College setting out the reasons for McGhee's desire to terminate Dr. Wilkerson's services.

*Inter alia*, that Memorandum stated that Dr. Wilkerson was under the impression that the

major purpose of the grant was to develop a program which could be replicated throughout the country rather than to train enrollees for job placement in the area served by the College; that Dr. Wilkerson was unable to work effectively with staff and faculty of the College and at times acted unprofessionally and in a quarrelsome manner. Additionally, Dr. McGhee wrote that Dr. Wilkerson had requested “ChSCC personnel information that was not relevant to the evaluation of the grant”. Finally, Dr. McGhee stated that Dr. Wilkerson had not provided a promised report for inclusion in a binder to be provided to DOL at a Core Monitoring Visit (Exh. 16).

Dr. Wilkerson’s *curriculum vitae* was marked as Exhibit 17.

Post-hearing, the State provided a copy of Dr. Wilkerson’s Quantitative Impact Evaluations of Grant in connection with her Proposal. This Proposal was incorporated into Exhibit 1, Dr. Wilkerson’s contract with ChSCC. The Commission will mark this document as Exhibit 18 and transmit the same to its Clerk for inclusion in the record.

Finally, on October 24, 2015, Dr. Wilkerson provided her line item budget submitted in connection with her proposal which will be marked as Exhibit 19 and likewise transmitted to the Clerk of the Commission for filing.<sup>3</sup>

### **Trial Testimony<sup>4</sup>**

The trial in this matter took place on October 20, 2015, in Mt. Juliet Tennessee at the City of Mt. Juliet Municipal Courtroom.

#### ***The Testimony of Claimant, Dr. Judy Wilkerson***

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<sup>3</sup> The Commission did not permit Dr. Wilkerson to introduce a portion of Exhibit 18 on the State’s pre-trial Witness and Exhibit List (Trade Adjustment Assistance Community College and Career Training Grant #TC-23748-12-60-A-47). Claimant did not file a pre-trial witness list nor did she advise the State that she would be relying on its documents in support of her claim. Dr. Wilkerson wanted to use this document in connection with her questioning of Dr. McConnell regarding the non-provision to her of certain statistical information regarding students. We do not believe the contents of the grant document would change our decision in light of our reasons for denying this claim.

<sup>4</sup> Testimony in this matter is contained within three separate volumes. References to those volumes will be to Transcript, Page (Tr. \_\_, \_\_).

Dr. Wilkerson claims that the State of Tennessee, because of the actions of Chattanooga State Community College (ChSCC), owes her \$28,000 for services rendered as a third party evaluator in connection with a training grant made to the College by the DOL.

Dr. Wilkerson was permitted to testify in a narrative fashion since she is proceeding *pro se* in this matter.

When questioned by the Commission as to why when she received the termination letter from the president of ChSCC on October 10, 2013, she did not cease work immediately, Claimant testified that he never told her to cease work. Dr. Wilkerson testified that the letter indicated that her work on the contract was being terminated for convenience rather than for cause, and thus there was no indication that the College was unsatisfied with her work. She contended that ChSCC simply did not understand the function of what she was supposed to do as a third party evaluator (Tr. 1, 21). She testified that her role was to provide an outside assessment for both ChSCC and the DOL and advise both parties as to whether the College was meeting its obligations under the grant. She stated that in doing so, she was “supposed to take an objective look at the data” involved with the program and then render an opinion (Tr. 1, 22). In connection with this grant, ChSCC had to respond to the DOL’s Solicitation for Grant Application. *Id.*

Dr. Wilkerson testified that she had become associated with ChSCC prior to this project, “to help them salvage their accreditation” (Tr. 1, 25.)

On this job, half of her evaluation was to make sure students came out of the project and secondly to study how ChSCC was structuring the program. Dr. Wilkerson stated that the “ultimate requirement” of her work was “to make sure that those outcomes were legit” (Tr. 1, 27). She testified that she believed that although ChSCC was paying her through the State, actually the funds came from the DOL and that federal agency expected her to “keep an eye” on

the money as its evaluator (Tr. 1, 28).

Dr. Wilkerson viewed the arrangement as being an agreement between the College, her, and the DOL. The College was doing what it was required to do under the grant by having a third party evaluator. *Id.*

The breakdown in the relationship between the parties, according to Claimant, was that ChSCC failed to provide her with the data necessary to analyze whether the institution was compliant with the terms of the grant (Tr. 1, 29).

The letter of termination from the president of the College to Dr. Wilkerson was dated October 10, 2013, and under the contract, the termination was effective 30 days later which would have been November 8, 2013 (See Exhibits 1 and 3).

The Commission then questioned Dr. Wilkerson as to why she even proceeded further after receiving the termination letter (Tr. 1, 32). Claimant responded that her technical proposal to the College in response to the RFP was a part of her contract by incorporation (Tr. 1, 32-33). Dr. Wilkerson pointed out that a part of her proposal to ChSCC involved a third report which was not technically required by the DOL solicitation for grant application (SGA). This was the October 2013 report which she submitted on November 6, 2013, two days before the effective date of her termination. Thus, she argued that she was obligated to provide the report dated November 6, 2013, by the terms of her contract which incorporated by reference the Technical Proposal marked as Exhibit 2 at trial. To have done otherwise, Dr. Wilkerson testified, would have constituted a breach of her obligations under the contract. *Id.*

She went on to testify that the College withheld data from her which was necessary to prepare a thorough 2013 report. Thus she was caught “between the rock and the hard place” in that the College did not provide her the necessary data yet the DOL wanted a report which

included an analysis of the data (Tr. 1, 34).

