

NOTE: This order is nonprecedential.

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

LANCE MCDERMOTT,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1981

Petition for review of the Merit Systems Protection Board in No. SF-0752-21-0159-I-1.

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

PER CURIAM.

O R D E R

In response to this court's August 19, 2024 order to show cause, the Merit Systems Protection Board argues for transfer, and Lance McDermott responds asking this court to retain jurisdiction.

Mr. McDermott seeks review of an MSPB decision dismissing his restoration appeal for lack of jurisdiction. In his filings with the court, he indicates that he raised claims of discrimination and retaliation before the MSPB and that

he wishes to continue to pursue those claims on review. *See* ECF No. 4 at 3; ECF No. 10-1 at 28; ECF No. 12 at 8–9.

We transfer this case because Mr. McDermott pursues his discrimination claims and federal district courts, not this court, have jurisdiction over so-called “mixed cases”: “[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 MSPB 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, 437 (2017). That “review route remains the same when the MSPB types its dismissal of a mixed case as ‘jurisdictional.’” *Perry*, 582 U.S. at 423. We agree with the MSPB that transfer to the United States District Court for the Western District of Washington, where the employment action appears to have occurred, is appropriate. *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 Western District of Washington pursuant to 28 U.S.C. § 1631.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

October 23, 2024
Date