

NOTE: This order is nonprecedential.

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

WILLIAM ROBERT KELLY,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent,

AND

DEPARTMENT OF COMMERCE,
Intervenor.

2013-3178

Petition for review of the Merit Systems Protection Board in No. DC0752120131-I-1.

ON MOTION

O R D E R

The Department of Commerce (“Commerce”) moves to reform the caption to designate the Merit Systems Protection Board (“Board”) as the respondent and Commerce as an intervenor in this petition.

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

The court notes that Kelly has not filed his informal brief in this case. If Kelly does not file his informal brief within 21 days from the date of this order, his petition will be dismissed for failure to prosecute.

Accordingly,

IT IS ORDERED THAT:

(1) The motion to designate the Board as respondent and Commerce as an intervenor is granted. The revised official caption is reflected above.

(2) Kelly is directed to file his brief. If Kelly does not file his brief within 21 days from the date of this order, his petition will be dismissed.

FOR THE COURT

/s/ Daniel E. O'Toole
Daniel E. O'Toole
Clerk of Court