Dr. Wilkerson conceded that she went forward with her work although the College had problems with her doing that (Tr. 1, 36). She proceeded because she believed it was the ethical thing to do, and in fact the letter from the president of the College did not say “stop now” (Tr. 1, 38-39). She believed that she “needed to finish the job” (Tr. 1, 40).

Dr. Wilkerson testified that she completed the report on November 6, 2013, two days before the scheduled termination date set out in the letter from the president of ChSCC (Tr. 1, 42-43).

On cross-examination the State directed Dr. Wilkerson’s attention to paragraph D4, of the contract dealing with satisfactory completion of deliverables and services. She testified that no one ever told her that her work was unsatisfactory (Tr. 1, 46-47). She went on to state that two of her earlier invoices had been paid, but the one she submitted on November 6, at issue in this case, was not paid (Tr. 1, 47-48). She agreed that she had been paid for all services up through the date of the termination letter but not the formal termination date of November 8, 2013 (Tr. 1, 49).

Dr. Wilkerson was then questioned regarding the Status Report she sent to ChSCC on October 4, 2013, which was marked as Exhibit 9. That status report listed information Claimant believed was necessary in order to complete the October report she offered to do in her Proposal. In the Status Report, she requested a delay until December, 2013, for delivery of her initial report (Tr. 1, 55). Dr. Wilkerson agreed that she did not receive the information mentioned in the October 4, 2013, Status Report before the notice of termination on October 10, 2013 (Tr. 1, 52-56).

Dr. Wilkerson agreed that after the termination letter was sent, no one from ChSCC

requested that she complete the report, and she did not communicate with anyone there regarding her intention to do that (Tr. 1, 56).

Dr. Wilkerson testified that she did not write a full report because she did not have the data requested, and that ChSCC “continued to hide it” (Tr. 1, 56-57).

Dr. Wilkerson also testified that the parties “never really reached an agreement on what the annual year under the contract actually meant although she sensed that the parties were operating on the federal fiscal year which runs from October 1 until September 30” (Tr. 1, 62-63). She stated that the first year of her contract, thus, would run from April, 2013, through September 30, 2013 (Tr. 1, 62-63). Under her view, her first report, contemplated by what she offered to do under the Proposal, was due in October, 2013. She testified that her proposal included an additional report as a part of the program “start up” due in October of 2013. The DOL grant required interim reports in October of 2014 and 2015 and a final report in 2016 (Tr. 1, 64-65).<sup>5</sup> She agreed that there was no specific due date for the additional report included in her Proposal (Tr. 1, 65).

Dr. Wilkerson stated that the core of this dispute is “all about withholding information” from her in connection with the preparation of her report (Tr. 1, 70).

Dr. Wilkerson was questioned at length regarding the entries included on her invoice for services rendered between August and November of 2013 as set out in Exhibit 6 (Tr. 1, 72-74).

Dr. Wilkerson went on to explain that she believed ChSCC had breached the contract since data described in her Technical Proposal, which was a part of her contract with the State, was never provided (Tr. 1, 77-79).

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<sup>5</sup> There is some discrepancy in the record whether DOL required interim reports in 2014 and 2015 (infra at p. 15). Clearly the final report was due in 2016.

### *The Testimony of Dr. Dorenda McConnell*

Dr. McConnell is the Director of the Institute for Materials Joining and Testing (IMJAT) program at ChSCC and administrator of the DOL TACCCT grant (Tr. 1, 90).

Dr. McConnell has been Director of IMJAT since January of 2013. She is the administrator of the DOL grant which involved generally training of displaced workers, and others, for high-tech jobs in the Chattanooga area. In that position, she was required to make quarterly reports to the DOL (Tr. 1, 94). She reported to the dean of the engineering division at ChSCC, Dr. Tim McGhee (Tr. 1, 95).

Under the grant, Dr. McConnell testified, ChSCC was required to make quarterly reports to DOL due six weeks after a quarter ended. An annual report was due to the federal government by November of 2014 under this particular grant. According to this witness, the federal fiscal year ended on September 30 and the federal grant year ended on that same date (Tr. 1, 99). The quarterly reports deal with qualitative matters including assessment of deliverables which are goals and objectives of the program (Tr. 1, 100).

Annual reports deal with the number of student participants in the program and their demographic information. It also records the number of students who have matriculated through the program and achieved either a certificate or a degree. Also included in the annual reporting is the ethnicity of program participants (Tr. 1, 101-102). These reports are made to an FPO (Mr. Barrett here) in Atlanta (Tr. 1, 102).

According to Dr. McConnell, third party evaluators have access to ChSCC quarterly and annual reports, but they work directly with the College (Tr. 1, 103).

Dr. McConnell testified that the reports of third party evaluators go to the College, and it forwards the same to the DOL (Tr. 1, 105). She went on to testify that there was no requirement

by DOL in 2013 that the College file the October report from Dr. Wilkerson with that department (Tr. 1, 106).

