

NOTE: This order is nonprecedential.

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

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**ANITA FAY THOMAS,**  
*Petitioner*

v.

**DEPARTMENT OF VETERANS AFFAIRS,**  
*Respondent*

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2024-1126

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Petition for review of the Merit Systems Protection Board in No. AT-0752-14-0008-I-1.

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**ON MOTION**

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Before MOORE, *Chief Judge*, TARANTO and CHEN, *Circuit Judges*.

PER CURIAM.

**ORDER**

Anita Fay Thomas petitions this court for review of the final decision of the Merit Systems Protection Board affirming her removal and rejecting her affirmative defense concerning reprisal for Equal Employment Opportunity (“EEO”) activity. The Department of Veterans Affairs now

moves to transfer to the United States District Court for the Middle District of Alabama, or in the alternative, to dismiss. According to the Department's motion, Ms. Thomas indicates that she "would like to continue with [her] pursuit of discrimination." ECF No. 15 at 1.

Federal district courts, not this court, have jurisdiction over "[c]ases of discrimination subject to the provisions of [5 U.S.C.] § 7702," i.e., cases involving adverse actions appealable to the Board and allegations of covered discrimination. 5 U.S.C. § 7703(b)(2); *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 432 (2017); 5 U.S.C. § 7702(a)(1); *Diggs v. Dep't of Hous. & Urb. Dev.*, 670 F.3d 1353, 1357 (Fed. Cir. 2011) (holding that the affirmative defense of retaliation for prior EEO activity "falls outside [of the court's] jurisdictional reach"). Because Ms. Thomas is pursuing a case of discrimination here, we grant the motion and transfer pursuant to 28 U.S.C. § 1631 to the Middle District of Alabama, where the employment action occurred.

Accordingly,

IT IS ORDERED THAT:

The motion to transfer is granted to the extent that this case and all transmittals are transferred, pursuant to 28 U.S.C. § 1631, to the United States District Court for the Middle District of Alabama.

FOR THE COURT



Jarrett B. Perlow  
Clerk of Court

February 20, 2024  
Date