

NOTE: This order is nonprecedential.

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

MARCUS A. MALONE,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

2012-3036

Petition for review of the Merit Systems Protection Board in case no. CH1221110078-W-1.

ON MOTION

O R D E R

The Department of Commerce (Commerce) moves without opposition to recaption to name the Merit Systems Protection Board (Board) as respondent. Also, Commerce moves for an extension of time for MSPB to file its brief following the disposition of the motion.

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 Malone's appeal for lack of jurisdiction. Thus, the Board is the proper respondent in this petition for review.

The petitioner's brief has not yet been filed.

Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT

FEB 09 2012

Date

/s/ Jan Horbaly

Jan Horbaly,
Clerk

cc: Marcus A. Malone
William J. Grimaldi, Esq.
Katherine Smith, Esq.

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

FEB 09 2012

JAN HORBALY
CLERK