NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

CHARLES D. ADAMS,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-2195

Petition for review of the Merit Systems Protection Board in No. DC-3443-23-0141-I-1.

ON MOTION

PER CURIAM.

O R D E R

In response to the court's order to show cause, Charles D. Adams urges this court to decide his petition for review and moves to reform the caption and for leave to proceed *in forma pauperis*. The Merit Systems Protection Board moves to dismiss as untimely or, in the alternative, to summarily affirm its decision.

Years after this court affirmed Mr. Adams's removal from the Department of Defense after revocation of his security clearance[1], he filed the underlying appeal at the Board, alleging misconduct by the FBI in handling relevant records and evidence. The Board dismissed his appeal for lack of jurisdiction, concluding that Mr. Adams was not challenging a personnel action appealable to the Board and, to the extent he was attempting to file an individual right of action ("IRA") appeal, he had failed to exhaust administrative remedies at the Office of Special Counsel ("OSC"). Mr. Adams petitions for review and states that he asserted a discrimination claim before the Board and does not wish to abandon those claims.

This court has jurisdiction to review final Board decision with one relevant exception: district courts have jurisdiction over "[c]ases of discrimination subject to the provisions of [5 U.S.C. §] 7702." 5 U.S.C. § 7703(b)(1)(A), (b)(2)—i.e., cases that involve (1) a non-frivolous allegation of "an action which the employee . . . may appeal to the" Board and (2) "that a basis for the action was [covered] discrimination." 5 U.S.C. § 7702(a)(1); *see Perry v. Merit Systems Protection Board*, 582 U.S. 420, 431–32 (2017). We need not definitively resolve whether Mr. Adams brought a "case[] of discrimination" here because, regardless of how we would answer that question, we would dismiss.

If Mr. Adams is only raising allegations divorced from any personnel action plausibly appealable to the Board, we would conclude that dismissal is appropriate because Mr. Adams has failed to identify any arguable basis for the Board's jurisdiction except for perhaps as a prohibited personnel practice and he does not deny failing to first seek

---

[1] *See Adams v. Dep't of Def.*, 688 F.3d 1330, 1336 (Fed. Cir. 2012).

corrective action with OSC as required by statute.[2, 3] We would reach the same conclusion if we were to take the view that Mr. Adams is trying to relitigate his prior case. It would not be in the interest of justice to transfer after Mr. Adams already fully litigated, and lost, these claims in his prior cases.

Accordingly,

IT IS ORDERED THAT:

(1) The Board's motion is granted to the extent that the above-captioned appeal is dismissed.

(2) All remaining pending motions are denied as moot.

(3) Each side shall bear its own costs.

FOR THE COURT

November 18, 2024
Date

Jarrett B. Perlow
Clerk of Court

---

[2] *See* 5 U.S.C. § 1214(a)(3) ("Except in a case in which an employee, former employee, or applicant for employment has the right to appeal directly to the Merit Systems Protection Board under any law, rule, or regulation, any such employee, former employee, or applicant shall seek corrective action from the Special Counsel before seeking corrective action from the Board.")

[3] To the extent Mr. Adams intended to file IRA appeals, "IRA appeals . . . by definition are never 'mixed cases.'" *Young v. Merit Sys. Prot. Bd.*, 961 F.3d 1323, 1328 (Fed. Cir. 2020).