

NOTE: This order is nonprecedential.

## United States Court of Appeals for the Federal Circuit

2009-3108

MIREYA B. DE LA CRUZ-PEREZ,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Petition for review of the Merit Systems Protection Board in DE0831080443-I-1.

Before MOORE, Circuit Judge.

### ORDER

The Merit Systems Protection Board informs the court that Mireya B. De la Cruz-Perez has filed a petition for review by the full Board of the administrative judge's initial decision. The petitioner moves for leave to proceed in forma pauperis.

The administrative judge issued her decision on November 25, 2008, affirming the Office of Personnel Management's decision that the petitioner was not entitled to Civil Service Retirement System death benefits. She filed a timely petition for review of the administrative judge's decision with this court and a petition for review with the Board that appears to have been submitted beyond the permissible time limit.

The petitioner may not simultaneously proceed in both fora. Therefore, if she wishes for her case to proceed in the court, she must dismiss her Board petition.\*

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\* If the petitioner chooses to dismiss her Board petition and proceed in this court, the court will review the merits of the AJ's decision. If the petitioner chooses to

Accordingly,

IT IS ORDERED THAT:

(1) If the petitioner does not notify the court that she has dismissed her petition for review before the Board within 30 days of the date of filing of this order, this petition will be dismissed.

(2) The court waives the requirement that the petitioner file a Fed. Cir. R. 15(c) statement.

(3) The motion for leave to proceed in forma pauperis is granted.

FOR THE COURT

**MAR 20 2009**

Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

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

cc: Mireya B. De la Cruz-Perez  
Courtney E. Sheehan, Esq.

**MAR 20 2009**

JAN HORBALY  
CLERK

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dismiss her petition for review in this court and proceed before the Board, the Board may dismiss her petition for review as untimely filed. If that occurred and the petitioner subsequently sought review of the Board's decision on timeliness in this court, our jurisdiction would be limited to review of the timeliness issue and we would not be able to review the merits of the AJ's decision concerning her claim.