

NOTE: This order is nonprecedential

United States Court of Appeals for the Federal Circuit

2010-3020

HAROLD HALL,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

Petition for review of the Merit Systems Protection Board in
AT0831090280-I-1.

ON MOTION

Before MICHEL, Chief Judge, SCHALL and LINN, Circuit Judges.

PER CURIAM.

ORDER

The Office of Personnel Management (OPM) moves to waive the requirements of Fed. Cir. R. 27(f) and to dismiss Harold Hall's petition from the Merit Systems Protection Board decision in AT0831090280-I-1 for lack of jurisdiction. Hall moves for leave to proceed in forma pauperis and to stay proceedings.

Hall filed an appeal challenging OPM's reconsideration decision that found Hall ineligible for survivor annuity benefits based on the federal service of his spouse. Hall married his spouse after she retired. The Board determined that because Hall's spouse had not filed a written election for a survivor annuity within two years of their marriage, Hall was not entitled to benefits on that ground. However, the Board remanded the case to OPM to determine whether Hall might be entitled to benefits if he and his spouse were married pursuant to common law at the time of his spouse's retirement.

OPM argues that the court lacks jurisdiction over Hall's appeal because the Board remanded Hall's case to OPM for further adjudication, and thus any appeal is premature. See 28 U.S.C. § 1295(a)(9) (this court has jurisdiction over a petition for review of a "final order or final decision of the Merit Systems Protection Board"). Because Hall seeks review of the Board's remand order, which is not a final order or decision, the petition for review is premature. See Weed v. Social Sec. Admin., 571 F.3d 1359, 1362 (Fed. Cir. 2009) ("a remand . . . [is] not a final order or final decision for purposes of § 1295(a)(9)"). Thus, we grant the motion to dismiss. If the Board issues an adverse final decision in this case at a later date, Hall may thereafter seek review of that decision, if appropriate.

Accordingly,

IT IS ORDERED THAT:

- (1) OPM's motions are granted. The appeal is dismissed.
- (2) Each side shall bear its own costs.
- (3) Hall's motions are denied as moot.

FOR THE COURT

DEC 16 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Harold Hall
Michael Goodman, Esq.

s20

ISSUED AS A MANDATE: DEC 16 2009

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

DEC 16 2009

JAN HORBALY
CLERK