

NOTE: This order is nonprecedential.

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

LARRY D. DITZLER,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent,

AND

DEPARTMENT OF TRANSPORTATION,
Intervenor.

2010-3148

Petition for review of the Merit Systems Protection Board in case no. AT3330100136-I-1.

ON MOTION

O R D E R

Before LOURIE, MAYER, and DYK, *Circuit Judges.*
DYK, *Circuit Judge.*

The Department of Transportation moves to summarily affirm the decision of the Merit Systems Protection

Board (Board) dismissing Larry D. Ditzler's appeal asserting a violation of veteran's preference rights pursuant to 5 U.S.C. § 3330.

The jurisdiction of the Board is not plenary; rather it is limited to actions designated as appealable to the Board "under any law, rule, or regulation." *Monasteri v. Merit Sys. Prot. Bd.*, 232 F.3d 1376, 1378 (Fed. Cir. 2000) (quoting 5 U.S.C. § 7701(a)). Although 35 U.S.C. §§ 3308-20 relating to veterans' preference rights applies to Federal Aviation Administration (FAA) applicants and employees, 35 U.S.C. § 3330(a), the section which would grant jurisdiction to the Board, does not. That was recently made clear by this court's decision in *Morse v. Merit Sys. Prot. Bd.*, 621 F.3d 1346 (Fed. Cir. 2010), which held that § 3330(a) was not one of the provisions specifically enumerated as applicable to the FAA personnel management system.

This petition for review arises out of Ditzler's allegation that his veteran's preference rights were violated when he was not selected for the position of Air Traffic Control Specialist, a position that the petitioner conceded below was within the FAA. The Board dismissed his petition for lack of jurisdiction for the very reasons provided in our decision in *Morse*. Summary affirmance is appropriate when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists." *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994). Because *Morse* controls this petition as a matter of law leaving no substantial question regarding its outcome, we agree with the Department that summary affirmance is warranted under the circumstances presented here.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion to summarily affirm is granted.

(2) All sides shall bear their own costs.

FOR THE COURT

DEC 08 2010
Date

/s/ Jan Horbaly
Jan Horbaly
Clerk

cc: Norman H. Jackman, Esq.
Jeffrey A. Gauger, Esq.
Jessica R. Toplin, Esq.

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

DEC 08 2010

JAN HORBALY
CLERK