Dr. McConnell testified that the third party evaluator works for the contracting College. In fact, she stated that the evaluator reports to the College and not to the DOL, and that there were only two reports from the evaluator due to DOL during the life of this grant (Tr. 1, 107). However, she went on to say that the “only thing [she] had to submit to [DOL] were ... quarterly reports and the annual report for 2015” (Tr. 1, 108).

Dr. McConnell testified that the College was under no obligation to provide the 2013 report to DOL. *Id.*

With regard to the report which Dr. Wilkerson did prepare, Dr. McConnell testified that she could not believe that Claimant had actually written a report since “none of the information that would have been needed in the report was ... available yet”. She testified that an annual report and the numbers required by the DOL were not due until November 2014. It would have been impossible for Claimant to prepare a complete report since accurate numbers were never sent to her (Tr. 1, 109-110).

Dr. McConnell went on to testify that even with regard to the report due the federal government in 2014, the report of the third party evaluator was not required to be sent (Tr. 1, 110). Some of the data Dr. Wilkerson had requested was not yet available, and in September, 2013, the College knew “that we probably were not going to continue the business relationship with [Dr. Wilkerson]”, and thus Dr. McConnell never responded to Dr. Wilkerson’s requests for information. At the time, the College was still building a database to accumulate information (Tr. 1, 111-112).

Dr. McConnell testified that she had no further communication from Dr. Wilkerson until

she received Exhibit 9 on October 4, 2013. She testified that she as program director did not want the Evaluation Report marked as Exhibit 5 (Tr. 1, 115). Dr. McConnell testified that Exhibit 5 was based on pure speculation on the part of Dr. Wilkerson (Tr. 1, 116).

She went on to state that Dr. Wilkerson was “very difficult to work with” and “very demanding”. Claimant wanted to re-create “all of our syllabi” which has nothing to do with the function of a third party evaluator (Tr. 1, 117).

Further, Dr. Wilkerson told Dr. McConnell that she needed the telephone number for the FPO, Mr. Barrett, in Atlanta, since she disagreed that the grant was “about training people and putting them to work” (Tr. 1, 118). At one point, Dr. McConnell had requested feedback from Dr. Wilkerson, but that assistance was late coming since Dr. McConnell had already filed the quarterly reports required by DOL (Tr. 1, 120).

Exhibit 5 was not helpful to Dr. McConnell as program director (Tr. 1, 122).

During the FPO’s visit in September of 2013, ChSCC discussed with him the concerns it had about Dr. Wilkerson. He told ChSCC that he understood those concerns, and that after checking in Atlanta he determined there would be no problem with the College changing third party evaluators and such a change would not reflect badly on the institution (Tr. 1, 128).

Dr. Wilkerson elicited testimony about whether there was a difference in deliverables due the DOL from ChSCC and deliverables from her to the College (Tr. 2, 6-7). Dr. Wilkerson insisted that the grant deliverables from the College to the DOL were also a part of her contract with ChSCC (Tr. 2, 8). Dr. McConnell went on to testify that regardless of whether the process of evaluating benchmarks was part of both the College’s agreement with Dr. Wilkerson, as well as the College’s agreement with the DOL, that made no difference in this dispute since, at the time Claimant was terminated, the information required on a quarterly basis was not yet

available (Tr. 2, 9-10).

Dr. McConnell testified that what Dr. Wilkerson was working on during the first year of the grant was not a required report (Tr. 2, 12). After her termination, the information necessary was gathered, but it was not available at the time Claimant was terminated (Tr. 2, 12). Dr. McConnell did agree that the scope of Dr. Wilkerson's contract with the College included information discussed in her Proposal, Exhibit 2 (Tr. 2, 14).

Dr. McConnell explained that the discussions about whether to terminate Dr. Wilkerson began in August of 2013, but that a final decision was delayed until the visit by federal officials in September of 2013 (Tr. 2, 16). Dr. McConnell testified that the information contained in the quarterly reports to DOL would have been available to Dr. Wilkerson (Tr. 2, 17). She said once again that she could not provide to Dr. Wilkerson information in 2013 that the College did not yet possess (Tr. 2, 25). W

With regard to the data Dr. Wilkerson maintains she was entitled to, including Social Security numbers, Dr. McConnell testified that the College did not provide that information to their current third party evaluator, but that that entity obtained releases from the students themselves (Tr. 2, 30-31).

Dr. McConnell went on to testify that at the time of the trial, the College was in the last year of the grant and had never been asked to provide Social Security numbers to the DOL nor its current third party evaluator (Tr. 2, 36). Dr. Wilkerson contended that this information was necessary for a third party evaluator in order to carry out the audit function (Tr. 2, 37).

Dr. Wilkerson also then questioned Dr. McConnell regarding Exhibit 13, at page 5, regarding general monitoring tools and procedures. Dr. McConnell testified that in the first year of the program, ChSCC was "still finding out what we were supposed to be doing" (Tr. 2, 40-

42).

Dr. McConnell also testified that Dr. Wilkerson's November report was basically a regurgitation of materials found in her earlier July report (Tr. 2, 50).

Dr. Wilkerson testified that her engagement with the College was "to work for both sides [ChSCC and DOL] and ... to be in the middle, like an arbitrator" (Tr. 2, 56).

