NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

ROBERT E. PERDUE,
Petitioner

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent

2026-1727

Petition for review of the Merit Systems Protection Board in No. AT-0752-24-0275-I-1.

Before CHEN, LINN, and CUNNINGHAM, *Circuit Judges*.

PER CURIAM.

O R D E R

In response to this court's show cause order, the Department of Veterans Affairs ("DVA") urges dismissal or transfer. Robert E. Perdue urges the court to retain jurisdiction. Lacking jurisdiction, we transfer.

Mr. Perdue seeks judicial review of the Merit Systems Protection Board's dismissal of his involuntary resignation action for lack of jurisdiction. Before the Board, Mr. Perdue raised claims of discrimination and prohibited personnel practices including retaliation for Equal Employment

Opportunity ("EEO") activities. In his statement concerning discrimination, Mr. Perdue indicates that he does not wish to abandon those claims. ECF No. 21 at 3.

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, 5 U.S.C. § 7702. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 425–26, 437 (2017). Here, Mr. Perdue raises both discrimination claims and retaliation for filing an EEO complaint, such that we do not have jurisdiction. *See Diggs v. Dep't of Hous. & Urb. Dev.*, 670 F.3d 1353, 1358 (Fed. Cir. 2011) (holding that "affirmative defenses of reprisal for prior EEO activity" constitute assertions of covered discrimination). We deem it the better course to transfer, 28 U.S.C. § 1631, and agree with DVA that venue is appropriate in the United States District Court for the Northern District of Florida, where the employment action appears to have occurred.

Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT

October 29, 2026
Date

Jarrett B. Perlow
Clerk of Court