

NOTE: This order is nonprecedential.

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

TERRY KENNINGTON,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

2011-3192

Petition for review of the Merit Systems Protection Board in case no. DE1221100502-W-1.

ON MOTION

O R D E R

The Department of the Treasury moves to recaption to name the Merit Systems Protection Board as respondent.

Pursuant to 5 U.S.C. § 7703(a)(2), the Board is designated as the respondent when the Board's decision concerns the procedure or jurisdiction of the Board. The employing agency is designated as the respondent when the Board reaches the merits of the underlying case. Here, the Board dismissed Kennington's appeal for lack of juris-

diction because it found that he failed to make a non-frivolous allegation that he made a protected disclosure under the Whistleblower Protection Act, 5 U.S.C. 2302 (b)(8). Thus, the Board is the proper respondent in this petition for review.

Accordingly,

IT IS ORDERED THAT:

The motion is granted. The revised official caption is reflected above.

FOR THE COURT

AUG 26 2011

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Terry L. Kennington
Dawn E. Goodman, Esq.
Michael Carney, Esq.

s21

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

AUG 26 2011

JAN HORBALY
CLERK