### *The Testimony of Lynn Potter*

Lynn Potter, formerly Lynn Price prior to her marriage in May of 2014, is the coordinator for the Engineering Technology Division at ChSCC and serves a number of functions in that department. She was a participant in the process which involved Dr. Wilkerson in this DOL grant. She stated that ChSCC was not required to send a copy of its contract with Dr. Wilkerson to the DOL or even to report her name (Tr. 2, 64). Ms. Potter fulfils a number of roles in the Division. She was involved with the DOL grant from its inception. She helped draft the grant application. She did not interact personally with Dr. Wilkerson. The evaluation planner, a Ms. Cindy Lo, carried out that work (Tr. 2, 62-63).

However, Ms. Potter did authorize payment for "services delivered" by Dr. Wilkerson (Tr. 2, 66). She went on to testify that DOL approval was not necessary in order to terminate Dr. Wilkerson, but that during the visit of the FPO in September of 2013, others spoke with him regarding their dissatisfaction with Dr. Wilkerson and her view of what the purpose of the grant was. They told the FPO that it appeared Dr. Wilkerson thought the grant was designed to develop a program which could be replicated at other locations while the administration of ChSCC thought the grant was about training people so that they could get a job (Tr. 2, 68-69). It was Ms. Potter who testified that ChSCC officials discussed with the FPO the effect, if any, of dismissing Dr. Wilkerson. The FPO told the College that the school did not need DOL approval unless the

replacement resulted in a modification of the entire budget. She went on to testify that had Dr. Wilkerson been paid the additional \$28,000 she requested, that would max out the amount which could be paid during the first year of the contract or \$51,200 (Tr. 2, 73). Ms. Potter characterized Dr. Wilkerson's November report as "crazy", and that she reviewed it line by line in order to determine if there was anything further Claimant could be paid because of that document (Tr. 2, 76-77). She concluded that it would not be a good utilization of grant funds to pay for this report, and that consequently she did not approve it (Tr. 2, 80).

Ms. Potter did agree that the evaluation plan submitted by Dr. Wilkerson in connection with ChSCC's grant proposal to the DOL was "basically satisfactory [to] the DOL" (Tr. 2, 82). That same evaluation proposal, in turn, was a part of the proposal made by Claimant in applying for the position of third party evaluator (Tr. 2, 83).

However, Ms. Potter testified that throughout Claimant's dealings with personnel at ChSCC, she was "very aggressive and abrasive and hard to work with". The straw that broke the camel's back were her differing views on what the program was supposed to accomplish (Tr. 2, 84). Ms. Potter testified, under questioning from Dr. Wilkerson, that Claimant wanted access to a college computer server which was not allowed (Tr. 2, 88). Dr. Wilkerson's position was that she did not want access to all the data on the server but only the student data she needed to complete her October, 2013, report. *Id.* Ms. Potter agreed that sometimes grant budgets are modified to move money to different expense categories, but that in the case of this grant there was no authorization to do it (Tr. 2, 89-90). Ms. Potter testified that information was not provided to Dr. Wilkerson at a certain point since a decision had been made to terminate her (Tr. 2, 93). Ms. Potter also stated that on Dr. Wilkerson's first visit as the evaluator, a dispute developed regarding the syllabi for engineering programs which had been approved by ABET, an

engineering accreditation body (Tr. 2, 95-96). Finally, Ms. Potter testified there were only minor differences between the July, 2013, and November, 2013, reports provided by Dr. Wilkerson (Tr. 2, 98).

***The Testimony of Dr. Tim McGhee***

Dr. McGhee is Dean of ChSCC's Division of Engineering and Technology (Tr. 3, 4). Ms. Potter and Dr. McConnell report to him. In 2008, ChSCC initiated a welding engineering program. After having been unsuccessful in obtaining a grant for that program from the National Science Foundation, Dr. McGhee and others wrote a TACCCT grant to the DOL to address "a severe need for structural welders, robotic welders, [and] technicians in non destructive testing" (Tr. 3, 7).

In terms of approving payment for services rendered to the Division, Dr. McGhee is the first in a line of approving authorities for payment for invoices. He, along with others at ChSCC including the president, determined that Dr. Wilkerson's November evaluation contained nothing that warranted payment (Tr. 3, 8).

On the day of the first meeting regarding her contract, Dr. Wilkerson was on campus in connection with her evaluation. Staff believed that she was berating the College "over our syllabi". She also expressed the view that the most important thing was to replicate a program which could be used across the country rather than training Chattanooga area citizenry and placing them in jobs with the College's industry partners (Tr. 3, 9-10).

Dr. McGhee was concerned about Dr. Wilkerson's "customer skills" and subsequently sent her an email expressing those concerns (Tr. 3, 9). During the summer of 2013, Dr. McGhee also became anxious regarding Dr. Wilkerson's availability to answer questions in a timely fashion (Tr. 3, 11).

Dr. McGhee characterized year one of the grant as a building and recruiting period (Tr. 3, 11-12).

When the FPO came to the College, he affirmed Dr. McGhee's view that the most important aspect of the grant was training students in the program (Tr. 3, 12). The officer also told him at the time that if ChSCC was not satisfied with the third party evaluator, it had the option of engaging another provider (Tr. 3, 13).

On September 26, 2013, Dr. McGhee submitted his memorandum to the president of the College who ultimately made the decision to terminate Dr. Wilkerson's contract (Tr. 3, 13-14).

