NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

CAROLYN MILLER,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

DEPARTMENT OF DEFENSE,
Intervenor

2026-1639

Petition for review of the Merit Systems Protection Board in No. AT-0752-24-0250-I-1.

Before DYK, MAYER, and STARK, *Circuit Judges*.

PER CURIAM.

O R D E R

Carolyn Miller seeks review of the Merit Systems Protection Board's dismissal of her involuntary resignation appeal. In her filings, Ms. Miller confirms that she asserted at the Board a claim of retaliation for prior equal employment opportunity activity and that she wishes to pursue that claim. In response to this court's show cause order,

the Board urges transfer to the United States District Court for the Middle District of Georgia. Ms. Miller requests transfer if this court lacks jurisdiction. The Department of Defense did not file a response. We transfer.

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, *id*. at § 7702. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017); *see also 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 generally "falls outside [of this court's] jurisdictional reach"). We agree with the Board and Ms. Miller that transfer to the United States District Court for the Middle District of Georgia, where it appears that the employment action occurred and Ms. Miller resides, is appropriate under the circumstances, *see* 28 U.S.C. § 1631.

Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT

Jarrett B. Perlow
Clerk of Court

September 22, 2026
Date