

NOTE: This order is nonprecedential.

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

CHRISTINA MCMILLIN,
Petitioner

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent

2023-1744

Petition for review of the Merit Systems Protection Board in No. DA-0752-22-0328-I-1.

Before CHEN, MAYER, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

The Department of Veterans Affairs responds to the court's May 25, 2023, show cause order urging dismissal. Christina McMillin has not responded.

Ms. McMillin appealed her removal to the Merit Systems Protection Board. On January 4, 2023, an administrative judge entered a settlement agreement into the record and dismissed the appeal, stating that the order would become final as of February 8, 2023. Ms. McMillin filed a petition for this court's review of the Board's

February 8, 2023, decision, and her filings indicate that she argued before the Board that her adverse employment action was based on discrimination and that she wishes to continue to pursue that claim. *See* ECF No. 6.

We lack jurisdiction to review a “mixed case” from the Board—one in which a federal employee (1) complains of having suffered a serious adverse personnel action appealable to the Board and (2) attributes the adverse action, in whole or in part, to bias prohibited by certain federal anti-discrimination laws. *See Harris v. SEC*, 972 F.3d 1307, 1317–18 (Fed. Cir. 2020); *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 426 (2017) (holding that federal district court is the proper forum for review of mixed cases from the Board); 5 U.S.C. § 7703(b)(1); 28 U.S.C. § 1295(a)(9).

Where we lack jurisdiction, and if it is in the interest of justice, we shall transfer the case to an appropriate court where the case “could have been brought at the time it was filed,” 28 U.S.C. § 1631. Here, we conclude that would be the United States District Court for the Eastern District of Texas, where it appears that Ms. McMillin resides and the employment practice occurred. Although the Department urges dismissal, we deem it the better course to transfer to allow the district court to consider any of Ms. McMillin’s challenges to the final decision.

Accordingly,

IT IS ORDERED THAT:

Pursuant to 28 U.S.C. § 1631, this case and all transmittals are transferred to the United States District Court for the Eastern District of Texas.

FOR THE COURT

August 21, 2023
Date

/s/ Jarrett B. Perlow
Jarrett B. Perlow
Clerk of Court