

NOTE: This order is nonprecedential.

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

KEVIN MERTENS,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1781

Petition for review of the Merit Systems Protection Board in No. PH-0752-21-0092-I-1.

ON MOTION

Before LOURIE, CUNNINGHAM, and STARK, *Circuit Judges*.
PER CURIAM.

O R D E R

In response to this court's July 2, 2024 show cause order, the Merit Systems Protection Board argues this case should be dismissed or transferred. Kevin Mertens appears to argue the merits of his case, ECF Nos. 21 and 22, and also moves to stay proceedings pending appeal, ECF No. 14, to file a replacement informal opening brief, ECF

No. 12, and for various other relief from this court and the Board, ECF No. 20.

Mr. Mertens appealed his removal to the Board on January 4, 2021, raising an affirmative defense of disability discrimination. The administrative judge granted Mr. Mertens's request to dismiss his appeal without prejudice to refile, and Mr. Mertens petitioned the Board for review. The Board's March 6, 2024 decision affirmed but construed his petition as seeking to refile his appeal and transmitted it to the regional office for further adjudication.¹ Mr. Mertens then petitioned this court for review.

Federal district courts, not this court, have jurisdiction over “[c]ases of discrimination subject to the provisions of [5 U.S.C. §] 7702,” § 7703(b)(2), which involve an allegation of an action appealable to the Board and an allegation that a basis for the action was covered discrimination, 5 U.S.C. § 7702. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017). And such cases may be brought if there has been “no judicially reviewable action” by “the 120th day following the filing of an appeal with the Board.” 5 U.S.C. § 7702(e)(1)(B). Here, as the Board notes, Mr. Mertens appealed his removal and alleged that the action was based, at least in part, on covered discrimination, and it appears that he continues to pursue that claim, *see, e.g.*, ECF No. 22 at 17–18. We transfer to the United States District Court for the District of Connecticut, where the employment action appears to have occurred. 28 U.S.C. § 1631.

Accordingly,

¹ The Board states that the re-filed appeal has been dismissed without prejudice pending resolution of this matter. ECF No. 23 at 4.

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IT IS ORDERED THAT:

This matter and all case filings are transferred to the United States District Court for the District of Connecticut pursuant to 28 U.S.C. § 1631.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

August 21, 2024
Date