BILL J. COPELAND,	)	**AGBCA Nos. 2003-124-R,**
	)	**2003-125-R, 2003-126-R,**
Appellant	)	**2003-127-R, 2003-128-R,**
	)	**2003-129-R, 2003-130-R,**
Representing the Appellant:	)	**2003-131-R**
	)	
Bill J. Copeland, pro se	)	
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RULING ON APPELLANT=S MOTION FOR RECONSIDERATION

February 20, 2003

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK. Opinion by Administrative Judge POLLACK, concurring in part and dissenting in part.

Bill J. Copeland, of Banning, California (Appellant), has filed a Motion for Reconsideration and New Hearing. In addition to the original motion received at the Board November 27, 2002, Appellant has also filed a Response to the Government=s Response to the original motion. The Board issued a decision in Bill J. Copeland, AGBCA Nos. 1999-182-1, et al., 02-2 BCA & 32,049. The Board=s decision in Copeland sustained the Government=s terminations for default of two construction contracts between Appellant and the U. S. Department of Agriculture, Forest Service (FS or Government). It also denied a number of claims by the contractor on both contracts and found entitlement on one small claim. The original appeals were entwined with allegations of Davis-Bacon Act labor violations under the jurisdiction of the Department of Labor (DOL).

Reconsideration is discretionary with the Board and will not be granted in the absence of compelling reasons, *i.e.*, clear error of fact or law, or newly discovered evidence that could not have been discovered at the time of the original proceeding. Reconsideration is not intended to permit

a party to reargue its position or to present additional arguments that could have been presented originally. John Blood, AGBCA No. 2002-114-R, 02-1 BCA & 31,830; Thomas B. Prescott, AGBCA No. 2000-108-R, 00-1 BCA & 30,722; Timber Rock Reforestation, AGBCA No. 97-194-R, 98-1 BCA & 29,360; Rain & Hail Insurance Service, Inc., AGBCA No. 97-180-R, 97-2 BCA & 29,121; White Buffalo Construction, Inc., AGBCA No. 95-221-R, 96-1 BCA & 28,050.

Appellant argues that he is entitled to interest on monies withheld by the Contracting Officer (CO) for Davis-Bacon Act violations and refunded to him at the conclusion of the DOL proceedings. He further argues that the Board failed to decide this issue. We grant reconsideration on this question alone to remedy that omission. The Order of the DOL Administrative Law Judge contains the following:

> 2. The U. S. Department of Labor, Wage and Hour Division, shall secure the return to Respondent of all monies withheld by the U. S. Department of Agriculture, monies which were otherwise due Respondent under the subject contracts.

(DOL Decision and Order on Remand, March 8, 1999, page (p.) 51.)

The DOL Order is silent on the matter of interest. Appellant has provided us with no authority compelling the payment of interest by the FS or authorizing us to order it at this time. The Prompt Payment Act, 31 U.S.C. ' ' 3901-3907, provides no such authority. Interest is not payable on an amount withheld pending a dispute over the amount of the payments or compliance with the contract. 31 U.S.C. ' 3907.

A significant portion of Appellant=s filings now before us concentrates on his view of how the labor violation allegations should have been treated when they arose and during the pendency of the lengthy DOL appeal procedures. He repeats arguments made pre-hearing, during the hearing and in briefs. He points to no new evidence nor does he point out specific errors of law in our decision. We do not grant reconsideration on any questions other than the interest issue for that reason.

Aside from the labor issues, Appellant raises two points which merit comment. First, he contends that the absence of the CO at both the DOL hearing and the hearing before this Board deprived him of Athe right to face [his] accuser.@ Most of his argument is in reference to the DOL hearing which predated the hearing before this Board by over two years. Appellant states that the CO, who retired before either hearing, had been subpoenaed six times and refused to respond. Context makes clear that he refers to the DOL hearing and not to the hearing before this Board. In addition, a June 28, 2000, record of a June 27, 2000, telephonic conference among the presiding judge of this Board, Administrative Judge Edward Houry, and the parties, indicates that the question of the appearance of the CO was discussed. Judge Houry wrote:

> 5. Appellant wanted the retired and former CO, Ms. Silberberger, as a witness.

> The Government could not provide an address. I stated that while the Board could issue a subpoena, Appellant must see to it that proper service was made. The Government stated that the CO had no first hand knowledge of site conditions, but
> relied on information provided by the CO=s Representative and Inspector, and that these persons would be at the hearing, along with the later assigned CO.

There is no indication in the record that Appellant requested the Board to issue a subpoena between the June 27, 2000, conference and the hearing which began on October 23, 2000. Appellant has made no showing that the Board committed any error pertaining to the absence of the CO or that her presence would have caused a different outcome to the appeals. The absence of the CO did not warrant the drawing of adverse inferences.

Finally, Appellant acknowledges that he rehashes his previous arguments. He contends that he does so because he does not feel that his arguments have been Aproperly settled@ by the Board. He ascribes this conclusion to the fact that Judge Houry, who presided over the hearing, did not participate in the panel decision. Judge Houry retired in January 2002. The case was reassigned at that time. The entire record was available not only to the judge assigned to write the opinion but to the other panel members as well. A presiding judge has no greater say in the outcome of an appeal than the other members. The Board=s rules contain no requirement that the judge who presides over a hearing must participate in the decision. While he or she will usually do so, there are several reasons, retirement being a notable one, which make this impossible. There is no precedent for reconvening a hearing merely because the presiding judge has retired.

RULING

We have reconsidered the question whether interest is payable on the refunded withholdings and find interest is not payable. In all other respects, the motion is denied.

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ANNE W. WESTBROOK
Administrative Judge

Concurring:

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JOSEPH A. VERGILIO
Administrative Judge

Administrative Judge POLLACK, concurring in part and dissenting in part.

I concur in the conclusion of the majority on reconsideration that Appellant has not established entitlement to interest. Prompt payment interest is not payable on disputed sums such as the withholding in issue in this appeal. I further concur with the majority that the remaining matters raised by the Appellant are essentially a re-argument of issues considered by the Board in the original decision. Notwithstanding the above, for the reasons I expressed in the dissent to the original decision, I believe that the Board erred in sustaining the default and should convert it to a termination for convenience.

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HOWARD A. POLLACK
Administrative Judge

Issued at Washington, D.C.
February 20, 2003