

NOTE: This order is nonprecedential.

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

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**MARISA E. DIGGS,**  
*Petitioner,*

v.

**DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT,**  
*Respondent.*

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2010-3193

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Petition for review of the Merit Systems Protection Board in case no. DC0752090594-I-1.

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**O R D E R**

This is a petition for review of the final decision of the Merit Systems Protection Board, affirming Ms. Diggs's removal from the Department of Housing and Urban Development for misconduct. *See Diggs v. Dep't of Hous. & Urban Dev.*, 2010 MSPB 151 (Jul. 22, 2010). Although neither party raised the issue of subject matter jurisdiction, this court has a "special obligation to satisfy itself . . . of its own jurisdiction." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (U.S. 1986) (internal quotations omitted). Having sought to do so, it is unclear whether we have subject matter jurisdiction over Ms.

Digg's petition, or whether this is a "mixed" case over which jurisdiction lies elsewhere. *See Williams v. Department of Army*, 715 F.2d 1485, 1490 (Fed. Cir. 1983); *Baker v. Dep't of the Interior*, No. 00-3174, 2000 U.S. App. LEXIS 28554, at \*2 (Fed. Cir. Nov. 8, 2000) (per curiam) (holding that cases involving an employment action "which may be appealed to the MSPB and an allegation in the nature of an affirmative defense that a basis for the action was discrimination within one of the categories in [5 U.S.C.] § 7702" are "[m]ixed" cases excluded from the Federal Circuit's jurisdiction") (internal quotations omitted). We, accordingly, request additional briefing on this jurisdictional question.

IT IS ORDERED THAT:

The parties shall file simultaneous supplemental briefs addressing the following issue: Does this court have subject matter jurisdiction over Ms. Diggs's petition, or does it present a "mixed" case over which jurisdiction lies elsewhere? An original and six copies of each brief shall be filed, and two copies of each brief shall be served on opposing counsel. The supplemental briefs shall be filed within 21 days of the date of this order and shall adhere to the type-volume limitations set forth in Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32.

FOR THE COURT

July 29, 2011  
Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

cc: Marisa E. Diggs  
Katy M. Bartelma, Esq.