

NOTE: This order is nonprecedential.

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

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**JOHN BREDA,**  
*Petitioner*

v.

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

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2023-2166

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Petition for review of the Merit Systems Protection Board in No. PH-1221-23-0138-W-1.

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Before DYK, BRYSON, and TARANTO, *Circuit Judges*.

PER CURIAM.

**O R D E R**

In response to this court's November 7, 2023, order directing the parties to show cause whether John Breda's petition for review should be dismissed for lack of jurisdiction, the Merit Systems Protection Board urges dismissal, which Dr. Breda opposes.

On April 19, 2023, the administrative judge granted-in-part Dr. Breda's motion to dismiss without prejudice subject to refiling "on the motion of the administrative judge by July 18, 2023," and ordered that "[u]pon refiling,

this matter will immediately be set for a new hearing” as discovery was closed. ECF No. 2 at 10. Dr. Breda then filed a petition for review with this court. His Board appeal has since been reopened, and the Board notes without contradiction that no final decision has yet been entered.

In general, this court only has jurisdiction over “an appeal from a final order or final decision of the” Board. 28 U.S.C. § 1295(a)(9); *see* 5 U.S.C. § 7703(a)(1). “The Supreme Court has consistently held that as a general rule an order is final only when it ends litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Weed v. Social Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009) (cleaned up). “Whether an order is final does not depend on the specific ‘form of words’ that it uses but instead on whether the order evinces the [tribunal’s] clear intent to end the case.” *PlasmaCAM, Inc. v. CNCElectronics, LLC*, 24 F.4th 1378, 1383 (Fed. Cir. 2022) (citation omitted). Here, the April 2023 order Dr. Breda seeks to appeal clearly evinced the opposite intent—*i.e.*, the Board was not finished with Dr. Breda’s appeal. Indeed, consistent with the order, Dr. Breda’s appeal has been reopened and is currently pending before the administrative judge.

Accordingly,

IT IS ORDERED THAT:

- (1) The petition for review is dismissed.
- (2) Each party shall bear its own costs.

FOR THE COURT



Jarrett B. Perlow  
Clerk of Court

January 26, 2024  
Date