

NOTE: This order is nonprecedential.

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

MICHAEL B. GRAVES,
Petitioner,

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent.

2011-3095

Petition for review of the Merit Systems Protection
Board in case no. SF3330100617-I-1.

MICHAEL B. GRAVES,
Petitioner,

v.

DEPARTMENT OF THE AIR FORCE,
Respondent.

2011-3099

Petition for review of the Merit Systems Protection Board in case no. SF3330100696-I-1.

ON MOTION

Before GAJARSA, MAYER, and PROST, *Circuit Judges*.

PER CURIAM.

ORDER

In case no. 2011-3095, Michael B. Graves submits motions requesting, inter alia, "stay and retraction" of various actions and requesting an order to direct the Department of Veterans Affairs and the Merit Systems Protection Board to comply with *Baird v. Army*, 517 F.3d 1345 (Fed. Cir. 2008). The respondent opposes. In case no. 2011-3099, Graves also submits several motions requesting, inter alia, a stay of agency action, to direct the service of the certified list, to immediately file his brief, and to find the Clerk of the Board, the Clerk of this court, and the Department of Justice in contempt. The respondent opposes the motions to stay and moves to dismiss 2011-3099. Graves opposes dismissal and moves to strike the respondent's motion.

In 2011-3095, Graves seeks this court's review of the administrative judge's decision that denied a request for corrective action under the Veterans Employment Opportunities Act of 1998 (VEOA) and the Board's order that denied his petition for review of that administrative judge's decision. Without fully briefing the matter, Graves requests this court to direct the Department of Veterans Affairs to not appoint non-veterans to positions pending resolution of his case. Graves also seeks to compel the Board to grant his requests for discovery. We determine that Graves has not shown entitlement to the

relief he seeks by motion and that arguments concerning the merits of 2011-3095 should be placed in the parties' briefs.

Case no. 2011-3099 arose out of a separate VEOA appeal. In that case, the administrative judge dismissed the appeal without prejudice to refile. While a petition for review was pending before the Board, the Chief Administrative Judge refiled the appeal and assigned it to herself for resolution. The Board then ordered that the case be forwarded the appeal back to the regional office to be adjudicated.

The Department argues that the Board's order forwarding the appeal back to the regional office is not a final decision and cannot be reviewed at this time. In *Weed v. Social Sec. Admin.*, 571 F.3d 1359 (Fed. Cir. 2009), this court held that a Board order forwarding an appeal to a regional office was not immediately appealable. We noted that the case was not finally adjudicated and the decision of the Board did not dispose of the entire action. This court dismissed that petition for lack of jurisdiction.

Here, Graves also seeks this court's review of an order forwarding the matter back to the regional office for adjudication of his case. We agree with the respondent that the order is not a final order or decision. When the Board issues a final decision or order that disposes of the entire action, Graves may then seek review if that decision or order is adverse to him.

Concerning Graves' motion for contempt and his other various motions, Graves has not shown that his requested relief is appropriate. To the extent that Graves may or may not have received the Board's certified lists, we attach to this order a copy of the Board's certified lists in these two cases.

Accordingly,

IT IS ORDERED THAT:

(1) Graves's motions are denied. The clerk may now file Graves's brief in 2011-3095. The Department's brief in 2011-3095 is due within 30 days of this order.

(2) The Department's motion to dismiss 2011-3099 is granted.

(3) Each side shall bear its own costs in 2011-3099.

(4) All other pending motions in 2011-3099 are moot.

FOR THE COURT

MAY 26 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Michael B. Graves (Copies Of Certified Lists In 2011-3095, 2011-3099 Enclosed)

Daniel B. Volk, Esq.

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ISSUED AS A MANDATE (as to 2011-3099 only):

MAY 26 2011

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAY 26 2011

JAN HORBALY
CLERK