Dr. McGhee also testified that original projections as to how many participants would be involved in the training program were too high, and that the figures were discussed with FPO Barrett (Tr. 3, 14-16).

Dr. McGhee testified that the process used in this grant procedure was the same one used by the Division during the accreditation process by the Accreditation Body for Engineering and Technology (ABET) and that measurements involved in that process resulted in a very good metric (Tr. 3, 24). According to Dr. McGhee, the procedures used during the SACS accreditation process "did [them] in" and his division had decided not to use that model going forward. *Id.* The methodology used in the SACS proceeding in terms of measurement of student outcomes was not acceptable to ABET. *Id.*

Dr. McGhee went on to state that he had previously worked through two DOL grants, and that the intent of those grants was "putting Americans to work". He testified that Dr. Wilkerson disagreed with him on that conclusion, and she believed replication of the program was the main goal (Tr. 3, 26). Dr. McGhee was firm in his testimony that the intent of the program was getting people trained and into jobs rather than developing a program capable of replication (Tr. 3, 29-

31).

Dr. Wilkerson agreed that she did not have a contract with the DOL (Tr. 3, 45). Dr. Wilkerson viewed her role as an intermediary or arbitrator between ChSCC and the DOL. Although the proof showed that ChSCC was not obligated to provide certain information to the DOL, Dr. Wilkerson testified that she thought she was required to do so (Tr. 3, 46). She acknowledged that although her paycheck came from ChSCC, it was comprised of monies from the DOL, and that is why she believed the federal agency wanted someone to determine whether or not it was getting “bang for [their] bucks” (Tr. 3, 47). In order to do that, it “seemed” to Dr. Wilkerson that the DOL wanted a third party evaluator (Tr. -3, 47-48).

Dr. Wilkerson also acknowledged that ChSCC had the right to terminate her pursuant to “an awful, stupid, ridiculous clause”. She now believes that she “should have contested it from the beginning” (Tr. 3, 43-49). Although ChSCC had the right to terminate her, it was her testimony that she did the work and was being paid indirectly by the DOL and it was her view that the DOL “wanted this information” (Tr. 3, 49).

Dr. Wilkerson attempted to enter into evidence her testimony that the DOL had asked her for her report, and that she gave it to them. The State objected on the grounds that Claimant’s testimony was hearsay to which Dr. Wilkerson responded that the allegation was set out in her complaint. The Commission observed that allegations in complaints do not constitute evidence (Tr. 3, 49-50). The Commission sustained the State’s objection the introduction of hearsay (Tr. 3, 51).

Dr. Wilkerson also stated that she was never advised that the report she submitted in November, 2013, was unsatisfactory nor was she given an opportunity to fix it (Tr. 3, 52).

## **Decision**

This is a contract dispute between Dr. Judy Wilkerson and the State of Tennessee by virtue of the actions of Chattanooga State Community College (ChSCC). The amount involved is \$28,000.

The claim is brought pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(L), which reads as follows:

(a)(1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of “state employees,” as defined in § 8-42-101, falling within one (1) or more of the following categories:

...

(L) Actions for breach of a written contract between the claimant and the state which was executed by one (1) or more state officers or employees with authority to execute the contract; provided, that the group insurance agreements created pursuant to §§ 8-27-201 and 8-27-302 shall be considered contracts for purposes of this subsection (a) in order for the commission to determine insurance claims which have been previously rejected by the state insurance committee or the local education insurance committee;

In Tennessee, establishing a breach of contract requires that a claimant prove three requirements: 1) that there was in fact an enforceable contract in existence; 2) that one of the parties did not perform their obligations under that contract to the extent that a breach occurred; and 3) that the claimant prove that she has suffered damages. *Town of Pegram v. Cornerstone Development, LLC.*, No. M2011-01536-COA-R3-CV, 2012 WL 2127231 \*5 (Tenn. Ct. App. 2012) and *Hauck Manufacturing Company v. Astec Industries Inc.*, 376 F.Supp. 2d. 808, 833 (U.S. Dist. Ct. E. D. Tenn. July 2, 2005). See also *Feldman*, Tennessee Practice (2006), Vol. 22 (Contract Law and Practice) §11.10, at 111.

It appears that Dr. Wilkerson and ChSCC had experienced a prior relationship. Claimant had worked with the institution during the course of an accreditation evaluation by the Southern

Association of Colleges and Schools (SACS). It is very clear that Dr. Wilkerson believes that she was of material assistance to ChSCC during that critical review. However, there is also proof that the Division of Engineering Technology at the College was of the opinion that the metric used by SACS during that evaluation was somewhat inaccurate, and that the more useful appraisal of the Division was under the standards published by ABET. Although the record in this case is not clear at all regarding this issue, it may well be that the initial cause for the friction between Dr. Wilkerson and the Division began during that SACS accreditation process.

In 2012 ChSCC had received a grant from the DOL in excess of \$3 million. ChSCC was in competition with other institutions for these funds. The grant was administered by an Atlanta based component of the DOL, the Employment and Training Administration. Federal Project Officer (FPO) Adrian Barrett was assigned the job of monitoring the implementation of the grant monies and determining if its goals were being met by ChSCC. It is important to note here that Mr. Barrett spent three days at the College campus between September 3 and 6 in 2013. Following that visit, the Acting Regional Administrator of the regional Employment and Training Administration office in Atlanta wrote the president of ChSCC indicating that there were no problems identified during the course of the September examination.

