

NOTE: This order is nonprecedential.

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

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**WILLIAM D. MARCUM,**  
*Petitioner*

v.

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

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2023-2439

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Petition for review of the Merit Systems Protection Board in No. DE-0752-21-0188-I-1.

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PER CURIAM.

**O R D E R**

Because William D. Marcum asserted before the Merit Systems Protection Board that he was forced to resign due to discrimination and Mr. Marcum has not elected to abandon his discrimination claim, we transfer.<sup>1</sup>

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<sup>1</sup> In response to this court's show cause order, Mr. Marcum initially indicated that he was not asking the

Federal district courts, not this court, have jurisdiction over “[c]ases of discrimination subject to the provisions of [5 U.S.C. §] 7702,” 5 U.S.C. § 7703(b)(2), which involve an allegation of an action appealable to the Board and an allegation that a basis for the action was covered discrimination, including retaliation. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017); *Diggs v. Dep’t of Hous. & Urb. Dev.*, 670 F.3d 1353, 1357 (Fed. Cir. 2011) (holding that the affirmative defense of retaliation for prior EEO activity “falls outside [of the court’s] jurisdictional reach”). Here, Mr. Marcum alleged that he was forced to resign for protected EEO activity, and he continues to pursue that claim. We therefore conclude that jurisdiction to review the Board’s decision lies in district court, and transfer to the United States District Court for the District of Arizona, where the employment action appears to have occurred, is appropriate. *See* 28 U.S.C. § 1631; ECF No. 16 at 2.

Accordingly,

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court to address his discrimination claim. ECF No. 21-1 at 1. The court informed Mr. Marcum that if he wished to abandon the discrimination claim and proceed in this court, he needed to submit a corrected Form 10: Statement Concerning Discrimination and an opening brief with no arguments or references to his discrimination claim. But Mr. Marcum’s corrected Form 10 indicates that he does not wish to abandon his discrimination claim. ECF No. 24 at 3 (checking the box in Section C stating he does not wish to abandon his discrimination claim). And his informal opening brief refers to this case as a “mixed case.” ECF No. 31 at 1–2 (answers to questions 1 and 2).

MARCUM v. MSPB

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IT IS ORDERED THAT:

This matter and all case filings are transferred to the United States District Court for the District of Arizona pursuant to 28 U.S.C. § 1631.

FOR THE COURT



Jarrett B. Perlow  
Clerk of Court

November 7, 2024  
Date