INTERIOR BOARD OF INDIAN APPEALS

Richard Gossett; Allen Elliott; and Bo Miller v. Portland Area Director,
Bureau of Indian Affairs

34 IBIA 16 (06/22/1999)

Denying reconsideration of:
28 IBIA 72

Judicial review of these cases:
Oral ruling for government, *Miller v. Bureau of Indian Affairs*, Case No. C98-330Z
(W.D. Wash. Mar. 24, 1999)

Related Board cases:
23 IBIA 114
31 IBIA 7
31 IBIA 273
31 IBIA 276
31 IBIA 279
31 IBIA 282
31 IBIA 285
31 IBIA 287
31 IBIA 295
31 IBIA 296
34 IBIA 79

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

RICHARD GOSSETT, Appellant	:	Order Denying Reconsideration
ALLEN ELLIOTT, Appellant	:	
BO MILLER, Appellant	:	Docket Nos. IBIA 94-89-A IBIA 97-18-A IBIA 97-33-A
v.	:	
PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	June 22, 1999

On June 10, 1999, the Board of Indian Appeals (Board) received a letter signed by Bo Miller as President of the Westshore Tenants Association (Association). The letter, which was dated June 5, 1999, enclosed an earlier letter dated April 14, 1999. Although Miller states that the April 1999 letter had been sent to the Board, and although that letter showed the Board's correct mailing address, the Board had not previously received the April 1999 letter.

Miller's April 1999 letter alleged that pages were missing from the administrative record in Gossett v. Portland Area Director, 28 IBIA 72 (1995), and Elliott v. Portland Area Director, 31 IBIA 287 (1997). These cases, which concerned rental rate adjustments for properties on the Swinomish Indian Reservation, were the subject of review by the United States District Court for the Western District of Washington. Miller v. Bureau of Indian Affairs, Case No. C98-330Z. On March 24, 1999, the court issued an oral decision affirming the Board's decisions. It is not clear whether Miller is alleging that the pages were missing before the Board, the court, or both.

Miller's letter requests reconsideration by the Board.

Reconsideration of Board decisions is governed by 43 C.F.R. § 4.315, which provides in pertinent part:

> (a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for

reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and shall contain a detailed statement of the reasons why reconsideration should be granted.

Under section 4.315(a), a petition for reconsideration must be filed by a party. It is not clear whether Miller filed this petition as President of the Association or as an individual. The Association has never been a party to any case filed with the Board, and therefore lacks standing to petition for reconsideration of any decision. As an individual, Miller was not a party in Gossett, and therefore lacks standing to petition for reconsideration of that decision. Reconsideration of Gossett is denied on the grounds that no party filed for reconsideration.

Miller was the appellant in Miller v. Portland Area Director, Docket No. IBIA 97-33-A, which was consolidated with Elliott for decision. Therefore, Miller had standing to petition for reconsideration of the decision at 31 IBIA 287.

However, a petition for reconsideration of either case is exceedingly untimely. Gossett was decided on June 19, 1995; Elliott/Miller was decided on November 25, 1997. Whether the Board considers this petition to have been filed on or about April 14, 1999, the date of the first letter, or on June 10, 1999, the date it received the April 1999 letter, the petition was not filed within 30 days of the date of either decision. The petition for reconsideration of Elliott/ Miller is denied as being untimely. The petition for reconsideration of Gossett is denied for being untimely as well as for not being filed by a party.

If Miller is alleging that the record sent to the court was incomplete, he, and all other parties participating in that proceeding, had the opportunity to inspect the record submitted to the court by the Department. If Miller believed material was missing from that record, he should have raised this issue with the court, rather than allowing the court to proceed to decision and then attempting to attack the court decision in an administrative forum. Cf. Estate of Albin (Alvin) Shemamy, 13 IBIA 258 (1985) (denying petition to reopen Indian estate on allegation that the record was incomplete after Departmental decision had been affirmed in Federal court).

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this petition for reconsideration is denied.

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Kathryn A. Lynn	Anita Vogt
Chief Administrative Judge	Administrative Judge