The grant monies were to be used to train workers who had lost their jobs because of outsourcing of work to foreign countries as well as persons seeking to develop skills in various forms of welding and non-destructive technology.

The grant anticipated a budget of \$51,500 for the first, or planning, year of a four year program (2012-2016). There was some mild dispute between the parties as to whether the year was a calendar year or a federal fiscal year running from October 1 to September 30.

The proof also shows that filling the position of third party evaluator was a personnel

requirement for the grant, was bid competitively by ChSCC, and although Dr. Wilkerson was not assigned the highest score for technical credentials, her bid was financially more attractive than those of the other bidders. Thus, on April 5, 2013, she signed a contract (Exh. 1) with ChSCC which the institution's president then signed on April 11, 2013. It is important to note that at no point did Dr. Wilkerson formally contract with the DOL although it was her very staunchly held position that she had if not a legal, a moral and ethical duty to report to the DOL since the monies she was being paid with had been provided by the federal government. However, there is no written contract in this record between Dr. Wilkerson and the DOL and Dr. Wilkerson agrees that was the case.

An extremely important facet of this litigation is paragraph D.4 of Exhibit 1 which is captioned "Termination for Convenience". The exact language of that provision is set out above at page 2. *Inter alia*, this term of the agreement provided that ChSCC could terminate the contract with Dr. Wilkerson "**without cause for any reason**". In that same paragraph, the contractor would receive at least 30 days advance written notice that her contract was being terminated and would be compensated "**for satisfactory, authorized service completed as of the termination date**". As will be discussed further shortly, the president of ChSCC wrote Dr. Wilkerson on October 10, 2013, advising that the College was terminating her contract, and that the effective date of the termination would be 30 days later or November 8, 2013.

Prior to the October 10, 2013, termination letter, ChSCC had paid Dr. Wilkerson \$23,500 for services rendered between April 13, 2013, and October 4, 2013 (See Exhs. 6 and 10).

Dr. Wilkerson now contends that she is owed an additional \$28,000 for work done from October 4, 2013, through the date of her initial Evaluation Report, November 6, 2013 (See Exh. 5). It is worth noting here that the DOL grant required interim reports in October 2014 and 2015

and a final report in 2016. However, Dr. Wilkerson's proposal was accepted and all agree was incorporated by reference in her contract with the College. That proposal provided for an additional 2013 report (Exh. 2, p 70). It is work done on this additional report that forms the basis for this dispute.

A review of all the evidence in this case makes it quite clear that the first year of the project was a planning year and involved staging a program from which eventually would flow statistical data which would reveal whether or not the goals of the grant were being met.

The witnesses at the trial of this matter were all quite impressive.

Dr. Wilkerson's CV is attached as Exhibit 7, and it speaks for itself. She has excellent academic credentials and has worked for colleges and universities all over the world. At the same time, she has held a full time position at a university in Florida which involves not only teaching but also supervision of doctoral candidates.

On the other hand, the Dean of the Engineering and Technology Division at ChSCC was a practicing Engineer for the United States Army for many years. Additionally, Dr. McGhee holds a terminal degree from an institution of higher learning. The Program Director, Dr. McConnell likewise has a doctoral degree and has worked at colleges and universities in several different sections of the United States. Ms. Potter is obviously qualified to perform the administrative functions involved with the DOL grant at issue here. Indeed, the witnesses do not appear to question each other's professional competence.

The proof is also extremely clear that differences arose early on between Dr. Wilkerson and those individuals at ChSCC in charge of implementing the grant once it had been awarded. The State's proof was that, in its opinion, Dr. Wilkerson was sometimes difficult to get along with and even perhaps a bit abrasive. The Commission can understand why individuals might

interpret Dr. Wilkerson's actions in that fashion. She is quite obviously highly educated and acutely intelligent. Her experience in the field of evaluation methodology is of longstanding as noted above. It extends not only to the United States but also internationally. As mentioned above, it is altogether possible that the genesis of this dispute began during the time of the SACS accreditation process when the Division of Engineering and Technology apparently felt that meeting the standards of its own accrediting body, ABET, was more important and relevant for grading the work it was doing than the SACS accreditation standards which Dr. Wilkerson was helping the College navigate. This is pure speculation on the part of the Commission in an attempt to understand how this dispute arose. However, the *indicia* of a fermenting dispute are evident in this record.

Aside from these personality differences, the State argues that Dr. Wilkerson had a different view as to the goal of the DOL grant. ChSCC officials viewed their role as training persons in their service area for careers in advanced welding and materials testing. On the other hand, ChSCC officials believed that Dr. Wilkerson's goal was to institute a training program which could be replicated throughout the United States. Dr. Wilkerson did not dispute that this was the case. This basic difference, in the Commission's opinion, also contributed to a difficult relationship between Claimant and ChSCC.

Invoices sent to ChSCC by Dr. Wilkerson indicate that she was paid some \$21,500 for work done between April 13, 2013, and July 21, 2013. Subsequently, she was paid an additional \$2,000, per her invoice, for a "status report on preparation of 2013 evaluation report" (Exh. 7), and work done in preparation for a September site visit which was cancelled by the College (Exh. 10).

