

NOTE: This order is nonprecedential.

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

**KATHERINE ARCHULETA, DIRECTOR, OFFICE
OF PERSONNEL MANAGEMENT,**
Petitioner,

v.

MARY A. MILLER,
Respondent,

AND

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

2014-119

Petition for Review of the Merit Systems Protection
Board in No. SF-0752-11-0766-R-2.

ON PETITION

Before LOURIE, DYK, and REYNA *Circuit Judges.*
LOURIE, *Circuit Judge.*

O R D E R

The Director of the Office of Personnel Management (“OPM”) petitions for review of a final order of the Merit Systems Protection Board pursuant to 5 U.S.C. § 7703(d). The Board found that the agency “failed to provide a ‘rational basis’ for requiring the appellant to accept the geographic reassignment” and that the agency instead invoked its discretion to reassign her as a “veil” to effect her separation. The Board thus concluded her removal did not promote the efficiency of the service.

OPM may seek review of a Board decision when it determines “that the Board erred in interpreting a civil service law, rule or regulation” and that the Board’s decision will have a substantial impact on the administration of the civil service. *See* 5 U.S.C. § 7703(d). The “granting of the petition for judicial review shall be at the discretion of the Court of Appeals.” *Id.* OPM asserts that when the Board reviewed the agency’s removal of Miller for failure to accept a geographic reassignment it assessed the merits of the agency’s underlying reassignment order, and by doing so “the [B]oard improperly substituted its judgment on managerial decisions Congress has left to agencies.”

OPM further asserts that “if the [B]oard is permitted to substitute its judgments for reassignments throughout the entire Federal Government, the tool of reassignment will be rendered unworkable, onerous, and burdensome.”

We conclude that review should be granted.

Upon consideration thereof,

IT IS ORDERED THAT:

OPM’s petition is granted.

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ARCHULETA v. MARY MILLER

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FOR THE COURT

/s/ Daniel E. O'Toole

Daniel E. O'Toole

Clerk of Court

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