

NOTE: This order is nonprecedential.

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

QUITO I. NEHEMIAH,
Petitioner

v.

**DIRECTOR OF THE OFFICE OF PERSONNEL
MANAGEMENT,**
Respondent

2024-1575

Petition for review of the Merit Systems Protection Board in No. DE-0731-23-0243-I-1.

ON MOTION

Before DYK, REYNA, and CHEN, *Circuit Judges*.

PER CURIAM.

O R D E R

In response to this court's July 2, 2024 order directing the parties to address this court's jurisdiction, Quito I. Nehemiah moves to transfer the case to district court and the Director of the Office of Personnel Management agrees that transfer is appropriate.

Mr. Nehemiah appealed his negative suitability decision from the Office of Personnel Management to the Merit Systems Protection Board, asserting, among other things, discrimination based on race and gender. In his filings with this court, Mr. Nehemiah continues to seek review of his discrimination claims.

Federal district courts, not this court, have jurisdiction over “[c]ases of discrimination subject to the provisions of [5 U.S.C. §] 7702,” § 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, § 7702(a). *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017). Here, Mr. Nehemiah brought a mixed case before the Board and he seeks judicial review of his discrimination claims such that his case belongs in district court. We agree with the Director that transfer to the United States District Court for the District of New Mexico, where it appears Mr. Nehemiah would have worked but for the alleged unlawful employment practice, is appropriate under 28 U.S.C. § 1631. *See* 42 U.S.C. § 2000e-5(f)(3).

Upon consideration thereof,

IT IS ORDERED THAT:

The motion to transfer is granted to the extent that this matter and all case filings are transferred to the United States District Court for the District of New Mexico pursuant to 28 U.S.C. § 1631.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

September 17, 2024
Date