Testimony in this case also shows that as early as August, 2013, discussions were held at

ChSCC concerning whether or not Dr. Wilkerson should continue as third party evaluator. That issue was also taken up with FPO Adrian Barrett at the time of his site visit to Chattanooga between September 3 and 6, 2013. A subsequent email exchange between Mr. Barrett and College officials shows that the federal government did not object to Dr. Wilkerson's termination as evaluator unless it would have some effect on the budget.

A memorandum from Dr. McGhee to the College president marked as Exhibit 16 enumerates the various objections which College staff had to Dr. Wilkerson's continuation as evaluator and requested that she be terminated from that role (See Exh. 16).

There are a number of reasons why the Commission concludes that the State did not breach its contract with Dr. Wilkerson.

First of all, we must look closely at paragraph D.4 of the April, 2013, agreement entered into by the College and Dr. Wilkerson. That portion of the Contract is captioned "Termination for Convenience". *Feldman*, supra at § 11:10, drawing on the Uniform Commercial Code for an analytical framework, wrote the following concerning the difference between cancelling and terminating a contract:

The U.C.C. contrasts a contract "cancellation" with a contract "termination" which latter event occurs when a party exercises a power created by the contract or by law put an end to the contract otherwise than for its breach. TCA § 47-2-106(3)<sup>6</sup>

Viewed in this fashion the Commission finds that ChSCC, in terminating Dr. Wilkerson's services, did so pursuant to a power found in section D.4 of the contract which Claimant agreed to in April of 2013. This provision clearly provides that ChSCC could terminate Dr. Wilkerson's contract "without cause for any reason" on 30 days written notice.

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<sup>6</sup> A United States District Court in Tennessee held that judicial bodies may use the Uniform Commercial Code for guidance in the context of cases which fall outside the provisions of Article 2. See *Pennyrile Tours, Inc. v. Country Inns USA, Inc.*, 559 F. Supp. 15 (E. D. Tenn. 1982).

At trial, Dr. Wilkerson stated that this section of her agreement with ChSCC was a “awful, stupid, ridiculous clause”, and that she in all likelihood “should have contested it from the very beginning”.

But in fact she did agree to this draconian provision, and the College utilized it to end her work on its behalf with a final termination date of November 8, 2013. Exercise of this contractual right to terminate does not constitute a breach of contract.

Secondly, even after she received the termination letter of October 10, 2013, from the president of ChSCC, she advised no one at the College that she was going to proceed with the preparation of the additional report she had included as a part of her bid to act as third party evaluator. This first year report was not a part of DOL requirements for the grant.<sup>7</sup> The proof shows that after the president’s letter of October 10, 2013, neither party communicated further with the other regarding the grant. Further, there is no proof that Dr. Wilkerson ever contacted the College about how she could rectify the perceived problems which had resulted in her termination.

The Commission also observes that as late as October 4, 2013, Dr. Wilkerson had written ChSCC requesting certain statistical data she believed was necessary to complete the report she had promised for October of that year. At that point, Claimant should have realized, when she never received those materials, that there was some sort of disconnect between her and ChSCC. Yet again we find little or no proof that Dr. Wilkerson had pressed the issue, prior to October 4, 2013, regarding provision of certain statistical data.

Nevertheless, Dr. Wilkerson voluntarily plowed ahead with preparation of a report which she knew was incomplete since she did not have available to her data she contends was necessary

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<sup>7</sup> Indeed Dr. Wilkerson agreed at trial that she personally did not have a contract with DOL.

for completion of the October report. Additionally, Wilkerson had earlier requested a delay in the submission date of her report until December, 2013. Why she would then in November submit a report, which she must have known would be incomplete because of the absence of statistical data which would not be available until a later date, is a disturbing question.

In light of these circumstances, the Commission does not believe that the November 6, 2013, Evaluation was either “authorized” or “satisfactory” as set out in paragraph D.4 of the contract.

Third, there is unrebutted proof in this record that a core, doctrinal dispute developed between ChSCC’s Division of Engineering Technology and Dr. Wilkerson concerning the goals of the grant. The proof shows that Dr. Wilkerson believed that one of the important purposes of the grant was to create a training program which could be used throughout the country or in the language used at trial, “replicated”. On the other hand, ChSCC officials viewed the grant as an opportunity to train people in their service area for high-tech, high-wage jobs available in and around Chattanooga. Dr. Wilkerson has never denied that this sort of dispute eventuated between her and ChSCC administrators, faculty, and staff. Given this tension between the parties regarding the purposes of the grant, it is understandable why the College made a determination during the fall of 2013 that it would no longer use Dr. Wilkerson’s expertise in implementing and evaluating its progress in meeting the DOL grant goals. With such a profound dichotomy between the parties as to how the training program should operate, the Commission is not surprised that ChSCC exercised its termination rights found in paragraph D.4 of its contract with Dr. Wilkerson.

Dr. Wilkerson argues that she was never told, prior to October 10, 2013, that her work was unacceptable and further, that she was never given an opportunity to correct any perceived

failings (Tr. 3, 52). However, there is nothing in this contract obligating ChSCC to advise her of what it believed were deficiencies in her performance as a third party evaluator. Rather, the contractual provision provided for termination of her services “without cause for any reason”. Had Dr. Wilkerson desired such second chance language, she should have insisted on wording to that effect in the contractual agreement.

