

NOTE: This order is nonprecedential.

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

MARIE MELTON,
Petitioner

v.

DEPARTMENT OF THE ARMY,
Respondent

2024-1487

Petition for review of the Merit Systems Protection Board in No. DE-315H-23-0206-I-1.

ON MOTION

Before LOURIE, DYK, and REYNA, *Circuit Judges*.

PER CURIAM.

O R D E R

In response to this court's March 14, 2024 show cause order, Marie Melton "request[s] this petition be transferred to the appropriate district court," ECF No. 11 at 1, while the Department of the Army moves to dismiss, which Ms. Melton opposes.

The administrative judge denied corrective action in Ms. Melton's Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") appeal, and Ms. Melton filed a timely petition for review with the full Merit Systems Protection Board, which has not yet been resolved. Ms. Melton also filed a petition for review with this court.

In general, this court's jurisdiction is limited to "an appeal from a final order or final decision of the . . . Board," 28 U.S.C. § 1295(a)(9). *Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361–63 (Fed. Cir. 2009). Here, there is no final decision because Ms. Melton filed a timely petition with the Board, and the Board has not yet resolved her petition. *See* 5 C.F.R. § 1201.113(a). Thus, we lack jurisdiction and dismiss her premature petition to this court.

After the Board issues a final decision on Ms. Melton's petition, she may, if appropriate, file a timely petition for this court's review. Alternatively, if Ms. Melton wishes to forgo Board review of her petition and instead directly pursue this court's review, she may wish to review the Board's withdrawal policy as identified by the Acting Clerk of the Board in a letter accompanying the certified list in this case. *See* ECF No. 2 at 1; *see also* June 2022 Board Policy.¹ Under that policy, the Clerk of the Board may grant a request to withdraw a petition for review when there is no apparent issue of untimeliness and no other party objects to the withdrawal. When the Clerk grants a request to withdraw, the order granting the request will be the final

¹ Merit Sys. Prot. Bd., Policy Regarding Clerk's Authority to Grant Requests to Withdraw Petitions for Review (2022), https://www.mspb.gov/appeals/files/Policy_Regarding-Withdrawal_of_a_Petition_for_Review_1515773.pdf (last visited May 5, 2024).

MELTON v. ARMY

3

order of the Board for purposes of obtaining judicial review. Thereafter, Ms. Melton would have to file a new petition at this court within 60 days of such order to obtain judicial review.

Accordingly,

IT IS ORDERED THAT:

- (1) The Department of the Army's motion to dismiss is granted, and this matter is dismissed.
- (2) All other pending motions are denied.
- (3) Each party shall bear its own costs.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

May 17, 2024
Date