

NOTE: This order is nonprecedential.

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

TOM KUNAU,
Petitioner

v.

DEPARTMENT OF VETERANS AFFAIRS,
Respondent

2024-2176

Petition for review of the Merit Systems Protection Board in No. DE-0752-23-0339-I-1.

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

PER CURIAM.

O R D E R

Tom Kunau petitions this court for review of the Merit Systems Protection Board's final decision affirming his removal and rejecting his affirmative defense of discrimination based on gender and race. In response to this court's September 17, 2024 show cause order, the Department of Veterans Affairs argues for dismissal or transfer. Mr. Kunau has not filed a response.

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, § 7702. *Perry v. Merit Sys. Prot. Bd.*, 582 U.S. 420, 437 (2017). Here, the Board understood Mr. Kunau to allege that his removal was based, at least in part, on race and gender discrimination, and Mr. Kunau continues to pursue those claims. Thus, we lack jurisdiction and conclude that transfer to the United States District Court for the District of Utah, where the employment action appears to have occurred, is appropriate. 28 U.S.C. § 1631.¹

Accordingly,

IT IS ORDERED THAT:

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

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

November 12, 2024
Date

¹ The Department of Veterans Affairs may raise its timeliness arguments, among others, before the district court.