

NOTE: This order is nonprecedential.

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

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**KIM LAU,**  
*Petitioner*

v.

**MERIT SYSTEMS PROTECTION BOARD,**  
*Respondent*

**DEPARTMENT OF HEALTH AND HUMAN  
SERVICES,**  
*Intervenor*

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2022-1289

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Petition for review of the Merit Systems Protection Board in No. DE-1221-21-0300-W-1.

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**ON MOTION**

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Before LOURIE, TARANTO, and HUGHES, *Circuit Judges*.  
PER CURIAM.

**ORDER**

The Merit Systems Protection Board moves to vacate its final decision and to remand this case for further

adjudication so that “the administrative judge can reevaluate whether [petitioner] met the jurisdictional requirements for an [individual right of action] appeal.” Mot. at 11. Among other things, the Board argues that remand is warranted to allow the administrative judge in the first instance to consider Board precedent holding that disclosures about a private organization that administers a government program may be protected. Kim Lau consents to the motion. The Department of Health and Human Services opposes. The Board and Dr. Lau reply.

It is within this court’s discretion to remand to allow the agency to reconsider its previous position. *See SKF USA Inc. v. United States*, 254 F.3d 1022, 1029 (Fed. Cir. 2001). Without drawing any conclusions regarding the merits of the parties’ arguments, the court agrees that remand here could preserve party and judicial resources, and therefore grants the motion.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted. The Board’s decision is vacated, and the case is remanded to the Board to reconsider its decision consistent with the motion and this order.
- (2) Each side shall bear its own costs.

FOR THE COURT

May 31, 2022  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

ISSUED AS A MANDATE: May 31, 2022