

NOTE: This order is nonprecedential.

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

SARVJIT S. CHOWDHARY,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

2014-3180

Petition for review of the Merit Systems Protection Board in No. CH-0752-09-0364-I-1.

ON MOTION

Before LOURIE, MOORE, and REYNA, *Circuit Judges.*

PER CURIAM.

ORDER

The Merit Systems Protection Board (“Board”) moves without opposition to transfer this petition for review to the United States District Court for the Eastern District of Michigan.

Sarvjit S. Chowdhary was removed from his position as a Consumer Safety Officer with the Department of Agriculture's Food Safety and Inspection Service in 2006. He appealed his removal to the Board, claiming, as an affirmative defense, that the agency action was in retaliation for filing a number of discrimination complaints against his supervisors. In 2007, the Administrative Law Judge ("ALJ") assigned to the matter affirmed the agency's determination.

In 2009, Chowdhary filed a second appeal at the Board, alleging his removal was improper because the agency discriminated against him on the basis of his race, religion, and national origin. The ALJ dismissed the appeal on res judicata grounds, concluding that the claim could have been brought in his prior appeal. In 2013, Chowdhary filed a petition for review at the Board, which was dismissed as untimely in an order now before this court.

Under the statutory provisions that govern judicial review of Board decisions, federal district courts, not this court, have jurisdiction over "case[s] of discrimination" under 5 U.S.C. §§ 7702, 7703(b). *See Kloeckner v. Solis*, 133 S. Ct. 596, 607 (2012). That includes cases in which the Board either addressed the merits or resolved the case on procedural grounds. *See id.* Here, there is no dispute that this petition belongs in federal district court.

Accordingly,

IT IS ORDERED THAT:

The motion is granted. The petition is transferred to the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. § 1631.

CHOWDHARY v. MSPB

3

FOR THE COURT

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

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ISSUED AS MANDATE: October 21, 2014