

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

CHRISTINE COBELL,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

2012-3080

Petition for review of the Merit Systems Protection
Board in case no. DE0752090455-I-1.

ON MOTION

Before DYK, *Circuit Judge.*

ORDER

Christine Cobell moves to (1) modify the record pursuant to Rule 10(e) of the Federal Rules of Appellate Procedure, (2) supplement the record, and (3) remand or transfer the case. The Merit Systems Protection Board moves for leave to file an out of time response that consents to modification of the record and opposes Cobell's motions to supplement the record and remand or transfer the case. Cobell also moves for a status report.

Cobell seeks to modify the record to reflect that the Board received her facsimile requesting a case status on July 7, 2010 as opposed to July 10, 2010. The Board consents, noting that the record should be changed and that it is working with the clerk of the Board to provide corrected copies of the index to the petitioner. Because the Board concedes that it received Cobell's facsimile on July 7, 2010, we agree with the Board that there is no need to modify the record in that regard.

Cobell moves to supplement the record with documents not before the Board, including a tribal counsel resolution, a newspaper article, and an investigative report. Rule 16(a) of the Rules Federal Rules of Appellate Procedure provides that the record on appeal is generally limited to the original pleadings, evidence, and other parts of the proceedings before the agency. *See also Cruz v. Department of the Navy*, 934 F.2d 1240, 1245 n.6 (Fed. Cir. 1991) (refusing to consider evidence that was not before the Merit Systems Protection Board and not part of the record on appeal). Although the Rules of Evidence authorize judicial notice of certain facts outside of the record, the court is not persuaded that such action is warranted here.

Finally, with regard to Cobell's motion to remand or transfer this case, we deem it the better course for those arguments to be put in her brief.

Accordingly,

IT IS ORDERED THAT:

(1) Cobell's motions are granted only to the extent that the administrative record is modified and corrected as described herein.

(2) The Board's motion for leave to file an out of time response is granted.

(3) A copy of this order shall be transmitted to the merits panel assigned to hear this case.

(4) Cobell's brief is due within 21 days from the date of filing of this order.

FOR THE COURT

SEP 28 2012

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Brenda Lindlief-Hall, Esq.
Alex P. Hontos, Esq.
Lindsey Schreckengost, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

SEP 28 2012

JAN HORBALY
CLERK