

NOTE: This order is nonprecedential.

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

RENATA P. MAGLIETTI,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

2010-3144

Petition for review of the Merit Systems Protection
Board in PH0752100073-I-1.

ON MOTION

O R D E R

The Department of Veterans Affairs moves to reform the caption to name the Merit Systems Protection Board as respondent. Renata P. Maglietti opposes.

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.

Because the Board held that it did not have jurisdiction, it did not address the merits of the case. *See Garcia v. Department of Homeland Security*, 437 F.3d 1322, 1341 (Fed. Cir. 2006) (en banc) (“In a constructive action case, the jurisdictional fact at issue is almost always whether the facially voluntary action was involuntary. Involuntariness is essential for jurisdiction and it must be proven by the claimant. But while jurisdiction is established under 5 U.S.C. § 7512, the merits of the case are determined by the agency’s compliance with § 7513(a)-(b). In other words, the jurisdictional determination is not identical to the merits determination.”).

Accordingly,

IT IS ORDERED THAT:

(1) The motion is granted. The revised official caption is reflected above.

(2) The Board should calculate its brief due date from the date of filing of this order.

FOR THE COURT

OCT 22 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Renata P. Maglietti
David M. Hibey, Esq.
David Brooks, Esq. (copy of petitioner’s informal brief enclosed)

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

OCT 22 2010

JAN HORBALY
CLERK