

NOTE: This order is nonprecedential.

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

---

**JAMES MCHUGH,**  
*Petitioner*

v.

**SECRETARY OF VETERANS AFFAIRS,**  
*Respondent*

---

2023-1616

---

Petition for review.

---

**ON MOTION**

---

Before PROST, REYNA, and STARK, *Circuit Judges*.

PER CURIAM.

**O R D E R**

The Secretary of Veterans Affairs moves to dismiss for lack of jurisdiction. The Secretary states that James McHugh opposes the motion.

Mr. McHugh filed his “notice of appeal,” ECF No. 1-2 at 1, on December 8, 2022, identifying an October 13, 2022, final agency decision of the Department of Veterans Affairs Office of Employment Discrimination Complaint

Adjudication.\* The decision stated that Mr. McHugh had a right to file a civil action within 90 days of receipt.

The Secretary correctly argues that this court lacks jurisdiction to review this decision. *Cf.* 28 U.S.C. § 1295; 38 U.S.C. §§ 502, 7292. However, the Secretary also correctly notes that pursuant to 42 U.S.C. § 2000e-16(c), Mr. McHugh could have brought this case in a United States district court at the time it was filed here. When we lack jurisdiction, this court shall, pursuant to 28 U.S.C. § 1631, transfer a civil action, if in the interest of justice, to another court where it could have been filed. Under the circumstances, we conclude that transfer is appropriate and agree with the Secretary's uncontradicted contention that the appropriate destination is the United States District Court for the Southern District of Ohio. *See, e.g.*, ECF No. 1-2 at 2 (noting that the relevant events occurred at a Veterans Affairs medical center in Cincinnati, Ohio).

Accordingly,

IT IS ORDERED THAT:

(1) The Secretary's motion is granted only to the extent that this case and all transmittals are transferred pursuant to 28 U.S.C. § 1631 to the United States District Court for the Southern District of Ohio.

---

\* Mr. McHugh's notice is dated "8/12/2022," and indicates he seeks review of a decision issued on that date, ECF No. 1-2 at 1, but he attaches the October 13, 2022, decision.

MCHUGH v. SECRETARY OF VETERANS AFFAIRS

3

(2) Any other pending motion is denied.

FOR THE COURT

June 13, 2023

Date

/s/ Jarrett B. Perlow

Jarrett B. Perlow  
Acting Clerk of Court