

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3041

DON A. MYNARD,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Petition for review of the Merit Systems Protection Board
in DA0831060436-B-1.

ON MOTION

Before BRYSON, Circuit Judge.

ORDER

The Office of Personnel Management moves to remand this case to the Merit Systems Protection Board to afford OPM "the opportunity to supplement the record, and for the board to conduct further proceedings to address the evidentiary concerns in this case."

The court notes that Don A. Mynard has already filed his opening brief. Pursuant to Fed. Cir. R. 27(f), any request to remand must be filed before the petitioner's opening brief is filed or should be included within the respondent's brief. OPM has not shown that that requirement should be waived and, in any event, has not shown within the motions papers submitted that the case should not first be reviewed based upon the record that was before the Board.

Accordingly,

IT IS ORDERED THAT:

The motion to remand is denied. OPM's brief is due within 21 days of the date of filing of this order.

FOR THE COURT

JUN 29 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Don A. Mynard
Joseph A. Pixley, Esq.

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

JUN 29 2009

**JAN HORBALY
CLERK**