

NOTE: This order is nonprecedential.

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

DARRON L. HARPE,
Petitioner,

v.

DEPARTMENT OF THE NAVY,
Respondent.

2011-3111

Petition for review of the Merit Systems Protection Board in case no. AT0731110186-I-1.

ON MOTION

Before LOURIE, MOORE, and REYNA, *Circuit Judges.*

PER CURIAM.

ORDER

The Department of the Navy moves to waive the requirements of Fed. Cir. R. 27(f) and to dismiss Darron L. Harpe's petition for review as premature.

On April 2, 2011, Harpe filed a petition for review with the Merit Systems Protection Board, seeking review of an initial decision by an administrative judge dismiss-

ing his petition for lack of jurisdiction. That petition remains pending at the Board. On April 13, 2011, this court also received a petition for review from the same initial decision.

Because the petition for review remains pending before the Board, Harpe's petition seeking review by this court is premature. 28 U.S.C. § 1295(a)(9) (this court has jurisdiction to review a "final order or final decision of the Merit Systems Protection Board"). After the Board rules on his petition for review, Harpe may, if appropriate, file a petition for review with this court, which must be received by this court within 60 days of his receipt of the Board's ruling.

Accordingly,

IT IS ORDERED THAT:

(1) The Navy's motions are granted. The petition for review is dismissed.

(2) Each side shall bear its own costs.

FOR THE COURT

SEP 02 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Darron L. Harpe
Ellen M. Lynch, Esq.
Merit Systems Protection Board, Clerk

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FILED
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THE FEDERAL CIRCUIT

SEP 02 2011

JAN HORBALY
CLERK