

NOTE: This order is nonprecedential.

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

SAMUEL EARL TOOTLE, II,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

2013-3182

Petition for review of the Merit Systems Protection Board in No. AT4324120819-I-1.

ON MOTION

O R D E R

The Department of Veterans Affairs (“DVA”) moves to reform the caption to designate the Merit Systems Protection Board (“MSPB”) as the respondent in this petition. The DVA also moves on behalf of the MSPB for an extension of time to file the response brief to Samuel Earl Tootle’s informal brief.

Pursuant to 5 U.S.C. § 7703(a)(2), the Board is designated as the respondent when the Board’s decision con-

cerns the procedure or jurisdiction of the Board. The employing agency is designated as the respondent when the Board reaches the merits of the underlying case. Here, the Board dismissed Tootle's appeal for lack of jurisdiction. Thus, the Board is the proper respondent in this petition for review.

Accordingly,

IT IS ORDERED THAT:

(1) The motion to designate the MSPB as respondent is granted. The revised official caption is reflected above.

(2) The motion for extension of time is granted to the extent that MSPB's response brief to Tootle's informal brief is due 21 days from the date of this order.

FOR THE COURT

/s/ Daniel E. O'Toole
Daniel E. O'Toole
Clerk of Court