

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-3068

JOHN-PIERRE BANEY

Petitioner,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Petition for review of the Merit Systems Protection Board in DA3443080404-I-1.

ON MOTION

Before DYK, Circuit Judge.

ORDER

The Department of Justice moves without opposition to reform the official caption to designate the Merit Systems Protection Board as respondent.

John-Pierre Baney filed an appeal with the Board alleging that the Department of Justice unlawfully placed him in leave without pay status for eight hours during which he participated in a Board hearing involving a USERRA claim. The Board concluded that it did not have jurisdiction over Baney's claim, finding that Baney's appeal was barred by collateral estoppel because he had previously filed an identical claim, which was fully adjudicated.

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. In this

case, the Board's decision was in part a decision on the merits. See Mindana v. Office of Personnel Management, 985 F.2d 1070 (Fed. Cir. 1993). Thus, the Department of Justice is the proper respondent in this petition for review.

Accordingly,

IT IS ORDERED THAT:

- (1) The Department of Justice's motion to reform the official caption is denied.
- (2) The Department of Justice's brief is due within 21 days of the filing of this order.

FOR THE COURT

FEB 25 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

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

cc: John-Pierre Baney
Ronald G. Morgan, Esq.
Raymond D'Angelo, Esq.

FEB 25 2009

JAN HORBALY
CLERK

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