NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

MARTIN AKERMAN,
Petitioner

v.

DEPARTMENT OF THE AIR FORCE,
Respondent

2024-133

On Petition for Permission to Appeal from the Merit Systems Protection Board in No. DC-1221-22-0445-W-2.

ON PETITION AND MOTION

Before STOLL, CUNNINGHAM, and STARK, *Circuit Judges*.

PER CURIAM.

O R D E R

Martin Akerman petitions for permission for interlocutory appeal from a May 31, 2024 Acknowledgement Order issued by an administrative judge of the Merit Systems Protection Board. Mr. Akerman also moves to hold the petition in abeyance, ECF No. 4, and objects to the caption, ECF No. 5. We deny the petition and the motions.

The May 31, 2024 order is the administrative judge's acknowledgement of the refiling of Mr. Akerman's appeal following dismissal subject to automatic reinstatement. In that order, the administrative judge denied a request for joinder of the National Guard and reiterated previous rulings as to the scope of the appeal and extent of permitted discovery. Mr. Akerman's petition here asks this court to reverse those aspects of the May 31, 2024 order.

In matters from the Board, this court's jurisdiction is generally limited to "an appeal from a *final* order or *final* decision," 28 U.S.C. § 1295(a)(9) (emphases added), and "an order is final only when it ends the litigation on the merits and leaves nothing for the [tribunal] to do but execute the judgment," *Weed v. Social Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up). The May 31, 2024 order clearly does not resolve the merits of Mr. Akerman's appeal before the Board, which remains pending. And Mr. Akerman has not identified, and the court is not aware of, any basis for this court's immediate, interlocutory review of the administrative judge's order under the circumstances.

Accordingly,

IT IS ORDERED THAT:

The petition and all pending motions are denied.

FOR THE COURT

July 5, 2024
Date

Jarrett B. Perlow
Clerk of Court