Fourth, the fact that Dr. Wilkerson now requests payment to her of \$28,000 for work done between October 4, 2013, (Exh. 10), the date of her second invoice, and November, 2013, raises questions in the Commission’s mind as to the validity of this claim.

In that regard, we note that prior to her termination, Dr. Wilkerson requested that \$28,000 of the initial \$51,500 allocated for year one of the grant be re-allocated to subsequent years when the amount of necessary work would be greater (Exh. 11). This appears to be a somewhat prevalent and normal practice in the world of grants. However, if that is the case, it suggests that perhaps \$28,000 worth of work was perhaps not necessary in connection with preparation of the October, 2013, report.

In that same connection, the Commission is also somewhat surprised that Dr. Wilkerson would take the position that she is due an additional \$28,000 for work done between October 4 and November 6, 2013, when she had been paid only \$21,500 for the entire period encompassed between the date when ChSCC signed the contract, April 11, 2013, and the date of her second invoice, October 4, 2013 (Exh. 10). In other words, a comparison of Exhibits 6, 8, and 10 seems to suggest that Dr. Wilkerson is claiming she is due \$28,000 for work done in little over a one month period when she had been paid \$6,500 less for work completed over an earlier five and

one-half month period.<sup>8</sup>

We note with some dismay Dr. Wilkerson's critical comments, principally found in Exhibit 4 (letter to ChSCC's president), concerning many aspects of how ChSCC had implemented the grant funds. There, she criticizes ChSCC's performance under the grant even though we know from Exhibit 13 that DOL was quite satisfied as of September 20, 2013, with the College's performance following a three day on-site review earlier that same month by FPO Barrett. In fact, in Exhibit 4, Dr. Wilkerson suggests that DOL access to her 2013 report might result in concern at that agency with the "grant in its current state". That suggests to the Commission that Dr. Wilkerson was perhaps suggesting to President Catanzaro that a report she was not contractually required to give to DOL (and the TACCCT Evaluation Team) might somehow make its way to these entities. Given the friction which had obviously developed between the parties by that point, and the somewhat unflattering comments made by Claimant in Exhibit 5, the Commission can readily envision a scenario in which the whole grant program could have been imperiled. That possibility is disturbing in the extreme.

Additionally, the alacrity with which Dr. Wilkerson proceeded to prepare her November 6, 2013, evaluation, which she knew from the start would be incomplete since she had not received data she insists she needed, some of which was not even due until after the effective date of her termination, leads us to the conclusion, as argued by the State, that Exhibit 5 is by and large an effort on the part of the Claimant to develop a report which would justify payment to her of the entire balance of the funds allocated for the first Planning Year of the grant.

Also, contrary to the Claimant's position, ChSCC was apparently doing quite a bit right

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<sup>8</sup> We also note that the activities described in Exhibit 8 for the period April 13 through July 21, 2013, are quite specific as to when the items set out there were completed while the invoice of November 5, 2013 (Exh. 6) does not even contain dates on which work was supposedly done.

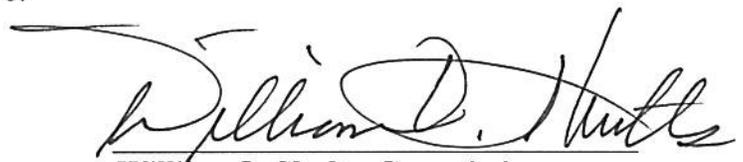
since the September 20, 2013, letter from the Acting Director of the Atlanta office of DOL's Employment Training Administration expressed no concerns as to how the College was handling the grant monies (Exh. 3). In fact, as late as July 21, 2013, Dr. Wilkerson herself praised the work being done on the project by Program Director McConnell and Dean McGhee (Exh. 7).

Finally, it is also clear to the Commission that ChSCC's implementation of this large federal grant has not been as faulty or deficient as Dr. Wilkerson appears to have contended in 2013. The program is ongoing and the proof shows that it has been so successful that government grant monies are no longer necessary and that funding is now provided by other sources. That leads the Commission to conclude that the faculty and staff at were meeting their obligations to DOL in 2012 and 2013 during the startup phase of this four year contract.

Terminating ones services under a contract is never pleasant. Yet here ChSCC exercised a termination right which was a part of a written contract it negotiated with an extremely capable, intelligent, and experienced professional. Even Dr. Wilkerson, as discussed above, now concedes that it was probably a mistake for her to agree to leave this language in her contract. Yet it is there and it was appropriately utilized in October of 2013 to end Claimant's services.

For all of the reasons discussed above, Dr. Wilkerson's claim is **DENIED** and **DISMISSED**.

Entered the 19<sup>th</sup> day of January, 2016.



**William O. Shults, Commissioner**  
P.O. Box 960  
Newport, TN 37822-0960

**CERTIFICATE**

I certify that a true and exact copy of the foregoing Order has been transmitted to the following:

**Judy Wilkerson, Ph.D.  
8500 Aloha Road  
Ft. Myers, FL 33967**

**Eugenie B. Whitesell, Esq.  
Office of the Attorney General  
P.O. Box 20207  
Nashville, TN 37202-0207**

On this the 21<sup>st</sup> day of January, 2016.

Paula Merrifield  
**Paula Merrifield, Clerk of the Commission**