

NOTE: This order is nonprecedential.

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

CASANOVA HAMBRICK,
Petitioner

v.

UNITED STATES POSTAL SERVICE,
Respondent

2023-2250

Petition for review of the Merit Systems Protection Board in No. DC-0752-14-0454-C-3.

Before PROST, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

ORDER

Having considered the parties' responses to the court's October 3, 2023, order to show cause, we dismiss the petition for review as premature.

An administrative judge of the Merit Systems Protection Board issued an initial decision denying Casanova Hambrick's petition for enforcement. Mr. Hambrick thereafter filed a timely petition seeking further review of that decision at the Board, and that petition remains pending. On July 31, 2023, this court received what the court has

construed to be his petition to review the same initial decision.

This court does not yet have authority to decide this case. In general, this court only has jurisdiction to review final orders or final decisions of the Board, *see* 28 U.S.C. § 1295(a)(9); *see also Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361 (Fed. Cir. 2009), and Mr. Hambrick’s pending timely petition at the Board renders the initial decision non-final for purposes of our jurisdiction. *See* 5 U.S.C. § 7701(e)(1)(A) (providing that the initial decision does not become final if a party timely petitions the Board for review); 5 C.F.R. § 1201.113(a) (“The initial decision will not become the Board’s final decision if within the time limit for filing . . . any party files a petition for review . . .”).

Two potential paths to this court’s future review are available. First, Mr. Hambrick may wait to receive a final decision from the Board on the merits of his petition, at which point Mr. Hambrick may, if necessary, seek this court’s review by filing a timely petition here. Alternatively, Mr. Hambrick may file a motion at the Board to withdraw his petition pursuant to the June 2022 policy specified on the Board’s website.* Under that policy, the Clerk of the Board may grant requests to withdraw a petition for review when there is no apparent issue of untimeliness with the petition and no other party objects to the withdrawal. When the Clerk grants a request to withdraw, the order granting the request will be the final order of the Board for purposes of seeking our review.

* Merit Sys. Prot. Bd., Policy Regarding Clerk’s Authority to Grant Requests to Withdraw Petitions for Review (2022), https://www.mspb.gov/appeals/files/Policy_Regarding-Withdrawal_of_a_Petition_for_Review_1515773.pdf (last visited November 6, 2023).

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Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

December 14, 2023
Date