

NOTE: This order is nonprecedential.

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

KEVIN P. MERTENS,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2025-1975

Petition for review of the Merit Systems Protection Board in Nos. PH-0752-21-0092-I-3 and PH-0752-21-0092-M-1.

ON MOTION

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

PER CURIAM.

O R D E R

In response to this court's December 10, 2025 order, Kevin P. Mertens files an amended Statement Concerning Discrimination abandoning the discrimination claim(s) he raised before the Merit Systems Protection Board in the

underlying proceedings. Under the circumstances of this case, we conclude that we have jurisdiction. *See Harris v. SEC*, 972 F.3d 1307, 1318 (Fed. Cir. 2020).

The Board moves to remand. In the appealed-from initial decision, the administrative judge sanctioned Mr. Mertens by dismissing his appeal. Without first seeking Board review, Mr. Mertens filed this petition for review. In its motion for remand, the Board concedes the administrative judge erred by dismissing Mr. Mertens's appeal as a sanction. Mr. Mertens agrees but seeks reversal rather than a remand for further proceedings. Mr. Mertens also seeks leave "to submit a cost bill for [his] time and expenses accrued since 12/28/2020." ECF No. 21 at 10.

We have discretion to remand to allow the Board to reconsider its previous position. *See SKF USA Inc. v. United States*, 254 F.3d 1022, 1029 (Fed. Cir. 2001). Without drawing any conclusions regarding the merits of the parties' arguments, the court concludes that remand would preserve party and judicial resources. On remand, we expect the Board will promptly resolve Mr. Mertens's long-standing appeal. As for Mr. Mertens's request for costs, we grant the request only to the extent he is awarded the cost of the docketing fee for filing the above-captioned case with this court. *See Fed. R. App. P.* 39(e)(1)(B).

Accordingly,

IT IS ORDERED THAT:

- (1) The motion for remand is granted.
- (2) The motion for costs is granted only to the extent provided in the order.
- (3) All other pending motions are denied.

FOR THE COURT



February 2, 2026
Date

Jarrett B. Perlow
Clerk of Court