

NOTE: This order is nonprecedential.

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

JANET M. MARTIN,
Petitioner

v.

OFFICE OF PERSONNEL MANAGEMENT,
Respondent

2023-2419

Petition for review of the Merit Systems Protection Board in No. DE-0831-23-0256-I-1.

ON MOTION

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

PER CURIAM.

O R D E R

The Office of Personnel Management (OPM) moves to dismiss this petition for lack of jurisdiction. Janet M. Martin has not responded.

On September 18, 2023, Ms. Martin filed a timely petition with the Merit Systems Protection Board seeking review of an administrative judge's initial decision. The

following day, this court received her petition to review the same initial decision.

This court does not yet have authority to decide this case. Although this court 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), Ms. Martin’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 review are available. First, Ms. Martin may wait to receive a final determination from the Board on her petition, at which point she may seek this court’s review by filing a timely petition here if necessary. Alternatively, Ms. Martin may file a motion at the Board to withdraw her 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 obtaining judicial review.

Accordingly,

* 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 October 26, 2023).

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IT IS ORDERED THAT:

(1) The motion to dismiss is granted. 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

ISSUED AS A MANDATE: December 14, 2023