

NOTE: This order is nonprecedential.

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

PAMELA MESSAL,
Petitioner

v.

DEPARTMENT OF AGRICULTURE,
Respondent

2024-1850

Petition for review of the Merit Systems Protection Board in No. DE-0752-20-0137-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 24, 2024 order directing the parties to show cause, the Department of Agriculture urges transfer while Pamela Messal argues in favor of this court's jurisdiction.

Ms. Messal appealed her removal from the U.S. Forest Service to the Merit Systems Protection Board and alleged,

inter alia, sex and disability discrimination. The Board affirmed her removal based, in relevant part, on a charge of being AWOL in March and October 2019. Ms. Messal then filed this petition seeking review of that decision.

Ms. Messal indicates that she wishes to abandon her claims of discrimination and proceed before this court. ECF No. 6 at 3. However, it appears she has a pending case in the United States District Court for the District of Nevada against the Chief of the Forest Service for discrimination and requested the court “change [her] AWOL” status for March and October 2019, *Messal v. Moore*, No. 3:24-cv-122, Dkt. No. 4 at 11 (D. Nev. Mar. 20, 2024). Although Ms. Messal states that she is in the process of “clarifying the case before [this court] does not cover what is in the US District Court lawsuit and the US District Court lawsuit does not cover what is before [this court],” ECF No. 12 at 3, 5 (Aug. 23, 2024), no amended complaint or similar clarification has been filed with that court.

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, 5 U.S.C. § 7702. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017). A petitioner does not bring a “[c]ase of discrimination” when she has abandoned her discrimination claim(s), *Harris v. SEC*, 972 F.3d 1307, 1318 (Fed. Cir. 2020), but “Congress did not direct or contemplate bifurcated review of” the personnel action and discrimination claim(s) raised before the Board, *Williams v. Dep’t of the Army*, 715 F.2d 1485, 1490 (Fed. Cir. 1983); see *Punch v. Bridenstine*, 945 F.3d 322, 330 (5th Cir. 2019) (“When federal employees have discrimination and non-discrimination claims arising from ‘the same or related facts,’ every court of appeals to consider the question has prohibited bifurcation.”).

MESSAL v. DEPARTMENT OF AGRICULTURE

3

Here, Ms. Messal has not abandoned her discrimination claims as she is actively litigating such claims in district court. Thus, we agree with the Department of Agriculture that under the present circumstances, this case belongs in district court. The court therefore will transfer to the District of Nevada, *see* 28 U.S.C. § 1631, unless, within 30 days from the date of entry of this order, Ms. Messal files a notice with this court that she has made a filing in the district court case affirmatively dismissing any claims overlapping with this matter.

Accordingly,

IT IS ORDERED THAT:

(1) Unless, within 30 days from the date of entry of this order, Ms. Messal files a notice with this court demonstrating that she has made a filing in the district court case affirmatively dismissing any claims overlapping with this matter, this matter and all case filings shall be transferred to the United States District Court for the District of Nevada pursuant to 28 U.S.C. § 1631.

(2) If Ms. Messal files such a notice, the Department of Agriculture may file a response no later than 14 days thereafter.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

October 1, 2024

Date