

NOTE: This order is nonprecedential.

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

SIDNEY NELSON, JR.,
Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent.

2014-3054

Petition for review of the Merit Systems Protection Board in No. SF-0845-13-0347-I-1.

ON MOTION

Before PROST, O'MALLEY, and TARANTO, *Circuit Judges.*

PER CURIAM.

ORDER

The Office of Personnel Management moves to waive the requirements of Federal Circuit Rule 27(f) and to dismiss this appeal for lack of jurisdiction. Sidney Nelson, Jr. did not respond.

This court's review of Merit Systems Protection Board ("MSPB") decisions is limited to final orders or final decisions. *See Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361-63 (Fed. Cir. 2009); *see also* 28 U.S.C. § 1295(a)(9). Here, Mr. Nelson filed a timely petition for review with the MSPB, which remains pending and which rendered the initial decision non-final for purposes of our review. 5 C.F.R. § 1201.113(a) ("The initial decision will not become the Board's final decision if within the time limit for filing . . . any party files a petition for review . . ."). Because there is no final order or final decision of the MSPB, this court currently lacks jurisdiction over this case.

That conclusion is not altered by the fact that Mr. Nelson filed a petition for review at this court before filing his petition at the MSPB. The usual rule that the filing of a timely request for reconsideration tolls finality, *see Stone v. Immigration & Naturalization Serv.*, 514 U.S. 386, 392-93 (1995), applies even where, as here, the request is made subsequent to the filing of the petition for judicial review. *See Wade v. Fed. Commc'ns Comm'n*, 986 F.2d 1433, 1434 (D.C. Cir. 1993) (holding that the appellant's "request for agency reconsideration rendered the underlying action nonfinal, regardless of the order of filing").

This order does not prevent Mr. Nelson from seeking this court's review by filing a timely petition for review after the MSPB enters a final decision.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted. The petition is dismissed.
- (2) Each side shall bear its own costs.

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FOR THE COURT

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

ISSUED AS A MANDATE: March 27, 2014

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