

NOTE: This order is nonprecedential.

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

LEROY ALFORD,
Petitioner,

v.

DEPARTMENT OF DEFENSE,
Respondent.

2010-3112

Petition for review of the Merit Systems Protection Board in case no. DC3330090703-I-1.

ON MOTION

Before PROST, *Circuit Judge.*

O R D E R

The Department of Defense moves without opposition to reform the caption to reflect the Merit System Protection Board as respondent. Leroy Alford moves to “amend the claim before the Court.”

Alford filed an appeal alleging that the Department violated his rights under the Veterans Employment

Opportunities Act of 1998 (VEOA) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) by not considering his military service to establish his initial civil service annual leave accrual rate. Although the Board held that it had jurisdiction over Alford's VEOA claim, the Board dismissed the VEOA claim for failure to state a claim upon which relief could be granted. The Board also dismissed Alford's USERRA claim for lack of jurisdiction, concluding that it lacked jurisdiction to review USERRA complaints involving Alford's employer, the Defense Intelligence Agency.

Pursuant to 5 U.S.C. § 7703(a)(2), the Board is designated as the respondent when the Board's decision concerns solely the procedure or jurisdiction of the Board. The deciding agency is designated as the respondent when the Board reaches the merits of the underlying case. If the merits of the agency action are reached by the Board, and at the same time a matter of Board jurisdiction is involved, the agency is the proper respondent. *Spruill v. Merit Sys. Prot. Bd.*, 978 F.2d 679, 686 (Fed. Cir. 1992).

Here, the Board addressed the underlying merits of Alford's VEOA claim. Thus, the Department is the proper respondent.

Accordingly,

IT IS ORDERED THAT:

(1) The Department's motion is denied. The Department's brief is due within 21 days of the date of filing of this order.

(2) Alford's motion is denied.

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ALFORD v. DEFENSE
FOR THE COURT

SEP 24 2010

Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Leroy Alford
Michael D. Austin, Esq.

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

SEP 24 2010

JAN HORBALY
CLERK