

NOTE: This order is nonprecedential.

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

JOSEPH ARMSTRONG,
Petitioner

v.

DEPARTMENT OF COMMERCE,
Respondent

2024-1892

Petition for review of the Merit Systems Protection Board in No. DC-0752-22-0621-I-1.

Before PROST, BRYSON, and HUGHES, *Circuit Judges*.

PER CURIAM.

O R D E R

Joseph Armstrong petitions for review of the Merit Systems Protection Board's decision affirming his removal and rejecting his affirmative defense of reprisal for equal employment opportunity activity. In response to the court's show cause order, the Department of Commerce urges transfer to the United States District Court for the District of Columbia. Mr. Armstrong has not responded.

Federal district courts, not this court, have jurisdiction over "[c]ases of discrimination subject to the provisions of

[5 U.S.C. §] 7702,” 5 U.S.C. § 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, including retaliation. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017); *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 equal employment opportunity activity “falls outside [of the court’s] jurisdictional reach”). Because Mr. Armstrong is pursuing a case of discrimination here, we transfer pursuant to 28 U.S.C. § 1631 to the District Court for the District of Columbia, where the employment action occurred.

Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

November 8, 2024
Date