

NOTE: This order is nonprecedential.

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

JAIME MELENDEZ,
Petitioner

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent

2024-1950

Petition for review of the Merit Systems Protection Board in No. SF-0752-24-0246-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 17, 2024 show cause order, the Merit Systems Protection Board argues for dismissal while Jaime Melendez seeks to proceed with the case.

Mr. Melendez appealed to the Board alleging that his resignation from the Department of the Treasury was involuntary and based, at least in part, on disability

discrimination. The administrative judge dismissed Mr. Melendez's appeal for lack of jurisdiction. Mr. Melendez filed a petition for review with the Board, which remains pending, and a petition for review with this court. In filings with this court, Mr. Melendez states that he abandons the "claim that [he] was discriminated against" and will "only pursue civil- service claims in the Federal Circuit." ECF No. 4 at 3.¹

We dismiss. This court only has jurisdiction over "an appeal from a final order or final decision of the . . . Board." 28 U.S.C. § 1295(a)(9). A timely petition for Board review renders the initial decision non-final. *See* 5 C.F.R. § 1201.113(a); *Weed v. Soc. Sec. Admin.*, 571 F.3d 1359, 1361–63 (Fed. Cir. 2009). Given Mr. Melendez's pending petition at the Board, we currently lack jurisdiction. After the Board issues a final decision on his petition, he may, if necessary, file a timely petition for this court's review. Alternatively, if Mr. Melendez wishes to forgo Board review of his petition and instead directly pursue this court's review, he may wish to review the Board's withdrawal policy as identified by the Clerk of the Board in a letter accompanying the certified list in this case. *See* ECF No. 11 at 1; *see also* June 2022 Board Policy.²

¹ Mr. Melendez indicated that he was seeking this court's review of his involuntary resignation claim while simultaneously seeking review of the Board's decision before the Equal Employment Opportunity Commission, but the parties' responses confirm that is not the circumstance. *See* ECF No. 16 at 2; ECF No. 15 at 3 n.1.

² Merit Sys. Prot. Bd., Policy Regarding Clerk's Authority to Grant Requests to Withdraw Petitions for Review (2022),

MELENDEZ v. MSPB

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Accordingly,

IT IS ORDERED THAT:

- (1) The petition for review is dismissed.
- (2) All pending motions are denied.
- (3) Each party shall bear its own costs.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

September 17, 2024
Date

https://www.mspb.gov/appeals/files/Policy_Regarding-Withdrawal_of_a_Petition_for_Review_1515773.pdf
(last visited September 6, 2024).